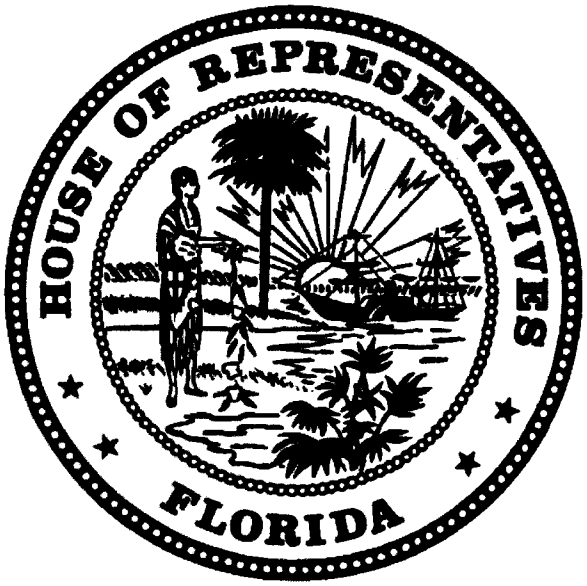

Regulatory Affairs Committee

Thursday, January 21, 2016
11:30 AM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

Jose Diaz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time:	Thursday, January 21, 2016 11:30 am
End Date and Time:	Thursday, January 21, 2016 01:30 pm
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HJR 193 Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment by Rodrigues, R., Berman
HB 195 Renewable Energy Source Devices by Rodrigues, R., Berman
CS/HB 297 Limitations on Actions other than for the Recovery of Real Property by Civil Justice Subcommittee, Perry
HB 381 Public Records/Florida State Boxing Commission by Raburn
CS/HB 431 Firesafety by Insurance & Banking Subcommittee, Raburn, Combee
CS/HB 577 Liability Insurance Coverage by Insurance & Banking Subcommittee, Lee
HB 695 Title Insurance by Boyd

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Wednesday, January 20, 2016.

By request of the Chair, all Regulatory Affairs Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, January 20, 2016.

NOTICE FINALIZED on 01/19/2016 4:16PM by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Steve Crisafulli
Speaker

Jose Diaz
Chair

AGENDA

January 21, 2016
404 HOB 11:30 AM – 1:30 PM

I. Call to Order and Roll Call

II. HJR 193 by *Reps. R. Rodrigues and Berman*
Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment

III. HB 195 by *Reps. R. Rodrigues and Berman*
Renewable Energy Source Devices

IV. CS/HB 297 by *Civil Justice Subcommittee; Rep. Perry*
Limitations on Actions other than for the Recovery of Real Property

V. HB 381 by *Rep. Raburn*
Public Records/Florida State Boxing Commission

VI. CS/HB 431 by *Insurance & Banking Subcommittee; Reps. Raburn and Combee*
Firesafety

VII. CS/HB 577 by *Insurance & Banking Subcommittee; Rep. Lee*
Liability Insurance Coverage

VIII. HB 695 by *Rep. Boyd*
Title Insurance

IX. ADJOURNMENT

303 House Office Building, 402 South Monroe Street , Tallahassee, FL 32399-1300
(850) 717-4870

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 193 Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment
SPONSOR(S): Rodrigues and others
TIED BILLS: HB 195 **IDEN./SIM. BILLS:** SJR 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N	Whittier	Keating
2) Finance & Tax Committee	14 Y, 0 N	Dugan	Langston
3) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

The Florida Constitution (Constitution) provides for local government ad valorem taxes on real property and tangible personal property, assessment of property for tax purposes, and exemptions to these taxes.

Article VII, section 4(i) of the Constitution provides that the legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:

(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
(2) The installation of a renewable energy source device.

This joint resolution proposes two amendments to the Constitution. The first amendment exempts the assessed value of a renewable energy source device, or a component thereof, from ad valorem tax on tangible personal property.

The second amendment authorizes the Legislature to prohibit, by general law, a property appraiser from considering the installation of a renewable energy source device, or a component thereof, in the determination of assessed value of real property for the purpose of ad valorem taxation. This expands the current constitutional provision by specifying that it applies also to a component of a renewable energy source device and by extending it to all real property, not just real property used for residential purposes. This provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

Assuming that the constitutional amendments proposed by HJR 193 are adopted by the voters, the Revenue Estimating Conference (REC) estimates that the self-executing provisions related to tangible personal property will have an indeterminate negative fiscal impact. Further, if the Legislature passes HB 195, which implements the provisions of HJR 193 that are related to real property, the REC estimates that the combined school and non-school impact of those provisions on local government revenues beginning in Fiscal Year 2017-18 will be -$17.0 million, growing to -$21.0 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant.

The joint resolution provides an effective date of January 1, 2017.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[1] The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[3] and it provides for specified assessment limitations, property classifications and exemptions.[4] After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[5]

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, "just valuation" is synonymous with "fair market value," and is defined as what a willing buyer would pay a willing seller for property in an arm's length transaction.[6]

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[8]

Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.[9] Property owners who lease, lend, or rent property must also file. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value.[10] A single return must be filed for each site in the county where the owner of tangible personal property transacts business.[11] The requirement to file an annual tangible personal property return is waived for taxpayers if they file an initial return on which the exemption is taken and the value of the tangible personal property is less than $25,000.[12]

---

[1] Fla. Const. art. VII, s. 1(a).
[2] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[3] Fla. Const. art. VII, s. 4.
[4] Fla. Const. art. VII, ss. 3, 4, and 6.
[5] s. 196.031, F.S.
[6] s. 193.011, F.S. *See, also, Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).
[7] The constitutional provisions in art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[8] Fla. Const. art. VII, s. 4(i).
[9] s. 193.062, F.S.; See also FLORIDA DEPARTMENT OF REVENUE, TANGIBLE PERSONAL PROPERTY, available at http://dor.myflorida.com/dor/property/tpp/ (last visited Nov. 13, 2015).
[10] Fla. Const., article VII, s. 3.
[11] s. 196.183(1), F.S.
[12] s. 196.183(3), F.S.

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to article VII, section 3(d) of the Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature implemented this exemption for real property on which a renewable energy source device is installed and operated.[13] However, the exemption expired after 10 years, as provided in the Constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The implementing statute limited the exemption to the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.[14]

In December 2000, the last of these exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission, adding the following language to article VII, section 4 of the Constitution:

> (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:[15]
> (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
> (2) The installation of a renewable energy source device.

The 2008 constitutional amendment only addressed residential property. In 2013, the Legislature passed a law implementing the renewable energy source device portion of the amendment.[16]

The 2008 constitutional amendment also repealed the constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which the device is installed and operated. This repealed language had provided the constitutional basis for

[13] ss. 196.175 and 196.012(14), F.S. (2000)
[14] *Id.*
[15] The 2008 constitutional amendment is permissive and does not *require* the Legislature to enact legislation.
[16] Ch. 2013-77, Laws of Fla.

the legislation passed in 1980 and 2008; thereby nullifying the property tax exemption that the Legislature had just passed.

Under current law, the renewable energy property tax exemption is implemented in s. 193.624, F.S. The statute applies to a renewable energy source device installed on or after January 1, 2013, on new and existing residential real property. The statute defines the term "renewable energy source device" to mean any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:[17]

- Solar energy collectors, photovoltaic modules, and inverters;
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks;
- Rockbeds;
- Thermostats and other control devices;
- Heat exchange devices;
- Pumps and fans;
- Roof ponds;
- Freestanding thermal containers;
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type;
- Windmills and wind turbines;
- Wind-driven generators;
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy; and
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Effect of Proposed Changes

The joint resolution proposes two amendments to the Constitution. The first amendment proposes an amendment to article VII, section 3 to exempt the assessed value of a renewable energy source device, or a component thereof, from the ad valorem tax on tangible personal property.

The second amendment proposes an amendment to article VII, section 4 that authorizes the Legislature, by general law, to prohibit a property appraiser from considering the installation of a renewable energy source device, or a component thereof, in the determination of assessed value of real property for the purpose of ad valorem taxation. This expands the current constitutional provision by specifying that it applies also to a component of a renewable energy source device and by extending it to all real property, not just real property used for residential purposes. This provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

The joint resolution also creates section 34 of article XII to provide a schedule of implementation.

The amendments and addition to the Constitution would take effect January 1, 2017.

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing constitutional amendments, it does not contain bill sections.

[17] s. 193.624(1), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See *Fiscal Comments.*

2. Expenditures:

   See *Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The joint resolution will result in lower ad valorem tax expenses for taxpayers who make qualifying improvements to real property and may encourage the purchase of more renewable energy source devices throughout the state.

D. FISCAL COMMENTS:

Assuming that the constitutional amendments proposed by HJR 193 are adopted by the voters, the Revenue Estimating Conference (REC) estimates that the self-executing provisions related to tangible personal property will have an indeterminate negative fiscal impact. Further, if the Legislature passes HB 195, which implements the provisions of HJR 193 that are related to real property, the REC estimates that the combined school and non-school impact of those provisions on local government revenues beginning in Fiscal Year 2017-18 will be -$17.0 million, growing to -$21.0 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant.

.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This is not a general bill and is therefore not subject to the municipality/county mandates provision of article VII, section 18 of the Florida Constitution.

2. Other:

Article XI, section 1 of the Florida Constitution, provides for proposed changes to the Constitution by the Legislature:

SECTION 1: **Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision. Article XI, section 5(e) of the State Constitution, requires 60 percent voter approval for a proposed constitutional amendment to pass.

If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.[18]

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[18] FLA. CONST. art. XI, s. 5(e).

House Joint Resolution

A joint resolution proposing amendments to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices, or components thereof, that are subject to tangible personal property taxes and to allow the Legislature, by general law, to prohibit consideration of such installed devices or components in assessment of the value of real property for the purpose of ad valorem taxation, and to provide an effective date.

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

That the following amendment to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be

exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

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

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

property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

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

(e) By general law and subject to conditions specified therein:~~,~~

(1) Twenty-five thousand dollars of the assessed value of property subject to tangible personal property tax shall be exempt from ad valorem taxation.

(2) The assessed value of a renewable energy source device, or a component thereof, subject to tangible personal

property tax shall be exempt from ad valorem taxation.

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

(g) By general law and subject to the conditions specified therein, each person who receives a homestead exemption as provided in section 6 of this article; who was a member of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard; and who was deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature shall receive an additional exemption equal to a percentage of the taxable value of his or her homestead property. The applicable percentage shall be calculated as the number of days during the preceding calendar year the person was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature divided by the number of days in that year.

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for

noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall only change as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8)a. A person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to

have the new homestead assessed at less than just value. If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that

the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property ~~used for residential purposes~~:

(1) Any change or improvement to residential real property

made to improve ~~for the purpose of improving~~ the property's resistance to wind damage.

(2) The installation of a renewable energy source device or a component thereof.

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

ARTICLE XII

SCHEDULE

SECTION 34. Renewable energy source devices and components thereof; exemption from certain taxation and assessment.—This section, the amendment to subsection (e) of Section 3 of Article VII requiring the legislature, by general law, to exempt the assessed value of a renewable energy source device, or a component thereof, subject to tangible personal property tax from ad valorem taxation, and the amendment to subsection (i) of

Section 4 of Article VII allowing the legislature, by general law, to prohibit consideration of a renewable energy source device, or a component thereof, in assessing the value of real property for the purpose of ad valorem taxation shall take effect on January 1, 2017.

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

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTIONS 3 AND 4

ARTICLE XII, SECTION 34

RENEWABLE ENERGY SOURCE DEVICES AND COMPONENTS THEREOF; EXEMPTION FROM CERTAIN TAXATION AND ASSESSMENT.—Proposing an amendment to the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices, or components thereof, that are subject to tangible personal property taxes and allow the Legislature, by general law, to prohibit consideration of such devices or components in assessing the value of real property for the purpose of ad valorem taxation. This amendment takes effect January 1, 2017.

REGULATORY AFFAIRS COMMITTEE
HJR 193 by Rep. Rodrigues
Renewable Energy Source Devices

AMENDMENT SUMMARY

Amendment 1 by Rep. Rodrigues (Strike-all)

- Removes the phrase "or a component thereof" from references to "renewable energy source device."

