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# **ECONOMIC DEVELOPMENT & TOURISM SUBCOMMITTEE**

## **MEETING PACKET**

**Wednesday, December 2, 2015  
11:30 AM – 1:30 PM  
12 HOB**

**Steve Crisafulli  
Speaker**

**Frank Artiles  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Economic Development & Tourism Subcommittee

**Start Date and Time:** Wednesday, December 02, 2015 11:30 am  
**End Date and Time:** Wednesday, December 02, 2015 01:30 pm  
**Location:** 12 HOB  
**Duration:** 2.00 hrs

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

HB 551 Aviation Fuel Taxes by Moraitis  
HB 7001 Special District Accountability by Local Government Affairs Subcommittee, Ray

**Presentations:**

Department of Economic Opportunity and Enterprise Florida, Inc. – Governor’s Economic Development Proposal for 2016

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, December 1, 2015.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, December 1, 2015.

**NOTICE FINALIZED on 11/25/2015 9:52AM by Lawhon.Amanda**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 551 Aviation Fuel Taxes  
**SPONSOR(S):** Moraitis, Jr.  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Lukis <i>AL</i>	Duncan <i>pbdd</i>
2) Finance & Tax Committee			
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

Currently, s. 206.9825, F.S., imposes an excise tax of 6.9 cents on every gallon of aviation fuel, kerosene, and aviation gasoline sold or brought into the state for use in an aircraft.

Section 206.9825, F.S., also provides for an aviation fuel tax credit or refund for "any licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that, after January 1, 1996, increases the air carrier's Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions."

Any employees that existed before January 1, 1996, are not counted toward reaching the employment threshold, and the wholesaler or terminal supplier can only receive the credit or refund if the air carrier has no facility for fueling highway vehicles from the tank in which the aviation fuel is stored. Further, if before July 1, 2001, the number of full-time equivalent employee positions created or added to the air carrier's Florida workforce fell below the additional 250, the exemption granted would cease to apply as long as the number of employees remains below the additional 250.

Accordingly, any air carrier offering transcontinental jet service that is able to meet the employment and other criteria described above is exempt from paying aviation fuel tax. Such qualifying air carriers can purchase aviation fuel from a wholesaler or terminal supplier without having to pay the wholesaler or terminal supplier tax on the fuel. The wholesaler or terminal supplier, in turn, receives a credit or refund on the tax amount that it would otherwise have passed along to the air carrier as a result of its tax payment due on the sale of the fuel or tax amount previously paid.

The bill amends s. 206.9825, F.S., limiting carriers that qualify for the aviation fuel tax exemption to those that increased their Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions between January 1, 1996 and July 1, 2016.

Then, beginning July 1, 2019, the bill repeals the aviation fuel tax exemption altogether and reduces the aviation fuel, kerosene, and aviation gasoline tax rates from 6.9 cents per gallon to 3.3 cents per gallon.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2016. However, as stated above, the removal of the aviation fuel tax exemption and reduction in the tax rates would not be effective until July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Aviation Fuel, Kerosene, and Aviation Gasoline Taxes

Florida law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use and a tax of 6.9 cents on each gallon of kerosene and aviation gasoline sold or brought into the state for use in an aircraft.<sup>1</sup>

Florida law defines aviation fuel, kerosene, and aviation gasoline as follows:

- Aviation fuel means "fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications."<sup>2</sup>
- Kerosene means "all aviation turbine fuels and any distillate known as diesel #1, K-1, or any product suitable for use as a substitute for kerosene not taxed as a diesel fuel under Ch. 206, Part II, F.S. Any kerosene meeting the definition of diesel under s. 206.86(1) is taxed under Ch. 206, Part II, F.S."<sup>3</sup> When kerosene is used for aviation fuel, it is awarded the same tax treatment as aviation fuel.<sup>4</sup>
- Aviation gasoline means "any motor fuel blended or produced specifically for use in aircraft which has been dyed in accordance with federal regulations. Aviation gasoline does not include any such fuel used in any manner other than being placed in the storage tank of an aircraft."<sup>5</sup>

##### Florida Aviation Fuel Tax Exemption

Despite Florida's tax on aviation fuel, Florida law also provides for a refund or credit of the aviation fuel tax paid as follows:

Any licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that, after January 1, 1996, increases the air carrier's Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions may receive a credit or refund as the ultimate vendor of the aviation fuel for the 6.9 cents excise tax previously paid.<sup>6</sup>

Any employees that existed before January 1, 1996, are not counted toward reaching the employment threshold, and the wholesaler or terminal supplier can only receive the credit or refund if the air carrier has no facility for fueling highway vehicles from the tank in which the aviation fuel is stored.<sup>7</sup> Further, if before July 1, 2001, the number of full-time equivalent employee positions created or added to the air carrier's Florida workforce fell below the additional 250, the exemption granted would cease to apply as long as the number of employees remains below the additional 250.<sup>8</sup>

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<sup>1</sup> See section 206.9825, F.S. (The administration of kerosene taxes and aviation gasoline taxes differ from aviation fuel. 206.9825(2)-(3), F.S.)