- Provides an expiration date of December 31, 2036, for the constitutional provisions proposed by the joint resolution.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

Remove everything after the resolving clause and insert:

That the following amendment to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be

exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

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

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

property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

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

(e) By general law and subject to conditions specified therein:~~,~~

(1) Twenty-five thousand dollars of the assessed value of property subject to tangible personal property tax shall be exempt from ad valorem taxation.

(2) The assessed value of a renewable energy source device subject to tangible personal property tax shall be exempt from

ad valorem taxation.

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

(g) By general law and subject to the conditions specified therein, each person who receives a homestead exemption as provided in section 6 of this article; who was a member of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard; and who was deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature shall receive an additional exemption equal to a percentage of the taxable value of his or her homestead property. The applicable percentage shall be calculated as the number of days during the preceding calendar year the person was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature divided by the number of days in that year.

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for

noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall only change as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8)a. A person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to

have the new homestead assessed at less than just value. If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that

the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property ~~used for residential purposes~~:

(1) Any change or improvement to residential real property

made to improve ~~for the purpose of improving~~ the property's resistance to wind damage.

(2) The installation of a renewable energy source device.

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

ARTICLE XII

SCHEDULE

SECTION 34. Renewable energy source devices; exemption from certain taxation and assessment.—This section, the amendment to subsection (e) of Section 3 of Article VII requiring the legislature, by general law, to exempt the assessed value of a renewable energy source device subject to tangible personal property tax from ad valorem taxation, and the amendment to subsection (i) of Section 4 of Article VII allowing the legislature, by general law, to prohibit consideration of a

renewable energy source device in assessing the value of real property for the purpose of ad valorem taxation shall take effect on January 1, 2017, and shall expire on December 31, 2036. Upon expiration, this section shall be repealed and the text of subsection (e) of Section 3 of Article VII and subsection (i) of Section 4 of Article VII shall revert to that in existence on December 31, 2016, except that any amendments to such text otherwise adopted shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.

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

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTIONS 3 AND 4

ARTICLE XII, SECTION 34

RENEWABLE ENERGY SOURCE DEVICES; EXEMPTION FROM CERTAIN TAXATION AND ASSESSMENT.—Proposing an amendment to the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices that are subject to tangible personal property taxes and allow the Legislature, by general law, to prohibit consideration of such devices in assessing the value of real property for the purpose of ad valorem taxation. This amendment takes effect January 1, 2017, and expires on December 31, 2036.

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

Remove everything before the resolving clause and insert:

House Joint Resolution

A joint resolution proposing amendments to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices that are subject to tangible personal property taxes and to allow the Legislature, by general law, to prohibit consideration of such installed devices in assessment of the value of real property for the purpose of ad valorem taxation, and to provide effective and expiration dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 195 Renewable Energy Source Devices
SPONSOR(S): Rodrigues and others
TIED BILLS: HJR 193 **IDEN./SIM. BILLS:** SB 172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N	Whittier	Keating
2) Finance & Tax Committee	14 Y, 0 N	Dugan	Langston
3) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

This bill implements HJR 193, which amends article VII, sections 3 and 4 of the Florida Constitution (Constitution) and creates article XII, section 34 of the Constitution. HJR 193 proposes to exempt the assessed value of a renewable energy source device, or a component thereof, from ad valorem tax on tangible personal property. HJR 193 also proposes to authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component thereof, in determining the assessed value of any real property for the purpose of ad valorem taxation.

The bill amends s. 193.624, F.S., to expand the definition of "renewable energy source device" to include devices for the storage of solar energy, wind energy, and energy derived from geothermal deposits. The bill also amends that section to prohibit the consideration of the installation of a renewable energy source device, or a component thereof, from assessments of *all* real property, rather than just for residential property, beginning January 1, 2017.

The bill creates s. 196.182, F.S., to exempt a renewable energy source device, as defined in s. 193.624, F.S., or a component thereof, from ad valorem tax on tangible personal property.

The Revenue Estimating Conference estimates that if HJR 193 is passed by the voters, the estimated local government revenue impact of HB 195 beginning in Fiscal Year 2017-18 would be -$17.0 million, growing to -$21.0 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant.

The act will take effect January 1, 2017, if HJR 193 or a similar joint resolution having substantially the same specific intent and purpose is approved by the electors at the general election to be held in November 2016 or at an earlier special election specifically authorized by law for that purpose. The proposed amendment must be approved by at least 60 percent of the votes cast in order to pass.

The county/municipality mandates provision of article VII, section 18 of the Florida 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, an exemption may apply because the fiscal impact may be insignificant.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxes and Assessments

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[1] The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[3] and it provides for specified assessment limitations, property classifications and exemptions.[4] After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[5]

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, "just valuation" is synonymous with "fair market value," and is defined as what a willing buyer would pay a willing seller for property in an arm's length transaction.[6]

Section 193.011, F.S., lists the following factors to be taken into consideration when a property appraiser is determining just valuation:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

---

[1] Fla. Const. art. VII, s. 1(a).
[2] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[3] Fla. Const. art. VII, s. 4.
[4] Fla. Const. art. VII, ss. 3, 4, and 6.
[5] s. 196.031, F.S.
[6] s. 193.011, F.S. *See, also, Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[8]

Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.[9] Property owners who lease, lend, or rent property must also file. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value.[10] A single return must be filed for each site in the county where the owner of tangible personal property transacts business.[11] The requirement to file an annual tangible personal property return is waived for taxpayers if they file an initial return on which the exemption is taken and the value of the tangible personal property is less than $25,000.[12]

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to article VII, section 3(d) of the Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature implemented this exemption for real property on which a renewable energy source device is installed and operated.[13] However, the exemption expired after 10 years, as provided in the Constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990.

[7] The constitutional provisions in art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[8] Fla. Const. art. VII, s. 4(i).
[9] s. 193.062, F.S.; See also FLORIDA DEPARTMENT OF REVENUE, TANGIBLE PERSONAL PROPERTY, available at http://dor.myflorida.com/dor/property/tpp/ (last visited Nov. 13, 2015).
[10] Fla. Const., article VII, s. 3.
[11] s. 196.183(1), F.S.
[12] s. 196.183(3), F.S.
[13] ss. 196.175 and 196.012(14), F.S. (2000)

Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The implementing statute limited the exemption to the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.[14]

In December 2000, the last of these exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission, adding the following language to article VII, section 4 of the Constitution:

> (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes: [15]
> (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
> (2) The installation of a renewable energy source device.

The 2008 constitutional amendment only addressed residential property. In 2013, the Legislature passed a law implementing the renewable energy source device portion of the amendment.[16]

The 2008 constitutional amendment also repealed the constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which the device is installed and operated. This repealed language had provided the constitutional basis for the legislation passed in 1980 and 2008; thereby nullifying the property tax exemption that the Legislature had just passed.

In 2013, the Legislature created s. 193.624, F.S., which provides that in determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered. The law applies to the installation of a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property. The wind mitigation portion of the constitutional amendment for residential properties was not included in the law.

"Renewable energy source devices" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters.
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- Rockbeds.

---

[14] *Id.*
[15] The 2008 constitutional amendment is permissive and does not *require* the Legislature to enact legislation.
[16] Ch. 2013-77, Laws of Fla.

- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.
- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.
- Windmills and wind turbines.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.[17]

Effect of Proposed Changes

The bill implements HJR 193, which amends article VII, sections 3 and 4 of the Florida Constitution and creates article XII, section 34 of the Florida Constitution. HJR 193 proposes to exempt the assessed value of a renewable energy source device, or a component thereof, from ad valorem tax on tangible personal property.

HJR 193 also proposes to authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component thereof,[18] in determining the assessed value of all real property (not just residential) for the purpose of ad valorem taxation, beginning January 1, 2017. The provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

To implement the joint resolution, the bill creates s. 196.182, F.S., to exempt a renewable energy source device, or any component thereof from ad valorem taxation. It amends s. 193.624, F.S., to prohibit the consideration of an increase in the just value of a property attributable to the installation of a renewable energy source device, or a component thereof, in determining assessments of *all* real property, rather than just for residential property, beginning January 1, 2017. The bill clarifies that the provision applies to new and existing real property.

The bill expands the definition of "renewable energy source device" in s. 193.624, F.S., to include power conditioning and storage devices that store or use solar energy (in addition to wind energy) or energy derived from geothermal deposits to generate electricity or mechanical forms of energy.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.624, F.S., relating to assessments of real property.

Section 2. Creates s. 196.182, F.S., exempting a renewable energy source device or any component thereof from ad valorem taxation.

Section 3. Reenacts s. 193.155, F.S., relating to homestead assessments.

Section 4. Reenacts s. 193.1554, F.S., relating to non-homestead residential property assessments.

[17] s. 193.624(1), F.S.
[18] Although this is not defined in the bill or the joint resolution, it may be referring to battery backups for photovoltaic systems.

Section 5. Provides an effective date of January 1, 2017, if HJR 193 or a similar joint resolution having substantially the same specific intent and purpose, is approved by the electors at the November 2016 general election or at an earlier special election specifically authorized by law for that purpose.

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:

   See *Fiscal Comments*.

2. Expenditures:

   See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will result in lower ad valorem tax expenses for taxpayers who make qualifying improvements to real property and may encourage the purchase of more renewable energy source devices throughout the state.

D. FISCAL COMMENTS:

The Revenue Estimating Conference estimates that if HJR 193 is passed by the voters, the estimated local government revenue impact of HB 195 beginning in Fiscal Year 2017-18 would be -$17.0 million, growing to -$21.0 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of article VII, section 18 of the Florida 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, an exemption may apply because the fiscal impact may be insignificant.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to renewable energy source devices; amending s. 193.624, F.S.; revising the definition of the term "renewable energy source device" to include certain devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate specified forms of energy; specifying a period during which a property appraiser is prohibited from considering an increase in the just value of real property used for residential purposes which is attributable to the installation of a renewable energy source device; prohibiting consideration by a property appraiser of an increase in the just value of real property used for any purpose which is attributable to the installation of a renewable energy source device or a component thereof on or after a specified date; creating s. 196.182, F.S.; exempting certain renewable energy source devices, or components thereof, from ad valorem taxation; reenacting ss. 193.155(4)(a) and 193.1554(6)(a), F.S., relating to homestead assessments and nonhomestead residential property assessments, respectively, to incorporate the amendment made to s. 193.624, F.S., in references thereto; providing a contingent effective date.

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

Section 1. Section 193.624, Florida Statutes, is amended to read:

193.624 Assessment of real ~~residential~~ property.—

(1) As used in this section, the term "renewable energy source device" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

(a) Solar energy collectors, photovoltaic modules, and inverters.

(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

(g) Roof ponds.

(h) Freestanding thermal containers.

(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.

(j) Windmills and wind turbines.

(k) Wind-driven generators.

(l) Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal

deposits to generate electricity or mechanical forms of energy.

(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of new and existing real property used for:

(a) Residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device between January 1, 2013, and December 31, 2016, may not be considered.

(b) ~~(3)~~ Any purpose, an increase in the just value of the property attributable ~~This section applies~~ to the installation of a renewable energy source device or a component thereof ~~installed~~ on or after January 1, 2017, may not be considered ~~January 1, 2013, to new and existing residential real property~~.

Section 2. Section 196.182, Florida Statutes, is created to read:

196.182 Exemption of renewable energy source devices and components.—A renewable energy source device, as defined in s. 193.624, or a component thereof, which is considered tangible personal property, is exempt from ad valorem taxation.

Section 3. For the purpose of incorporating the amendment made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (4) of section 193.155, Florida Statutes, is reenacted to read:

193.155 Homestead assessments.—Homestead property shall be

assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 4. For the purpose of incorporating the amendment made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 193.1554, Florida Statutes, is reenacted to read:

193.1554 Assessment of nonhomestead residential property.—

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 5. This act shall take effect January 1, 2017, if HJR 193, or a similar joint resolution having substantially the same specific intent and purpose, is approved by the electors at the general election to be held in November 2016 or at an earlier special election specifically authorized by law for that purpose.

REGULATORY AFFAIRS COMMITTEE
HB 195 by Rep. Rodrigues
Renewable Energy Source Devices

AMENDMENT SUMMARY

Amendment 1 by Rep. Rodrigues (Strike-all)

- Revises the definition of "renewable energy source device" to include specific components and removes the phrase "or a component thereof" from references to "renewable energy source device."

- Provides an expiration date of December 31, 2036.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 193.624, Florida Statutes, is amended to read:

193.624 Assessment of real ~~residential~~ property.—

(1) As used in this section, the term "renewable energy source device" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

(a) Solar energy collectors, photovoltaic modules, and inverters.

(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

(g) Roof ponds.

(h) Freestanding thermal containers.

(i) Pipes, ducts, refrigerant handling systems, wiring, structural supports, and other components ~~equipment~~ used as integral parts of ~~to interconnect~~ such systems; however, such equipment does not include conventional backup systems of any type or any equipment or structures that would be required in the absence of the renewable energy source device.

(j) Windmills and wind turbines.

(k) Wind-driven generators.

(l) Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate electricity or mechanical forms of energy.

(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of new and existing real property used for:

(a) Residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device between January 1, 2013, and December 31, 2016, may not be considered.

(b) ~~(3)~~ Any purpose, an increase in the just value of the property attributable ~~This section applies~~ to the installation of a renewable energy source device ~~installed~~ on or after January 1, 2017, may not be considered ~~January 1, 2013, to new and existing residential real property~~.

Section 2. Section 196.182, Florida Statutes, is created to read:

196.182 Exemption of renewable energy source devices.—A renewable energy source device, as defined in s. 193.624, which is considered tangible personal property, is exempt from ad valorem taxation.

Section 3. For the purpose of incorporating the amendment made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (4) of section 193.155, Florida Statutes, is reenacted to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 4. For the purpose of incorporating the amendment

made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 193.1554, Florida Statutes, is reenacted to read:

193.1554 Assessment of nonhomestead residential property.—

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 5. The amendment made by this act to s. 193.624, Florida Statutes, expires December 31, 2036, and the text of that section shall revert to that in existence on December 31, 2016, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portion of text which expires pursuant to this section.

Section 6. Section 196.182, Florida Statutes, as created by this act, expires December 31, 2036, and shall be repealed on that date.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to renewable energy source devices; amending s. 193.624, F.S.; redefining the term

"renewable energy source device"; specifying a period during which a property appraiser is prohibited from considering an increase in the just value of real property used for residential purposes which is attributable to the installation of a renewable energy source device; prohibiting consideration by a property appraiser of an increase in the just value of real property used for any purpose which is attributable to the installation of a renewable energy source device on or after a specified date; creating s. 196.182, F.S.; exempting certain renewable energy source devices from ad valorem taxation; reenacting ss. 193.155(4)(a) and 193.1554(6)(a), F.S., relating to homestead assessments and nonhomestead residential property assessments, respectively, to incorporate the amendment made to s. 193.624, F.S., in references thereto; providing specified provisions of the act that expire on a certain date; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 297 Limitations on Actions Other than for the Recovery of Real Property
SPONSOR(S): Civil Justice Subcommittee; Perry and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	8 Y, 4 N, As CS	King	Bond
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	White	Topp
3) Regulatory Affairs Committee		Anderson CA	Hamon K.W.H.

SUMMARY ANALYSIS

Both a statute of limitations and a statute of repose limit the time period with which a person may file a lawsuit. A statute of limitations usually begins when the cause of action accrues and bars the lawsuit after a set period of time. A statute of repose extinguishes the right of action altogether and begins at the occurrence of a specified event.

Under current law, a cause of action founded on the design or construction of a building is subject to a four-year statute of limitations and a 10-year statute of repose. The statute of limitations and the statute of repose start at the latest date of the following: the date of actual possession; the date a certificate of occupancy is issued; the date construction, if not completed, is abandoned; or the date the contract is completed or terminated. The difference between the two is in treatment of a latent defect. The statute of limitations for a latent defect begins when the defect was or should have been discovered, but the statute of limitations may not extend beyond the statute of repose. The statute of repose thus limits the cause of action even if the injured party has no knowledge of the latent defect.

A recent court decision found that a construction contract is complete upon final payment. For the purposes of both the statute of limitations and the statute of repose, this bill provides that a construction contract is considered complete on the last day that the contractor, architect, or engineer furnishes labor, services, or materials related to the contract, excluding those furnished to correct a deficiency in previously performed work or materials supplied.

This bill also provides that any action that would otherwise be barred by this change in the definition of the completion of the contract may be commenced within one year after the effective date of the bill.

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

This bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. Laws creating statutes of limitation specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended). A statute of limitations usually begins to run when a cause of action accrues (generally, when the harm occurs).

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language, a statute of repose is not a true statute of limitations because it begins to run not from accrual of the cause of action, but from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action.[1] Moreover, unlike a statute of limitations, a statute of repose abolishes or completely eliminates the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the period specified in the statute of repose.[2] Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed. Statutes of repose are designed to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and foster certainty and finality in liability.[3]

Section 95.11(3)(c), F.S., currently provides that actions founded on the design, planning, or construction of an improvement to real property are subject to a four-year statute of limitations. The four-year time period of the statute of limitations begins to run from the latest date of the following events:

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

However, when an action involves a latent defect,[4] the four-year statute of limitations does not begin to run until the defect is discovered or should have been discovered with the exercise of due diligence.

In addition to this four-year statute of limitations, there is a 10-year statute of repose for an action founded on the design, planning, or construction of an improvement to real property. Such actions must be commenced, regardless of the time the cause of action accrued, within 10 years after the date of the above listed events, whichever is latest. Thus, the statute of repose may bar an action even though the injured party is unaware of the existence of the cause of action.

---

[1] *Kush v. Lloyd,* 616 So. 2d 415 (Fla. 1992).
[2] *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997)
[3] *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988)
[4] Latent defects are generally considered to be hidden or concealed defects which are not discoverable by reasonable and customary inspection, and of which the owner has no knowledge. *Alexander v. Suncoast Builders, Inc.,* 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).

Recent Case Law

In 2013, the Fifth District Court of Appeal was presented with the issue of what constituted "the date of 'completion . . . of the contract' "[5] for the purpose of determining the beginning of the statute of repose pursuant to s. 95.11(3)(c), F.S. The court held that the contract is complete for purposes of s. 95.11(3)(c), F.S., on the date final payment is made.[6] It reasoned that

> [c]ompletion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor completed performance, it could have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.[7]

The court's definition of completion of the contract subjects the triggering of the statute of limitations period to particular actions of the injured party. This differs from the normal operation of a statute of repose which is usually based on the actions of the injuring party.

Effect of Proposed Changes

This bill amends s. 95.11(3)(c), F.S., to define the date of the completion of the contract. It provides that the completion of the contract for purposes of the statute of repose and statute of limitations for design, planning, or construction defects is the last day during which the professional engineer, registered architect, or licensed contractor furnishes labor, services, or materials, excluding those furnished to correct a deficiency in previously performed work or materials supplied.

The amendment to s. 95.11(3)(c), F.S., applies to any action commenced on or after July 1, 2016, regardless of when the cause of action accrued. Therefore, a party whose cause of action accrued prior to the changes in this bill, but who commences the action after July 1, 2016, could be barred from bringing the action by the shortening of the statute of repose resulting from the change in the definition in the completion of the contract. The bill provides that in such circumstances, if the action would not have been barred under the court's definition of the completion of the contract, the action may be commenced before July 1, 2017. If the action is not commenced by July 1, 2017 and is barred by the new definition of the completion of the contract, then the action will be forever barred.

B. SECTION DIRECTORY:

Section 1 amends s. 95.11, F.S., relating to limitations on actions other than for the recovery of real property.

Section 2 provides for applicability.

Section 3 reenacts s. 627.441(2), F.S., relating to commercial general liability policies; coverage to contractors for completed operations.

Section 4 provides an effective date of July 1, 2016.

[5] *Cypress Fairway Condominium v. Bergeron Const. Co. Inc.*, 164 So. 3d 706, 707 (Fla. 5th DCA 2015).
[6] *Id.* at 708.
[7] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

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, not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   Although the right to commence an action is a valid and protected property interest,[8] a plaintiff has no vested right in a statute of repose in effect when his or her cause of action accrues.[9] Thus, the time allowed for a suit may be either initially imposed or reduced by legislation enacted after the cause of action arose, provided the litigant still has a reasonable time left in which to enforce his or her right.[10] The amendment to s. 95.11(3)(c), F.S., made in this bill may reduce the time allowed for a suit after the cause of action arose, but the bill appears to give a litigant reasonable time to enforce his or her right before being completely barred.

B. RULE-MAKING AUTHORITY:

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

---

[8] *See Polk Cty. BOCC v. Special Disability Trust Fund*, 791 So. 2d 581, 583 (Fla. 1st DCA 2001).
[9] *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).
[10] *Bauld v. J.A. Jones Const. Co.*, 357 So. 2d 401, 403 (Fla. 1978), quoting *Hart v. Bostick*, 14 Fla. 162, 181 (1872); *Walter Denson & Son v. Nelson*, 88 So. 2d 120 (Fla. 1956).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided that any action that would otherwise be barred by changing the definition of the completion of the contract may be commenced within one year after the effective date of the act. This analysis is drafted to the committee substitute as reported favorably by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to limitations on actions other than for the recovery of real property; amending s. 95.11, F.S.; specifying the date of completion for specified contracts; providing for applicability; reenacting s. 627.441(2), F.S., relating to commercial general liability policy coverage to contractors for completed operations, to incorporate the amendment made by the act to s. 95.11, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed

contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. The date of completion of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer is the last day during which the professional engineer, registered architect, or licensed contractor furnishes labor, services, or materials, excluding labor, services, or materials relating to the correction of deficiencies in previously performed work or materials supplied.

Section 2. The amendment made by this act to s. 95.11(3)(c), Florida Statutes, applies to any action commenced on or after July 1, 2016, regardless of when the cause of action accrued, except that any action that would not have been barred on July 1, 2017, under s. 95.11(3)(c), Florida Statutes, before the amendment made by this act may be commenced before July 1, 2017, and if it is not commenced by that date and would be barred by the amendment made by this act to s. 95.11(3)(c),

Florida Statutes, it shall be barred.

Section 3. For the purpose of incorporating the amendment made by this act to section 95.11, Florida Statutes, in a reference thereto, subsection (2) of section 627.441, Florida Statutes, is reenacted to read:

627.441 Commercial general liability policies; coverage to contractors for completed operations.—

(2) A liability insurer must offer coverage at an appropriate additional premium for liability arising out of current or completed operations under an owner-controlled insurance program for any period beyond the period for which the program provides liability coverage, as specified in s. 255.0517(2)(b). The period of such coverage must be sufficient to protect against liability arising out of an action brought within the time limits provided in s. 95.11(3)(c).

Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 381 Public Records/Florida State Boxing Commission
SPONSOR(S): Raburn
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 578

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Brown-Blake	Anstead
2) Government Operations Subcommittee	10 Y, 1 N	Williamson	Williamson
3) Regulatory Affairs Committee		Brown-Blake	Hamon

SUMMARY ANALYSIS

The bill amends a public records exemption under s. 548.062, F.S., related to promoters of pugilistic exhibitions, including boxing, kickboxing, and mixed martial arts. The current exemption provides that all proprietary confidential business information ***required to be filed with the Florida State Boxing Commission (Commission) after a match*** or obtained during an audit of the promoter's books and records pursuant to s. 548.06, F.S., is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution.

Specifically, the bill expands the exemption to cover all proprietary confidential business information ***provided by a promoter to the Commission*** or obtained during an audit of the promoter's books and records pursuant to s. 548.06, F.S. The definition of "proprietary confidential business information" is not amended or expanded, nor does it modify the language providing that the proprietary confidential business information may be disclosed to another governmental entity in the performance of its duties and responsibilities.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the State Constitution.

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

The bill is effective July 1, 2016.

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, section 24 of the Florida Constitution, provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1)(a), F.S., provides that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

---

[1] Section 1390, 1391 F.S. (Rev. 1892).
[2] FLA. CONST. art. I, s. 24.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.
[5] Section 119.011(12), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in statute.[8] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[9]

Only the Legislature is authorized to create exemptions to open government requirements.[10] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[11] A bill enacting an exemption[12] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[14] provides for the systematic review, through a five-year cycle ending October 2 of the fifth year following enactment, of a public records or public meetings exemption.

The Act states an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[15] An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of the individual under this provision is exempted.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[16]

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.[17] The Legislature is only limited in its review process by constitutional requirements.