<sup>2</sup> Section 206.9815, F.S.

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

<sup>4</sup> See s. 206.9825, F.S.

<sup>5</sup> Section 206.9815, F.S.

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

<sup>7</sup> *Id.*

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

Accordingly, any air carrier offering transcontinental jet service that is able to meet the employment and other criteria described above, is exempt from paying aviation fuel tax.<sup>9</sup> Such qualifying air carriers can purchase aviation fuel from a wholesaler or terminal supplier without having to pay the wholesaler or terminal supplier tax on the fuel.<sup>10</sup> The wholesaler or terminal supplier, in turn, receives a credit or refund on the tax amount that it would otherwise have passed along to the air carrier as a result of its tax payment due on the sale of the fuel or tax amount previously paid.<sup>11</sup>

The Legislature first established the aviation fuel tax credit in 1996<sup>12</sup> to attract new airlines to Florida. The provisions of the original fuel tax credit expired on July 1, 2001; however, following the events of September 11, 2001, the 2002 Legislature decided to reenact the tax credit policy and did so without providing for an expiration date.<sup>13</sup>

The following chart illustrates data relating to the aviation fuel tax from June 2013, through July 2014.<sup>14</sup>

Sales of Aviation Fuel to Commercial Air Carriers (2014/2015)			
Carrier	Sum of Gallons	% of Total Sales	Tax Due (Includes Tax Exempt Disbursements)
American Airlines	298,649,092	33.42%	\$20,606,787.35
Delta Airlines, Inc.	129,635,299	14.51%	\$8,944,835.63
JetBlue Airways	113,293,136	12.68%	\$7,817,226.38
Southwest Airlines	108,026,647	12.09%	\$7,453,838.64
Continental Airlines, Inc.	72,505,569	8.11%	\$5,002,884.26
Allegiant Air LLC	49,966,012	5.59%	\$3,447,654.83
Spirit Airlines, Inc.	41,414,492	4.63%	\$2,857,599.95
US Airways, Inc.	34,688,081	3.88%	\$2,393,477.59
Federal Express	18,187,079	2.04%	\$1,254,908.45
Frontier Airlines	5,568,293	0.62%	\$384,212.22
Silver Airways Corp.	3,984,321	0.45%	\$274,918.15
DHL Express (USA)	3,578,371	0.40%	\$246,907.60
Virgin America, Inc.	3,425,117	0.38%	\$236,333.07
National Jets, Inc.	3,096,216	0.35%	\$213,638.90
United Parcel	2,725,184	0.30%	\$188,037.70
Envoy Air, Inc.	1,675,693	0.19%	\$115,622.82
AirTran Airways, Inc.	1,398,434	0.16%	\$96,491.95
Miami Air	1,038,493	0.12%	\$71,656.02
United Airlines, Inc.	343,751	0.04%	\$23,718.82

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

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

<sup>11</sup> See s. 206.9825(1)(a), F.S.

<sup>12</sup> Section 21, Ch. 96-323, L.O.F.

<sup>13</sup> See s. 5, Ch. 2002-2, L.O.F.

<sup>14</sup> The Department of Revenue provided the data in this chart to the Economic Development and Tourism Subcommittee via e-mail on November 24, 2015 (which e-mail is on file with staff). The data does not include sales from fixed based operators or jobbers to commercial air carriers, fuel sold for export, or bulk sales in the terminal. Further, all returns have not been processed through June 2015, and sales reported on unworked returns are not included. Lastly, tax due does not include reduction due to collection allowance.

Atlas Air, Inc.	298,737	0.03%	\$20,612.85
ABX Air, Inc.	69,280	0.01%	\$4,780.32
TEM Enterprises, Inc.	57,719	0.01%	\$3,982.61
AmeriJet	53,518	0.01%	\$3,692.74
Presidential	14,277	0.00%	\$985.11
Reva, Inc.	10,337	0.00%	\$713.25
Professional	5,018	0.00%	\$346.24
<b>Grand Total</b>	<b>893,708,166</b>	<b>100.00%</b>	<b>\$61,665,863.45</b>

### Effect of Proposed Changes

First, the bill amends s. 206.9825, F.S., limiting carriers that qualify for the aviation fuel tax exemption to those that increased their Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions between January 1, 1996 and July 1, 2016.

Then, beginning July 1, 2019, the bill repeals the aviation fuel tax exemption altogether and reduces the aviation fuel, kerosene, and aviation gasoline tax rates from 6.9 cents per gallon to 3.3 cents per gallon.

The bill provides an effective date of July 1, 2016. However, as stated above, the removal of the aviation fuel tax exemption and reduction in tax rates would not be effective until July 1, 2019.

#### B. SECTION DIRECTORY:

Section 1: Amends s. 206.9825, F.S., limiting the carriers that qualify for the exemption to those that increase their Florida workforce between January 1, 1996 and July 1, 2016.