---

[8] 85-62 Fla. Op. Att'y Gen. (1985).
[9] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).
[10] *See supra* note 2.
[11] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So.2d 567, 569 (Fla. 1999).
[12] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[13] *See supra* note 2.
[14] Section 119.15, F.S.
[15] Section 119.15(6)(b), F.S.
[16] *Id.*
[17] *Straughn v. Camp,* 293 So.2d 689, 694 (Fla. 1974).

The Florida State Boxing Commission (Commission), Generally

The function of the Commission is to license and regulate professional boxing, kickboxing, and mixed martial arts. The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. It also makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants.[18] The Commission regulates professional boxing, kickboxing, and mixed martial arts matches by designating employees to attend the matches, appointing match officials, and ensuring the matches are held in a safe and fair manner.

The Commission is appointed by the Governor and consists of five members.[19] It collects revenue via license issuance, live event permit fees, and taxation on gross receipts associated with live events in the state.[20]

Licensure of Promoters

Section 548.002(20), F.S., defines "promoter" as any person or entity, including any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional. Section 548.012, F.S., provides for the licensure of promoters.

Applicants for promoter licensure are required to submit a completed application along with a non-refundable application fee of $250[21] and must deposit with the Commission a surety bond, cash, or certified check in the amount of $15,000 prior to being issued a promoter license.[22]

Promoters are responsible for producing the events at which matches are held, and are responsible for ensuring the following requirements are met:

- Insurance is obtained for the event in the following amounts:
  - Minimum of $20,000 per participant for medical, surgical and hospital care for injuries sustained while engaged in a match.
  - Minimum of $20,000 per participant for life insurance covering death caused by injuries received while engaged in a bout.
  - Any deductible associated with these policies is entirely the responsibility of the promoter of record.[23]
- Live Event Permit is issued for the event from the Commission.[24]
- Location of the weigh-in and pre-match physical is scheduled, and the participants are notified of the location. Additionally, the promoter is responsible for ensuring the weigh-in location is appropriate for the weigh-in, pre-match physicals are completed, and the required documentation is present from each participant.[25]
- The correct number of all access credentials are provided for the Commission employees that will attend the event.
- The venue has the appropriate ring and apron, required equipment, and medical personnel and equipment present for the match.[26]

---

[18] Florida State Boxing Commission Annual Report, Fiscal Year 2011-2012, p. 5, available at https://www.google.com/url?q=http://www.myfloridalicense.com/dbpr/os/news/Boxing10_17_12.html&sa=U&ei=vfoVU-X3CsPW2AWps4D4Cw&ved=0CAYQFjAA&client=internal-uds-cse&usg=AFQjCNF-2nwlf6jibOo9m4VuSq-Q1wUTHw (last viewed March 4, 2014).
[19] Section 548.003(1), F.S.
[20] *See supra* note 2.
[21] Rule 61K1-1.003, F.A.C.
[22] Rule 61K1-1.005, F.A.C.
[23] Rule 61K1-1.0035, F.A.C.
[24] *See supra* note 21.
[25] Rule 61K1-1.004, F.A.C.
[26] Rule 61K1-1.0031, F.A.C.

- Payment is made to the referees, judges, and ringside physicians assigned by the Commission for the event.[27]
- Reporting requirements as set forth in s. 548.06, F.S., are complied with regarding gross receipts and the applicable taxes related to gross receipts are paid.

Promoter Records Requirements

Section 548.06, F.S., requires that, within 72 hours after a match, the promoter of a match file a written report with the Commission. The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.

The written report shall be accompanied by a tax payment in the amount of five percent of the total gross receipts, exclusive of any federal taxes; however, the tax payment derived from the gross price charged for the sale or lease of broadcasting, television, and motion picture rights cannot exceed $40,000 for any single event. For the purposes of ch. 548, F.S., "gross receipts" is defined as:

- The gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida.
- The face value of all tickets sold and complimentary tickets issued, provided, or given above five percent of the seats in the house and not authorized by the Commission.
- The face value of any seat or seating issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promoter of an event.

Promoters are permitted to issue, provide, or give complimentary tickets for up to five percent of the seats in the house without including the tickets in the gross receipts and without paying corresponding taxes on them. The promoter may request the Commission's authorization to issue, provide, or give more than five percent of the seats in the house as complimentary tickets if the tickets are provided to specific entities or individuals.

Chapter 548, F.S., does not require the promoter to retain records in relation to the filing of the written report. Currently, ch. 548, F.S., does not provide an exemption from the public records requirements for any documents or information provided in the reports submitted to the commission pursuant to s. 548.06, F.S.

Current Public Records Exemption

Section 548.062, F.S., provides a public records exemption for proprietary confidential business information submitted by promoters in a post-match report to the Commission or obtained by audit of the Commission. "Proprietary confidential business information" is defined as information that is owned or controlled by the promoter; that is intended by the promoter to be and is treated by the promoter as private in that the disclosure of the information would cause harm to the promoter or its business operations; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public; and that concerns any of the following:

- The number of ticket sales for a match.
- The amount of gross receipts after a match.
- Trade secrets.
- Business plans.
- Internal auditing controls and reports of internal auditors.
- Reports of external auditors.[28]

[27] *See supra* note 22.
[28] s. 548.062(1), F.S.

The release of the proprietary confidential business information is authorized to another governmental entity in the performance of its duties and responsibilities.[29] The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature.[30]

Effect of the Bill

The bill amends the public records exemption under s. 548.062, F.S. The current exemption provides that all proprietary confidential business information ***required to be filed with the Commission after a match*** or obtained during an audit of the promoter's books and records pursuant to s. 548.06, F.S., is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution. Specifically, the bill expands the exemption to cover all proprietary confidential business information ***provided by a promoter to the Commission*** or obtained during an audit of the promoter's books and records pursuant to s. 548.06, F.S.

The definition of "proprietary confidential business information" is not amended or expanded, nor does it modify the language providing that the proprietary confidential business information may be disclosed to another governmental entity in the performance of its duties and responsibilities.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a public necessity statement as required by the State Constitution. It provides that:

> The disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into the promoter's financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from the disclosure of such information.

B. SECTION DIRECTORY:

Section 1 amends s. 548.062, F.S., providing an exemption from public records requirements for proprietary confidential business information submitted by promoters to the Commission or obtained by audit of the Commission pursuant to s. 548.06, F.S.

Section 2 provides the legislative statement of public necessity for the public records exemption.

Section 3 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department anticipates no impact on revenues.

[29] s. 548.062(2), F.S.
[30] s. 548.062(3), F.S.

2. Expenditures:

   The Department anticipates no impact on expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Vote Requirement

   Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement

   Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption; thus, it includes a public necessity statement.

   Breadth of Exemption

   Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the current public records exemption for proprietary confidential business information filed with the Commission after a match to include such information provided by a promoter to the Commission.

B. RULE-MAKING AUTHORITY:

There appears to be no rulemaking authority added or amended.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public necessity statement

It is suggested that lines 30-31 of the public necessity statement be modified to clarify that the Legislature finds that it is a public necessity that proprietary confidential business information provided by a promoter to the Florida State Boxing Commission be made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. This will ensure that the public necessity statement comports with the expanded public records exemption.

It is also suggested that the public necessity statement be modified to include a discussion regarding the need to expand the current public record exemption.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 548.062, F.S.; revising an exemption from public records requirements with respect to certain proprietary confidential business information obtained by the Florida State Boxing Commission; extending the period for legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 548.062, Florida Statutes, is amended to read:

548.062 Public records exemption.—

(2) Proprietary confidential business information provided by a promoter ~~in the written report required~~ to ~~be filed with~~ the commission ~~after a match~~ or obtained by the commission through an audit of the promoter's books and records pursuant to s. 548.06 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed

on October 2, 2021 ~~2019~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that proprietary confidential business information be protected from disclosure. The disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into the promoter's financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from the disclosure of such information. For these reasons, the Legislature declares that any proprietary confidential business information provided by a promoter to the Florida State Boxing Commission is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect July 1, 2016.

REGULATORY AFFAIRS COMMITTEE

HB 381 by Rep. Raburn
Relating to Public Records

AMENDMENT SUMMARY
January 21, 2016

Amendment by Rep. Raburn (lines 30-39): The amendment makes the following changes:

- Clarifies the need for the public exemption for proprietary confidential business information provided by a promoter to the Florida State Boxing Commission.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Raburn offered the following:

Amendment

Remove lines 30-39 and insert:

necessity that proprietary confidential business information provided by a promoter to the Florida State Boxing Commission be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into the promoter's financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit

derived from the disclosure of such information. Therefore, extending the public records exemption to proprietary confidential business information provided by a promoter to the commission, no matter if the information is provided in a report or otherwise, ensures that the public records exemption is maintained and not undermined. For these reasons, the Legislature declares that

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 431 Firesafety
SPONSOR(S): Insurance & Banking Subcommittee; Raburn; Combee and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Luczynski
2) Regulatory Affairs Committee		Bauer	Hamon

SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer (CFO) as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (FFPC) by rule every three years. The FFPC sets forth firesafety standards (including certain national codes) for property and is enforced by local fire officials within each county, municipality, and special fire districts in the state.

Exemptions from the FFPC: Currently, a structure located on agricultural property is exempt from the FFPC if the occupancy is limited to 35 persons and is not used by the public for direct sales or as an educational outreach facility. Tents up to 30 feet by 30 feet are also exempt. Nonresidential farm buildings are currently exempt from the Florida Building Code and county and municipal codes, but not from the FFPC.

The bill creates a new exemption from the FFPC and national codes for *agricultural pole barns*, which are nonresidential farm buildings in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress. In addition, the bill revises the two existing exemptions from the FFPC and national codes by:

- Restating the current exemption for tents to be up to 900 square feet, and
- Revising the current exemption for structures located on agricultural property and limited to a maximum occupancy for 35 persons to exempt a "nonresidential farm building" with a maximum occupancy of 35 persons and removes the exclusion on use by the public for direct sales or as an educational outreach facility.

Farm Structures Used for Assembly, Business, or Mercantile Activity: The bill provides that structures on farms that are used for "assembly, business, or mercantile activity" must be classified into one of three classes, and requires the State Fire Marshal to adopt rules to implement these classifications, including alternative lifesafety and fire prevention standards for Class 1 and Class 2 structures:

- *Class 1*: A nonresidential farm building used by the owner 12 times per year or fewer for assembly, business, or mercantile activity, with a maximum occupancy of 100 persons. These structures are not subject to local inspection or the FFPC.
- *Class 2*: A nonresidential farm building used by the owner for assembly, business, or mercantile activity, with a maximum occupancy of 300 persons. These structures are subject to local inspection, but are not subject to the FFPC.
- *Class 3*: A structure used for the primary use of housing, sheltering, or accommodating the general public. Class 3 structures are subject to local inspection and the FFPC.

Additionally, the bill permits local fire officials to consider certain alternative national life safety approaches as a low-cost, reasonable alternative to minimum firesafety standards, with regard to existing buildings.

The bill has minimal to no fiscal impact on state government. The bill has an indeterminate fiscal impact on local governments by decreasing review fees due to broadened class of structures exempted the FFPC, but may be offset by the annual inspections of Class 2 and Class 3 structures. The bill should have a positive fiscal impact on the private sector.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State Fire Prevention – State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years.[2] The FFPC includes national firesafety and life safety standards set forth by the National Fire Protection Association (NFPA),[3] including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).

The FFPC and national codes provide that events held in any location, whether agricultural or not, that are considered *assembly, mercantile, or business* in nature, require a building to change occupancy type. When this occurs, the property owner must bring the building up to the new fire prevention code standards for that occupancy type. This may require the installation of several fire protection features such as fire sprinklers, fire alarm systems, or egress capacity.[4]

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[5] These local enforcing authorities may adopt more

---

[1] s. 633.104, F.S.

[2] s. 633.202, F.S.

[3] Founded in 1895, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. NATIONAL FIRE PROTECTION ASSOCIATION, *About NFPA*, at http://www.nfpa.org/about-nfpa (last viewed Nov. 9, 2015). The NFPA states that the Guide on Alternative Approaches to Life Safety "is intended to be used in conjunction with the Life Safety Code (101), not as a substitute." NATIONAL FIRE PROTECTION ASSOCIATION, *NFPA 101A: Guide on Alternative Approaches to Life Safety*, at http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=101a (last viewed Nov. 9, 2015).

[4] Florida Department of Financial Services, Agency Analysis of 2016 House Bill 413, p. 1 (Nov. 12, 2015). The FFPC and national codes define *assembly occupancy* as an occupancy used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load (e.g., dance halls, museums, skating rinks). *Mercantile occupancy* means an occupancy used for the display and sale of merchandise (e.g., drugstores and supermarkets). *Business occupancy* means an occupancy used for the transaction of business other than mercantile (e.g., city and town halls, doctors' offices).

[5] ss. 633.108 and 633.208, F.S.

stringent fire safety standards, subject to certain requirements in s. 633.208, F.S.,[6] but may not enact fire safety ordinances which conflict with ch. 633, F.S., or any other state law.[7]

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.[8] Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[9]

Since the Legislature recognizes that it is not always practical to apply any or all of the provisions of the FFPC, under the minimum fire safety standards, the local fire officials shall apply the applicable fire safety code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.[10]

Current Exemptions from the FFPC

Currently, s. 633.202(16), F.S., exempts two types of structures from the FFPC and national codes incorporated by reference:

- A structure located on property that classified as agricultural for ad valorem purposes and which is part of a farming or ranching operation, if the occupancy is limited by the property owner to no more than 35 persons and is not used by the public for direct sales or as an educational outreach facility. Structures used for residential or assembly purposes (as defined in the FFPC) are not included in this exemption.[11]
- Tents up to 30 feet by 30 feet.

"Nonresidential farm buildings" are currently *not* exempt from the FFPC, but are exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.[12] These structures are defined under s. 604.50, F.S., as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm for the purposes of the Florida Building Code, or that is classified as agricultural land for assessment purposes, is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Effect of the Bill

The bill broadens the types of structures exempt from the FFPC by amending the two existing exemptions to the FFPC, creates an agricultural pole barn exemption to the FFPC, and creates a 3-tier classification system for structures on farms[13] used for "assembly, business, or mercantile" activity.

---

[6] s. 633.208, F.S.; *see also* s. 633.102(21), F.S., for the definition of "minimum firesafety standard" and Rule 69A-60.002, F.A.C.
[7] s. 633.214(4), F.S. A list of local amendments to the FFPC is available at DIVISION OF STATE FIRE MARSHAL, *Local Amendments*: http://www.myfloridacfo.com/division/sfm/BFP/LocalAmendments.htm (last viewed Nov. 12, 2015).
[8] s. 633.118, F.S.
[9] s. 633.216(1), F.S.
[10] s. 633.208, F.S.
[11] Chapter 6 of the FFPC defines "residential occupancy" as "an occupancy that provides sleeping accommodations for purposes other than health care or detention and correctional," and defines "assembly occupancy" as "an occupancy (1) used for a gathering *of 50 or more* persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load." *See* NFPA, *Classification of Occupancy and Hazard of Contents*, http://codesonline.nfpa.org/a/c.ref/ID020101110939/chapter (last viewed Nov. 12, 2015).
[12] s. 604.50(1), F.S.
[13] The bill refers to s. 823.14(3)(a), F.S., for the definition of "farm," which means the land, buildings, support facilities, machinery, and other appurtenances used for the production of farm or aquaculture products."

Additionally, the bill allows local fire officials to consider the fire safety evaluation systems found in the NFPA's Guide on Alternative Approaches to Life Safety (101A) as an acceptable systems for identifying reasonable alternatives to current minimum firesafety standards in s. 633.208, F.S., with regard to existing buildings.

- *Agricultural pole barns:* The bill exempts "agricultural pole barns" from the FFPC, including the national codes and the Life Safety Code incorporated by reference. The bill defines "agricultural pole barns" as a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress.

- *Nonresidential farm buildings*: The bill amends the current FFPC exemption in s. 633.202(16), F.S., for structures located on agricultural property, to provide that "nonresidential farm buildings" (which the bill provides has the same meaning as s. 604.50, F.S.) that the property owner limits occupancy to more than 35 persons are exempt from the FFPC. The bill also removes the exclusion on use of by the public for direct sales or as educational outreach facilities.

  By providing that the term "nonresidential farm building" has the same meaning as in s. 604.50, F.S., the bill exempts from the FFPC and national codes:

  > Any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) [the Building Code] or that *is used primarily for agricultural purposes*, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling.

  As such, buildings such as barns, greenhouses, shade houses, farm offices, storage buildings, or poultry houses would be exempt from the FFPC, if used primarily for agricultural purposes.

- *Tents:* The bill also restates the current FFPC exemption for 30 feet by 30 feet tents from the FFPC to 900 square feet.

- *Farm structures used for assembly, business, or mercantile activity*: The bill requires structures on a farm used for assembly, business, or mercantile activity to be classified in one of three classes, described in further detail below.

- *Rulemaking authority for State Fire Marshal:* The bill requires the State Fire Marshal to adopt rules relating to farm structures used for assembly, business, or mercantile activity, "including, but not limited to" the use of alternative life safety and fire prevention standards and notification and inspection requirements for Class 1 and Class 2 structures, as well as the application of the FFPC to Class 3 structures, and any other standards or rules necessary to facilitate the use of farm structures for assembly, business, or mercantile activities.

Structure	Requirements	Occupancy Limit	FFPC Applicability
Agricultural pole barn (treated as a nonresidential farm building in the bill)	70% or more of the perimeter walls are permanently open and allow free ingress/egress.	None	Exempt
Tent	Up to 900 square feet.	None	Exempt
Nonresidential farm building (the bill refers to the term as defined in s. 604.50,	Used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified	Up to 35 persons	Exempt

F.S.)	as agricultural land for tax purposes, and is not intended to be used as a residential dwelling.		
Class 1 farm structure used for assembly, business, or mercantile activity	Nonresidential farm building used by the owner for assembly, business, or mercantile activity *12 times per year or fewer.*	Up to 100 persons	The bill does not specify that Class 1 structures are subject to inspection. Subject to alternative standards in State Fire Marshal rules.
Class 2 farm structure used for assembly, business, or mercantile activity	Nonresidential farm building used by the owner for *assembly, business, or mercantile* activity.	Up to 300 persons	Classified as Class 2 by local fire inspection authority; subject to alternative standards in State Fire Marshal rules.
Class 3 farm structure used for assembly, business, or mercantile activity	New/additional or existing structure or facility *used for the primary purpose of housing, sheltering, or otherwise accommodating the general public.*	None	Classified as Class 3 by local fire inspection authority; subject to the FFPC and State Fire Marshal rules.

B. SECTION DIRECTORY:

Section 1. Amends s. 633.202, F.S., relating to the Florida Fire Prevention Code.

Section 2. Amends s. 633.208, F.S., relating to minimum firesafety standards.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires the State Fire Marshal to adopt rules relating to the classification and inspection of structures used for assembly, business, or mercantile activity, but DFS noted this would be a minimal impact.[14]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. The bill may decrease review fees arising from the exemption of nonresidential farm buildings from the FFPC, but may be offset by the new annual inspections of farm structures used for assembly, business, or mercantile activity.

2. Expenditures:

   See above.

[14] Florida Department of Financial Services, Agency Analysis of 2016 House Bill 431, p.2 (Nov. 12, 2016).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate positive fiscal impact on agricultural property owners, since bill allows some farm structures used for assembly, business, or mercantile to be subject to alternative lifesafety and fire prevention standards instead of the FFPC.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the State Fire Marshal to adopt rules to administer the bill's new exemptions from the FFPC, "including, but not limited to" the three new classes of structures used for assembly, business, or mercantile activity.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill does not define "assembly, business, or mercantile activity," which may result in unclear or inconsistent application of fire safety regulations. Currently, the state and national firesafety codes define these terms (see footnote 11), and have occupancy limits for these activity types that may conflict with the occupancy limits set forth in the bill. A building may have to change its occupancy type if events held in that building are considered *assembly, business, or mercantile in nature*. When this occurs, the property owner must bring the building up to the new fire prevention code standards for that occupancy type. This may require the installation of several fire protection features such as fire sprinklers, fire alarm systems, or egress capacity.

  The FFPC, which adopted the National Fire Prevention Act ("NFPA") 101:3.3.188.2, forbids the use of assembly occupancy of more than 50 without following the requirements of the FFPC. NFPA 101:12.3.5, referring to new assembly occupancies, and 101:13.3.5, referring to existing assembly occupancies, require assembly occupancy that exceed 100 individuals be protected by an approved, supervised automatic sprinkler system. The attendance of more than 35 (defined in s. 633.202(16)(b), F.S.), or 50 (as defined in NFPA 101:3.3.188.2) or 100 (as defined in NFPA 101:12.3.5 and 101:13.3.5) without the currently-required fire safety protections could pose safety risks.[15]

- Additionally, the bill does not subject Class 1 structures to inspection by local authorities. The Division of State Fire Marshal has noted that without the initial inspection, the local authorities will

[15] Department of Financial Services, Agency Analysis of 2015 House Bill 1025, pp. 2-3 (Mar. 14, 2015).

not be able to determine the appropriate building classification and the corresponding exempt status or applicable safety standards.[16]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 18, 2015, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment retained the portions of the House bill, and adopted a a three-level classification system for structures used for "assembly, business, or mercantile" activity, instead of the original bill's classification system based on use for agritourism activity. The amendment provides that structures on a "farm" (as defined in s. 823.14(3)(a), F.S.) used by the owner for "assembly, business, or mercantile activity" must be classified in one of three classes, with occupancy and use requirements and State Fire Marshal rulemaking authority similar to that of the original House bill's 3-level agritourism structures. The amendment subjects Class 2 and Class 3 structures to annual inspection by local authorities.

The analysis has been updated to reflect the committee substitute.

[16] Email from BG Murphy, Deputy Director of Legislative Affairs, Department of Financial Services, RE: HB 431 – Fire Safety by Rep. Raburn, regarding amendment adopted in Insurance & Banking Subcommittee (Nov. 19, 2015).

A bill to be entitled

An act relating to firesafety; amending s. 633.202, F.S.; defining terms; revising provisions relating to certain structures located on agricultural property which are exempt from the Florida Fire Prevention Code; requiring that certain structures used for assembly, business, or mercantile activity be classified; specifying that certain structures are subject to annual inspection for classification; providing classifications; revising certain dimensions of a tent that is exempt from the code; requiring that the State Fire Marshal adopt rules; amending s. 633.208, F.S.; authorizing a local fire official to consider a specified publication when identifying an alternative to a firesafety code; providing an effective date.

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

Section 1. Subsection (16) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(16)(a) As used in this subsection, the term:

1. "Agricultural pole barn" means a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress.

2. "Nonresidential farm building" has the same meaning as provided in s. 604.50.

(b) Notwithstanding any other provision of law, a nonresidential farm building ~~A structure, located on property that is classified for ad valorem purposes as agricultural, which is part of a farming or ranching operation,~~ in which the occupancy is limited by the property owner to no more than 35 persons~~, and which is not used by the public for direct sales or as an educational outreach facility,~~ is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference. ~~This paragraph does not include structures used for residential or assembly occupancies, as defined in the Florida Fire Prevention Code.~~

(c) Notwithstanding any other provision of law, an agricultural pole barn is exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

(d) Notwithstanding any other provision of law, a structure on a farm as defined in s. 823.14(3)(a) which is used by an owner for assembly, business, or mercantile activity must be classified in one of the following classes:

1. Class 1: A nonresidential farm building that is used by the owner 12 times per year or fewer for assembly, business, or mercantile activity with up to 100 persons occupying the structure at one time. This class is not subject to the Florida Fire Prevention Code.

2. Class 2: A nonresidential farm building that is used by the owner for assembly, business, or mercantile activity with up to 300 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code.

3. Class 3: A new or an additional structure or facility constructed, or an existing structure, which is used primarily for housing, sheltering, or otherwise accommodating members of the general public. A structure or facility in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is subject to the Florida Fire Prevention Code.

(e) The State Fire Marshal shall adopt rules to administer this section, including, but not limited to:

1. The use of alternative lifesafety and fire prevention standards for structures in Classes 1 and 2;

2. Notification and inspection requirements for structures in Class 2;

3. The application of the Florida Fire Prevention Code for structures in Class 3; and

4. Any other standards or rules deemed necessary in order to facilitate the use of structures for assembly, business, or mercantile activities.

(17) ~~(b)~~ A tent up to 900 square ~~30~~ feet ~~by 30 feet~~ is exempt from the Florida Fire Prevention Code, including the

national codes incorporated by reference.

Section 2. Subsection (5) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(5) With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Florida Fire Prevention Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety. Before ~~Prior to~~ applying the minimum firesafety code to an existing building, the local fire official shall determine whether ~~that~~ a threat to lifesafety or property exists. If a threat to lifesafety or property exists, the fire official shall apply the applicable firesafety code for existing buildings to the extent practical to ensure ~~assure~~ a reasonable degree of lifesafety and safety of property or the fire official shall fashion a reasonable alternative that ~~which~~ affords an equivalent degree of lifesafety and safety of property. The local fire official may consider the fire safety evaluation systems found in NFPA 101A: Guide on Alternative Approaches to Life Safety, adopted by the State Fire Marshal, as acceptable systems for the identification of low-cost, reasonable alternatives. The decision of the local fire official may be appealed to the local administrative board described in s. 553.73.

Section 3. This act shall take effect July 1, 2016.

REGULATORY AFFAIRS COMMITTEE

CS/HB 431 by Rep. Raburn
Firesafety

AMENDMENT SUMMARY
January 21, 2016

Amendment 1 by Rep. Raburn (lines 29-76): Retains the provisions of the bill, and makes the following changes:

- Revises the 3-tier classification system for farm structures used for "assembly, business, or mercantile activity" to apply to "agritourism activity," as defined in s. 570.86, F.S., and accordingly revises the State Fire Marshal's rulemaking authority.
- Subjects Class 1 structures to annual inspection for classification by local authorities having jurisdiction, but specifies that Class 1 structures are not subject to the state fire code, and
- Clarifies that Class 1 and 2 structures are subject to rules adopted by the State Fire Marshal.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Raburn offered the following:

Amendment (with title amendment)

Remove lines 29-76 and insert:

(b) Notwithstanding any other provision of law:

1. A nonresidential farm building ~~A structure, located on property that is classified for ad valorem purposes as agricultural, which is part of a farming or ranching operation,~~ in which the occupancy is limited by the property owner to no more than 35 persons~~, and which is not used by the public for direct sales or as an educational outreach facility,~~ is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference. ~~This paragraph does not include structures used for residential or assembly occupancies, as defined in the Florida Fire Prevention Code.~~

2. An agricultural pole barn is exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

3. Except for an agricultural pole barn, a structure on a farm as defined in s. 823.14(3)(a) which is used by an owner for agritourism activity as defined in s. 570.86, F.S., for which the owner receives consideration must be classified in one of the following classes:

a. Class 1: A nonresidential farm building that is used by the owner 12 times per year or fewer for agritourism activity with up to 100 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code but is subject to rules adopted by the State Fire Marshal pursuant to this section.

b. Class 2: A nonresidential farm building that is used by the owner for agritourism activity with up to 300 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code but is subject to rules adopted by the State Fire Marshal pursuant to this section.

c. Class 3: A structure or facility that is used primarily for housing, sheltering, or otherwise accommodating members of the general public. A structure or facility in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is subject to the

Florida Fire Prevention Code.

(c) The State Fire Marshal shall adopt rules to administer this section, including, but not limited to:

1. The use of alternative lifesafety and fire prevention standards for structures in Classes 1 and 2;

2. Notification and inspection requirements for structures in Class 2;

3. The application of the Florida Fire Prevention Code for structures in Class 3; and

4. Any other standards or rules deemed necessary in order to facilitate the use of structures for agritourism activities.

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

Remove lines 7-13 and insert:

agritourism activity be classified; requiring that certain structures be classified; providing criteria for such classifications; providing that such classifications are subject to annual inspection; specifying applicable fire prevention standards for each class; requiring that the State Fire Marshal adopt rules; providing requirements for revising certain dimensions of a tent that is exempt from the code; amending

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 577 Liability Insurance Coverage
SPONSOR(S): Insurance & Banking Subcommittee; Lee
TIED BILLS: **IDEN./SIM. BILLS:** SB 774

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Lloyd	Luczynski
2) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Liability insurance is a form of casualty insurance covering the legal obligations of the insured for bodily injuries or property damage caused to another person. When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of the relevant coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Florida law allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for covering the insured.

Within 30 days of receipt of the written request, the insurer must disclose the following information regarding every known policy that may be related to the claim:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- A copy of the policy.

The information must be provided under oath, subject to penalties for perjury, by a corporate officer, claims manager, or claims superintendent of the insurer. This sworn statement of coverage information must be amended upon the discovery of additional material facts, such as additional policies or defenses that were not initially identified.

The bill adds "company employee adjusters" to the list of individuals that may issue a sworn statement detailing the required coverage information on behalf of the insurer.

The bill has no impact on state and local governments. The bill has a positive impact on the private sector.

The bill is effective on July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Liability insurance is "insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as a part of a liability insurance contract."[1] It is a form of casualty insurance[2] covering the legal obligations of the insured for bodily injuries or property damage caused to another person.

When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. However, the injured person usually has no knowledge of or information about the insurance coverage of the person responsible for the loss. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Section 627.4137, F.S., allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request for disclosure, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for liability insurance coverage of the insured.

Within 30 days of receipt of the written request,[3] the insurer must provide the following information regarding every known policy:[4]

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- A copy of the policy.

The information must be provided under oath by a corporate officer, claims manager, or claims superintendent of the insurer.[5] This sworn statement must be amended upon the discovery of

---

[1] s. 624.605(1)(b), F.S.

[2] s. 624.605, F.S. The following forms of insurance are also casualty insurance: vehicle, workers' compensation and employer's liability, burglary and theft, personal property floaters, glass, boiler and machinery, leakage and fire extinguishing equipment, credit, credit property, malpractice, animal, elevator, entertainments, failure of certain institutions to record documents, failure to file certain personal property instruments, debt cancellation products, and, when not contrary to law or public policy or within any other line of insurance, any insurance providing coverage against liabilities for loss or damage to person or property. Medical, hospital, surgical, and funeral benefits covered under policies for vehicle, liability, burglary and theft, boiler and machinery, or elevator are deemed to be casualty insurance and is not subject to the provisions of the Insurance Code applicable to life and health insurance. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." s. 624.01, F.S.

[3] Written requests made of a self-insured corporation must be sent by certified mail to the registered agent of the entity that is obligated to make the disclosures required by statute. s. 627.4137(3), F.S.

[4] This includes policies for excess or umbrella insurance applicable to the insured's liability coverages. s. 627.4137(1), F.S.

[5] The oath required for verification of the informational response is governed by s. 92.525, F.S. If perjury is committed in executing the oath, it is punishable as a felony of the third degree under s. 775.082, F.S., (up to 5 years imprisonment), s. 775.083, F.S., (up to a $5,000 fine), or s. 775.084, F.S., (sentencing factors for habitual offenders). Depending upon circumstances of the claim, the claims handling of the insurer, including settlement practices, and the coverages involved, a civil remedy under s. 624.155, F.S., may be available to the claimant for damages related to an alleged failure of the insurer to operate in good faith. This is in addition to a possible civil remedy for bad faith under common-law.

additional material facts, such as additional policies or defenses that were not initially identified. Willful violation of the requirements of s. 627.4137, F.S., is grounds for an administrative penalty against individuals holding one of the various insurance licenses issued by the Department of Financial Services.[6]

In addition to corporate officers, claims managers, and claims superintendents, the bill allows "company employee adjusters" to issue a sworn statement detailing the required coverage information. Section 626.856, F.S., defines a "company employer adjuster" as "a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage."

B. SECTION DIRECTORY:

Section 1: Amends s. 627.4137, F.S., relating to disclosure of certain information required.

Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Liability insurers could experience increased efficiency by allowing the adjuster with direct responsibility for a claim file or policy to perform the required information disclosure consistent with the requirements of the bill, rather than more senior, and possibly remotely located, personnel.

D. FISCAL COMMENTS:

None.

[6] ss. 626.611 and 626.621, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   Section 626.9372, F.S., contains a substantively comparable provision that requires a surplus lines insurer to disclose the same coverage information in the same way as s. 627.4137, F.S. The only substantive difference is that the surplus lines liability insurer must issue its disclosure within 60 days of a written request from the claimant. For purposes of consistency, it may be advisable to amend s. 626.9372, F.S., so that the same information response requirements apply to insurers admitted in the state and surplus lines insurers.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment replaced the term "licensed company adjuster," which is not defined in statute, with the term "company employee adjuster," which is defined in statute.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to liability insurance coverage; amending s. 627.4137, F.S.; adding company employee adjusters to the list of persons who may respond to a claimant's written request for information relating to liability insurance coverage; providing an effective date.

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

Section 1. Subsection (1) of section 627.4137, Florida Statutes, is amended to read:

627.4137 Disclosure of certain information required.—

(1) Each insurer that provides ~~which does~~ or may provide liability insurance coverage to pay all or a portion of a ~~any~~ claim that ~~which~~ might be made shall provide, within 30 days after ~~of~~ the written request of the claimant, a statement, under oath, of a corporate officer, ~~or~~ the insurer's claims manager or superintendent, or a company employee adjuster setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense that the ~~which such~~ insurer reasonably believes is available to the ~~such~~

insurer at the time of filing such statement.

(e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days after ~~of~~ receipt of such request.

Section 2. This act shall take effect July 1, 2016.

Regulatory Affairs Committee

CS/HB 577 by Lee
Liability Insurance Coverage

AMENDMENT SUMMARY
January 21, 2016

Amendment 1 by Rep. Lee (Line 30): The amendment requires that the company employee adjuster must include in the sworn statement that the information was verified with the insurer's underwriting and claims personnel. The amendment also requires that the adjuster state that "best efforts" were used to verify the information accuracy and completeness with the insured and the insured's insurance agent.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Lee offered the following:

Amendment (with title amendment)

Remove line 30 and insert:

If the person providing the statement required under this subsection is the company employee adjuster, the statement will also include a sworn statement that the affiant has consulted with the appropriate personnel in the company's underwriting and claims investigation departments, and used their best efforts to appropriately inquire with the insured and the insured's insurance agent to verify the accuracy and completeness of the information in the statement. In addition, the insured, or her or his insurance agent, upon

---

Amendment No. 1

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

Remove line 6 and insert:

liability insurance coverage; requiring a company employee adjuster who provides a specified statement to consult with certain individuals to verify information disclosed in the sworn statement; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 695 Title Insurance
SPONSOR(S): Boyd
TIED BILLS: **IDEN./SIM. BILLS:** SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 0 N	Lloyd	Luczynski
2) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Purchasers of real property and lenders utilize title insurance to protect their interests against claims by others to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend against adverse claims on the subject property's title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

Title insurers are regulated by the Office of Insurance Regulation (OIR) and are subject to the Insurance Code. Among other things, Florida law sets a statutory unearned premium reserve for title insurers to guaranty the interests of policyholders in case of insurer insolvency. The reserve is based on the amount of surplus held by the insurer. Title insurers with surplus under $50 million must put $0.30 for every $1,000 of risk they retain into reserve. Those with $50 million or more in surplus must put 6.5 percent of premium into reserve. Both must supplement their reserve with any additional amount deemed necessary by a qualified actuary. It is notable that the two calculations are based on different factors, the first on risk retained and the second on premiums written. For smaller transactions, there is little difference in the amounts that must be reserved. However, on larger value transactions, there can be significantly lower reserve requirements applicable to the title insurers with $50 million or more in surplus. These larger surplus insurers also benefit from a reserve retention schedule that releases the reserve earlier than for the smaller surplus insurers.

Florida insurers are permitted to arrange themselves into insurance holding companies, also known as insurance holding company systems. An insurance holding company system consists of two or more affiliated entities, at least one of which is an insurer.

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers. These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The various rating companies use similar terminology, but each has a proprietary method to establish their rating results.

The bill allows a title insurer that is a member of an insurance holding company system that has $1 billion or more in surplus to set its guaranty fund reserve in the same manner as a title insurer that on its own has $50 million or more in surplus. However, this exception will only be available if the insurance holding company system has a financial strength rating of "A-" or better from the A.M. Best Company. This allows a smaller title insurer with access to capital from its holding company to set the reserve in the same way as a larger title insurer. This sets lower guaranty fund reserve amounts on higher value policies and allows the reserve to be released earlier. Also, the bill allows title insurers that move their domicile to Florida to release guaranty fund reserves consistent with Florida law, rather than maintaining and releasing the guaranty fund reserve that they held at the time of domestication pursuant to the law of their former state.

The bill has no impact on state revenues and local government. The bill has an indeterminate impact on state expenditures. It has an indeterminate positive impact on the private sector.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including: forgery; fraud; liens; and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty by the title insurer to defend against adverse claims on the subject property's title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

Title insurers[3] are regulated by the Office of Insurance Regulation (OIR) and are subject to the Insurance Code.[4] Among other things, Florida law requires title insurers to report its reserves to the OIR.[5] An insurer's reserve is a fund of capital kept by an insurer to meet its best estimate of known or expected losses for claims on policies it has written or assumed.[6, 7] In addition to reserves for known or expected losses,[8] title insurers are required to maintain a separate unearned premium reserve fund as a guaranty against insolvency.[9] This is because title insurers are excluded from participating in the Florida Insurance Guaranty Association[10] and there is no guaranty association unique to title insurers.

In the event of insolvency, the statutory guaranty fund reserve held by the title insurer is used to fund claims on policies issued by the insolvent title insurer. Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[11] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services is responsible for rehabilitating or liquidating insurance

---

[1] s. 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.

[2] *See, e.g.*, AMERICAN LAND TITLE ASSOCIATION (ALTA), http://www.alta.org (last visited Nov. 25, 2015). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies. AMERICAN LAND TITLE ASSOCIATION, *Title Insurance: A Comprehensive Overview*, http://www.alta.org/about/TitleInsuranceOverview.pdf (last visited Nov. 25, 2015).

[3] There are 18 title insurance companies participating in the state according to the OIR web site. FLORIDA OFFICE OF INSURANCE REGULATION, *Active Company Search*, http://www.floir.com/CompanySearch/ (last visited Dec. 3, 2015), "Company Type" search term limited to "Title Insurance."

[4] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." s. 624.01, F.S.

[5] s. 624.424, F.S.

[6] INSURANCE INFORMATION INSTITUTE, *Glossary*, http://www.iii.org/services/glossary (last viewed Nov. 25, 2015).

[7] According to financial data published by the ALTA, nationwide aggregate statutory surplus is approximately $3.81 billion and statutory reserve is $3.76 billion. AMERICAN LAND TITLE ASSOCIATION (ALTA), *Industry Financial Data*, http://www.alta.org/industry/financial.cfm (last visited Nov. 25, 2015).

[8] s. 625.041, F.S.

[9] s. 625.111, F.S.

[10] s. 631.52(12), F.S.

[11] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

companies as the "receiver."[12] Because of the nature of title insurance and the lack of a title insurance guaranty association, the receiver does not liquidate the insurer nor transfer the policy liabilities to another entity; rather, the title insurer remains in rehabilitation under the control of the receiver.

Subsection 625.111(1), F.S., sets the statutory guaranty fund reserve for title insurers based on the amount of surplus[13] held by the insurer. For title insurers with less than $50 million in surplus, the insurer must maintain the following reserve:[14]

- 30 cents for every $1,000 of net retained liability,[15] plus
- Any additional amount deemed necessary by a qualified actuary[16] to meet known and anticipated losses.

For title insurers with $50 million or more in surplus, the insurer must maintain the following reserve:

- At least 6.5 percent of direct written premiums, plus other income and reinsurance assumed, plus
- Any additional amount deemed necessary by a qualified actuary to meet known and anticipated losses.[17]

For title insurers from other states that choose to move their operations to Florida and become domestic title insurers in this state, the reserve requirement for reserves held at the time of the change of state is based upon the law of their prior state.[18]

In the two statutory reserve categories described above, the amount of the reserve is tied to a different base. For the smaller surplus insurers, it is a percent of the face value of the policy. For the larger surplus insurers, it is a percentage of the premium.[19] The following examples highlight the difference in guaranty fund reserve requirements based on the insurer's level of surplus:[20]

---

[12] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition and release them as a going concern. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[13] "Surplus" is the remainder after an insurer's liabilities are subtracted from its assets. It is the financial cushion that protects policyholders in case of unexpectedly high claims. INSURANCE INFORMATION INSTITUTE, *Glossary*, http://www.iii.org/services/glossary (last viewed Nov. 25, 2015).

[14] For unearned premiums on policies written or assumed before July 1, 1999, the amount of reserve established on June 30, 1999, applies. s. 625.111(1)(a), F.S. This is in addition to any additional amount deemed necessary by a qualified actuary. s. 625.111(1)(d), F.S.

[15] "Net retained liability" means the total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any. s. 625.111(6)(b), F.S.

[16] "Qualified actuary" means a person who is, as detailed in the National Association of Insurance Commissioners' Annual Statement Instructions: 1. A member in good standing of the Casualty Actuarial Society; 2. A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or 3. A person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of the domiciliary state. In such case, at least 90 days before filing its annual statement, the insurer must request that the person be deemed qualified and that request must be approved or denied. The request must include the National Association of Insurance Commissioners' Biographical Form and a list of all loss reserve opinions issued in the last 3 years by this person. s. 625.111(6)(c), F.S.

[17] s. 625.111(1), F.S.

[18] s. 625.111(3), F.S.

[19] The amount of premium is established by applying the OIR approved title insurance rate to the amount of liability written. The OIR approved rates are found in Rule 69O-186.003, F.A.C.

[20] These examples are based exclusively on the application of the OIR approved rate to a hypothetical real estate property value, exclusive of any premium discounts, credits, or other factors.

Example A: an owner's title insurance policy on a $750,000 real estate transaction.

Statutory reserve for an insurer with less than $50 million in surplus (based on retained liability):

Net retained liability: $750,000 (if no premium is ceded through reinsurance)

Statutory reserve: ($750,000 / 1,000) x $0.30 = **$225**

Statutory reserve for an insurer with $50 million or more in surplus (based on premium):

Calculated premium: $3,825

Statutory reserve: $3,825 x 6.5% = **$248.63**

Example B: an owner's title insurance policy on a $20,000,000 real estate transaction.

Statutory reserve for an insurer with less than $50 million in surplus (based on retained liability):

Net retained liability: $20,000,000 (if no premium is ceded through reinsurance)

Statutory reserve: ($20,000,000 / 1,000) x $0.30 = **$6,000**

Statutory reserve for an insurer with $50 million or more in surplus (based on premium):

Calculated premium: $46,325

Statutory reserve: $46,325 x 6.5% = **$3,011.03**

As illustrated, in Example A the two reserve amounts are similar. The smaller surplus company's reserve requirement is approximately 90 percent of the amount required of the larger surplus company. In Example B, however, the larger surplus company is only required to reserve about half as much as the smaller surplus company.

The title insurer's premium reserve is released over time based on a schedule set by statute.[21] Since title insurance policies cover an exceptionally long period of risk, the conversion of reserve to surplus occurs over a period of 20 years. The amount released from reserve each year is done quarterly in equal amounts. The statutory reserve release schedule for each of the two sizes of insurer is shown below.

For title insurers with less than $50 million in surplus, the portion of the reserve based on retained liability is released as follows:[22]

Year(s)	Percent released
1	30%
2	15%
3, 4	10%, each year
5, 6	5%, each year
7, 8	3%, each year
9 through 15	2%, each year
16 through 20	1%, each year

[21] s. 625.111(2), F.S.

[22] The amount of reserve that is based on the additional amount needed to meet the opinion of the qualified actuary regarding necessary reserves is released on the same schedule as that provided for insurers with $50 million or more in surplus. s. 625.111(2)(d), F.S.

For title insurers with $50 million or more in surplus, the reserve is released as follows:

Year(s)	Percent released
1	35%
2, 3	15%, each year
4	10%
5, 6, 7	3%, each year
8, 9, 10	2%, each year
11 through 20	1%, each year

The release of reserves by title insurers with $50 million or more in surplus is somewhat more frontloaded than the other title insurers. They will have released 75 percent of the reserved amount after the first four years where the insurer with less than $50 million in surplus will have only release 65 percent of the reserve. Following the 15th year of release, the two will have released an equal amount of reserve.

Insurance Holding Companies

Florida insurers are permitted to arrange themselves into insurance holding companies, also known as insurance holding company systems. An insurance holding company system consists of two or more affiliated entities that are subsidiaries of the holding company. One of the members must be an insurer. They are regulated by the OIR under ch. 628, Part IV, F.S. This allows the OIR to have an oversight role in the shared financial risks of the members of the insurance holding company.

Financial Strength Ratings

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers.[23] These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The rating companies use similar terminology, but each has a proprietary method to establish their rating results. While the rating results are similar, one should review the rating organization's own explanation of its approach and methods to understand the subtle differences that occur when a particular insurer is rated by multiple rating organizations. A.M. Best's Financial Strength Rating is divided between "Secure," with ratings between A++ and B+, or "Vulnerable," with ratings of B or lower. Among the "Secure" ratings, A++ and A+ are described as "Superior," A and A- are described as "Excellent," and B++ and B+ are described as "Good" in terms of A.M. Best's opinion of the company's ability to meet financial obligations.[24] Additionally, an insurer may not be rated by every rating company as some rating companies may focus on particular markets or entities that are not served by the other rating companies.

Effect of the Bill

The bill allows a title insurer that is a member of an insurance holding company system that has $1 billion or more in surplus to set its guaranty fund reserve in the same manner as a title insurer that on its own has $50 million or more in surplus. This allows smaller title insurers with access to large amounts of capital to set reserves as if it had a higher surplus of its own. This exception will only be available if the insurance holding company system has a financial strength rating of "A-" or better from the A.M. Best Company.

---

[23] Financial strength rating organizations include: A.M. Best (www.ambest.com), Fitch (www.fitchratings.com), Moody's Investor Services (www.moodys.com), Standard & Poor's (www.standardandpoors.com), and Demotech (www.demotech.com).

[24] See A.M. BEST COMPANY, *Guide to Best's Financial Strength Ratings*, http://www.ambest.com/ratings/guide.pdf (Last viewed Nov. 25, 2015).

This has two effects. First, it sets a lower amount of reserve on higher value policies and, second, the insurer's reserve is released earlier. Together, this allows the insurer earlier access to capital by placing funds in surplus, rather than reserves.

Also, the bill allows title insurers that move their domicile to Florida from another state to release its guaranty fund reserve consistent with Florida law, rather than requiring release of the predomestication guaranty fund reserve pursuant to the law of their former state.

B. SECTION DIRECTORY:

Section 1: Amends s. 625.111, F.S., relating to title insurance reserve.

Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The OIR is not currently required to monitor the financial strength rating of a title insurer's holding company. The bill sets reserve requirements for certain title insurers based on the financial strength and surplus size of its insurance holding company. The fiscal impact section of the OIR bill analysis was not completed. Accordingly, the impact on state resources is indeterminate, but it could be negative.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a positive impact on the private sector. It frees up capital that title insurers can use to write additional coverage or make new investments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The portion of the bill related to title insurers who redomesticate to Florida (lines 106-114) that allows the release of the statutory premium reserve pursuant to Florida law, rather than the law of the title insurer's former state, may be subject to multiple interpretations or yield unintended results. On lines 111-114 of the bill, the reserve is authorized to be released "over the subsequent 20 years at an amortization rate not to exceed the formula in paragraph (2)(c)" of s. 625.111, F.S. The bill requirement that the statutory premium reserve be released over the subsequent 20 years may not be possible under the requirements of s. 625.111(2)(c), F.S.

The OIR states in their bill analysis[25] that the bill requires the reserve to be "re-amortized" and that the first release after domestication to the state will be at the first-year value in s. 625.111(2)(c), F.S., which is 35 percent of the initial sum reserved. The practical result of this interpretation is that for any title insurers whose former state follows the National Association of Insurance Commissioners Title Insurers Model Act,[26] the title insurer will have released 65 percent of the reserve associated with a particular policy after the third-year release. If the title insurer were then to release an additional 35 percent of the initial sum reserved, the amount of the reserve associated with any policy that was issued more than three years before the first release authorized by the bill will be fully released. In other words, the reserve held on policies over three years old would be reduced to zero following the first release under the bill, thus preventing compliance with the 20-year amortization requirement of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[25] Florida Office of Insurance Regulation, Agency Analysis of 2016 House Bill 695, p. 2 (Nov. 30, 2015).

[26] NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, *Products & Services*, http://www.naic.org/store/free/MDL-628.pdf, p. 8 (last visited Jan. 10, 2016).

A bill to be entitled

An act relating to title insurance; amending s. 625.111, F.S.; revising the reserves that certain title insurers must set aside after a certain date; revising the manner in which reserves must be released; revising reserve requirements for a title insurer who transfers domicile to this state; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 625.111, Florida Statutes, are amended to read:

625.111 Title insurance reserve.—In addition to an adequate reserve as to outstanding losses relating to known claims as required under s. 625.041, a domestic title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as provided in this section. The sums to be reserved for unearned premiums on title guarantees and policies shall be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of the insurer in determining its financial condition. Such reserved funds shall be withdrawn from the use of the insurer for its general purposes, impressed with a trust in favor of the holders of title guarantees and policies, and held available for reinsurance of the title guarantees and policies

in the event of the insolvency of the insurer. This section does not preclude the insurer from investing such reserve in investments authorized by law, and the income from such investments shall be included in the general income of the insurer and may be used by such insurer for any lawful purpose.

(1) For an unearned premium reserve established on or after July 1, 1999, such reserve must be in an amount at least equal to the sum of paragraphs (a), (b), and (d) for title insurers holding less than $50 million in surplus as to policyholders as of the previous year end and the sum of paragraphs (c) and (d) for title insurers holding $50 million or more in surplus as to policyholders as of the previous year end <u>or title insurers that are members of an insurance holding company system having $1 billion or more in surplus as to policyholders and rated "A-" or higher by A.M. Best Company</u>:

(a) A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums with such reserve being subsequently released as provided in subsection (2). For domestic title insurers subject to this section, such amounts shall be calculated in accordance with state law in effect at the time the associated premiums were written or assumed and as amended before July 1, 1999.

(b) A total amount equal to 30 cents for each $1,000 of net retained liability for policies written or title liability

assumed in reinsurance on or after July 1, 1999, with such reserve being subsequently released as provided in subsection (2). For the purpose of calculating this reserve, the total of the net retained liability for all simultaneous issue policies covering a single risk shall be equal to the liability for the policy with the highest limit covering that single risk, net of any liability ceded in reinsurance.

(c) On or after January 1, 2014, for title insurers that are members of an insurance holding company system having $1 billion or more in surplus as to policyholders and rated "A-" or higher by A.M. Best Company or title insurers holding $50 million or more in surplus as to policyholders as of the previous year end, a minimum of 6.5 percent of the total of the following:

1. Direct premiums written; and

2. Premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the office with such reserve being subsequently released as provided in subsection (2). Title insurers with less than $50 million in surplus as to policyholders that are not members of an insurance holding company system holding $1 billion or more in surplus as to policyholders and rated "A-" or higher by A.M. Best Company must continue to record unearned premium reserve in accordance with paragraph (b).

(d) An additional amount, if deemed necessary by a

qualified actuary, to be subsequently released as provided in subsection (2). Using financial results as of December 31 of each year, all domestic title insurers shall obtain a Statement of Actuarial Opinion from a qualified actuary regarding the insurer's loss and loss adjustment expense reserves, including reserves for known claims, incurred but not reported claims, and unallocated loss adjustment expenses. The actuarial opinion must conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. If the amount of the reserve stated in the opinion and displayed in Schedule P of the annual statement for that reporting date is greater than the sum of the known claim reserve and unearned premium reserve as calculated under this section, as of the same reporting date and including any previous actuarial provisions added at earlier dates, the insurer shall add to the insurer's unearned premium reserve an actuarial amount equal to the reserve shown in the actuarial opinion, minus the known claim reserve and the unearned premium reserve, as of the current reporting date and calculated in accordance with this section, but not calculated as of any date before December 31, 1999. The comparison shall be made using that line on Schedule P displaying the Total Net Loss and Loss Adjustment Expense which is comprised of the Known Claim Reserve, and any associated Adverse Development Reserve, the reserve for Incurred But Not Reported Losses, and

Unallocated Loss Adjustment Expenses.

(3) If a title insurer that is organized under the laws of another state transfers its domicile to this state, the statutory or unearned premium reserve shall be the amount required by the laws of the state of the title insurer's former state of domicile as of the date of transfer of domicile and shall be released from reserve over the subsequent 20 years at an amortization rate not to exceed the formula in paragraph (2)(c) ~~according to the requirements of law in effect in the former state at the time of domicile~~. On or after January 1, 2014, for new business written after the effective date of the transfer of domicile to this state, the domestic title insurer shall add to and set aside in the statutory or unearned premium reserve such amount as provided in subsection (1).

Section 2. This act shall take effect July 1, 2016.

Regulatory Affairs Committee

HB 695 by Rep. Boyd
Title Insurance

AMENDMENT SUMMARY
January 21, 2016

Amendment 1 by Rep. Raburn (Line 41): The amendment allows title insurers that are members of a holding company system with a Demotech financial strength rating of "A'" (A Prime) to qualify for the premium reserve provision created by the bill.

Amendment 2 by Rep. Boyd (Strike All): The amendment allows title insurers that are members of a holding company system with a superior, excellent, exceptional, or an equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation to qualify for the premium reserve provision created by the bill. It also replaces the provisions of the bill related to the release of an insurer's statutory premium reserve following a move to Florida with the relevant provisions of the National Association of Insurance Commissioner's Title Insurance Model Act.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Raburn offered the following:

Amendment

Remove lines 41-76 and insert:

policyholders and are either rated "A-" or higher, by A.M. Best Company, or "A'" or higher, by Demotech:

(a) A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums with such reserve being subsequently released as provided in subsection (2). For domestic title insurers subject to this section, such amounts shall be calculated in accordance with state law in effect at the time the associated premiums were written or assumed and as amended before July 1, 1999.

(b) A total amount equal to 30 cents for each $1,000 of net retained liability for policies written or title liability assumed in reinsurance on or after July 1, 1999, with such reserve being subsequently released as provided in subsection (2). For the purpose of calculating this reserve, the total of the net retained liability for all simultaneous issue policies covering a single risk shall be equal to the liability for the policy with the highest limit covering that single risk, net of any liability ceded in reinsurance.

(c) On or after January 1, 2014, for title insurers that are members of an insurance holding company system having $1 billion or more in surplus as to policyholders and are either rated "A-" or higher, by A.M. Best Company, or "A'" or higher, by Demotech; or for title insurers holding $50 million or more in surplus as to policyholders as of the previous year end, a minimum of 6.5 percent of the total of the following:

1. Direct premiums written; and

2. Premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the office with such reserve being subsequently released as provided in subsection (2). Title insurers with less than $50 million in surplus as to policyholders that are not members of an insurance holding company system holding $1 billion or more in surplus as to policyholders and are either rated "A-" or

higher, by A.M. Best Company, or "A'" or higher, by Demotech, must continue to record unearned premium reserve in

Amendment No. 2

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Boyd offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (1) and subsection (3) of section 625.111, Florida Statutes, is amended to read:

625.111 Title insurance reserve.—In addition to an adequate reserve as to outstanding losses relating to known claims as required under s. 625.041, a domestic title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as provided in this section. The sums to be reserved for unearned premiums on title guarantees and policies shall be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of the insurer in determining its financial condition.

Such reserved funds shall be withdrawn from the use of the insurer for its general purposes, impressed with a trust in favor of the holders of title guarantees and policies, and held available for reinsurance of the title guarantees and policies in the event of the insolvency of the insurer. This section does not preclude the insurer from investing such reserve in investments authorized by law, and the income from such investments shall be included in the general income of the insurer and may be used by such insurer for any lawful purpose.

(1) For an unearned premium reserve established on or after July 1, 1999, such reserve must be in an amount at least equal to the sum of paragraphs (a), (b), and (d) for title insurers holding less than $50 million in surplus as to policyholders as of the previous year end and the sum of paragraphs (c) and (d) for title insurers holding $50 million or more in surplus as to policyholders as of the previous year end or title insurers that are members of an insurance holding company system having $1 billion or more in surplus as to policyholders and a superior, excellent, exceptional, or an equivalent financial strength rating by a rating agency acceptable to the office:

(a) A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums with such reserve being subsequently released as provided in subsection (2). For

domestic title insurers subject to this section, such amounts shall be calculated in accordance with state law in effect at the time the associated premiums were written or assumed and as amended before July 1, 1999.

(b) A total amount equal to 30 cents for each $1,000 of net retained liability for policies written or title liability assumed in reinsurance on or after July 1, 1999, with such reserve being subsequently released as provided in subsection (2). For the purpose of calculating this reserve, the total of the net retained liability for all simultaneous issue policies covering a single risk shall be equal to the liability for the policy with the highest limit covering that single risk, net of any liability ceded in reinsurance.

(c) On or after January 1, 2014, for title insurers holding $50 million or more in surplus as to policyholders as of the previous year end or title insurers that are members of an insurance holding company system having $1 billion or more in surplus as to policyholders and a superior, excellent, exceptional, or an equivalent financial strength rating by a rating agency acceptable to the office, a minimum of 6.5 percent of the total of the following:

1. Direct premiums written; and

2. Premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the office with such reserve being subsequently released as

provided in subsection (2). Title insurers with less than $50 million in surplus as to policyholders and that are not members of an insurance holding company system having $1 billion or more in surplus as to policyholders and a superior, excellent, exceptional, or an equivalent financial strength rating by a rating agency acceptable to the office must continue to record unearned premium reserve in accordance with paragraph (b).

(d) An additional amount, if deemed necessary by a qualified actuary, to be subsequently released as provided in subsection (2). Using financial results as of December 31 of each year, all domestic title insurers shall obtain a Statement of Actuarial Opinion from a qualified actuary regarding the insurer's loss and loss adjustment expense reserves, including reserves for known claims, incurred but not reported claims, and unallocated loss adjustment expenses. The actuarial opinion must conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. If the amount of the reserve stated in the opinion and displayed in Schedule P of the annual statement for that reporting date is greater than the sum of the known claim reserve and unearned premium reserve as calculated under this section, as of the same reporting date and including any previous actuarial provisions added at earlier dates, the insurer shall add to the insurer's unearned premium reserve an actuarial amount equal to the reserve shown in the

actuarial opinion, minus the known claim reserve and the unearned premium reserve, as of the current reporting date and calculated in accordance with this section, but not calculated as of any date before December 31, 1999. The comparison shall be made using that line on Schedule P displaying the Total Net Loss and Loss Adjustment Expense which is comprised of the Known Claim Reserve, and any associated Adverse Development Reserve, the reserve for Incurred But Not Reported Losses, and Unallocated Loss Adjustment Expenses.

(3) If a title insurer that is organized under the laws of another state transfers its domicile to this state, the insurer shall calculate an adjusted statutory or unearned premium reserve as of the effective date of redomestication to this state. The adjusted statutory or unearned premium reserve shall be calculated as if subsections (1) and (2) had been in effect as to the insurer's foreign statutory premium reserve for all years beginning twenty (20) years prior to the effective date of redomestication. For purposes of calculating the adjusted statutory or unearned premium reserve, the balance of the insurer's foreign statutory premium reserve as of the date twenty (20) years prior to the redomestication shall be $0. If the adjusted statutory or unearned premium reserve exceeds the aggregate amount set aside for statutory or unearned premiums in the insurer's annual statement on file with the office on the date of redomestication, the insurer shall, out of total charges for policies of title insurance, increase its statutory or

unearned premium reserve by an amount equal to one sixth of that excess in each of the succeeding six years, commencing with the calendar year that includes the redomestication, until the entire excess has been added. If the adjusted statutory or unearned premium reserve is less than the aggregate amount set aside for statutory or unearned premiums in the insurer's annual statement on file with the office on the date of redomestication, the insurer may release the excess into surplus ~~the statutory or unearned premium reserve shall be the amount required by the laws of the state of the title insurer's former state of domicile as of the date of transfer of domicile and shall be released from reserve according to the requirements of law in effect in the former state at the time of domicile. On or after January 1, 2014, for new business written after the effective date of the transfer of domicile to this state, the domestic title insurer shall add to and set aside in the statutory or unearned premium reserve such amount as provided in subsection (1)~~.

Section 2. This act shall take effect July 1, 2016.

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

Remove everything before the enacting clause and insert:

An act relating to title insurance; amending s. 625.111, F.S.; revising the reserves that certain title insurers must set aside after a certain date;

revising the manner in which reserves must be released; revising reserve requirements for a title insurer who transfers domicile to this state; establishing the calculation of an adjusted statutory premium reserve; requiring increases to statutory premium reserves, in certain circumstances; allowing release of reserves to surplus, in certain circumstances; providing an effective date.