Section 2: Amends s. 206.9825, F.S., removing an exemption from the aviation fuel tax and reducing the aviation fuel, kerosene, and aviation gasoline tax rates from 6.9 cents per gallon to 3.3 cents per gallon.

Section 3: Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

See FISCAL COMMENTS.

##### 2. Expenditures:

See FISCAL COMMENTS.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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

The bill's eventual repeal of the aviation fuel tax exemption and reduction of the aviation fuel, kerosene, and aviation gasoline tax rates will increase the expenditures of air carriers that benefit from the tax exemption and reduce the expenditures of air carriers that do not benefit from the tax exemption.

**D. FISCAL COMMENTS:**

On November 12, 2015, the Revenue Estimating Conference (REC) estimated that the bill will have a negative recurring fiscal impact to state government as follows:

- The bill will have a negative recurring impact to general revenue of \$0.9 million each year from Fiscal Years (FY) 2016-17 through 2020-21.
- The bill will have a negative recurring impact to the state trust fund of \$9.9 million in FY 2016-17, \$10.1 million in FY 2017-18, \$10.2 million in FY 2018-19, \$10.4 million in FY 2019-20, and \$10.6 million in FY 2020-21.
- The total recurring negative fiscal impact of the bill in FYs 2016-17 through 2020-21 will be \$10.8 million, \$11 million, \$11.1 million, \$11.3 million, and \$11.5 million, respectively.

Additionally, the Department of Revenue (DOR) determined the bill would have an insignificant negative fiscal impact to DOR's expenditures.<sup>15</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

<sup>15</sup> DOR, Agency Bill Analysis of HB 551 (November, 20 2015).  
STORAGE NAME: h0551.EDTS.DOCX  
DATE: 11/19/2015



1                                   A bill to be entitled  
 2           An act relating to aviation fuel taxes; amending s.  
 3           206.9825, F.S.; revising eligibility criteria for  
 4           wholesalers and terminal suppliers to receive refunds  
 5           or credits of previously paid excise taxes; providing  
 6           for future repeal; revising the rate of the excise tax  
 7           on certain aviation fuels; providing an effective  
 8           date.

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

11  
 12           Section 1. Paragraph (b) of subsection (1) of section  
 13   206.9825, Florida Statutes, is amended to read:

14           206.9825 Aviation fuel tax.—

15           (1)

16           (b) Any licensed wholesaler or terminal supplier that  
 17   delivers aviation fuel to an air carrier offering  
 18   transcontinental jet service and that, after January 1, 1996,  
 19   but before July 1, 2016, increases the air carrier's Florida  
 20   workforce by more than 1000 percent and by 250 or more full-time  
 21   equivalent employee positions, may receive a credit or refund as  
 22   the ultimate vendor of the aviation fuel for the 6.9 cents  
 23   excise tax previously paid, provided that the air carrier has no  
 24   facility for fueling highway vehicles from the tank in which the  
 25   aviation fuel is stored. In calculating the new or additional  
 26   Florida full-time equivalent employee positions, any full-time

27 equivalent employee positions of parent or subsidiary  
 28 corporations which existed before January 1, 1996, shall not be  
 29 counted toward reaching the Florida employment increase  
 30 thresholds. The refund allowed under this paragraph is in  
 31 furtherance of the goals and policies of the State Comprehensive  
 32 Plan set forth in s. 187.201(16)(a), (b)1., 2., (17)(a), (b)1.,  
 33 4., (19)(a), (b)5., (21)(a), (b)1., 2., 4., 7., 9., and 12.

34 Section 2. Effective July 1, 2019, section 206.9825,  
 35 Florida Statutes, as amended by this act, is amended to read:  
 36 206.9825 Aviation fuel tax.—

37 (1)(a) Except as otherwise provided in this part, an  
 38 excise tax of 3.3 ~~6.9~~ cents per gallon of aviation fuel is  
 39 imposed upon every gallon of aviation fuel sold in this state,  
 40 or brought into this state for use, upon which such tax has not  
 41 been paid or the payment thereof has not been lawfully assumed  
 42 by some person handling the same in this state. Fuel taxed  
 43 pursuant to this part is ~~shall not be~~ subject to the taxes  
 44 imposed by ss. 206.41(1)(d), (e), and (f) and 206.87(1)(b), (c),  
 45 and (d).

46 ~~(b) Any licensed wholesaler or terminal supplier that~~  
 47 ~~delivers aviation fuel to an air carrier offering~~  
 48 ~~transeontinental jet service and that, after January 1, 1996,~~  
 49 ~~but before July 1, 2016, increases the air carrier's Florida~~  
 50 ~~workforce by more than 1000 percent and by 250 or more full-time~~  
 51 ~~equivalent employee positions, may receive a credit or refund as~~  
 52 ~~the ultimate vendor of the aviation fuel for the 6.9 cents~~

53 ~~excise tax previously paid, provided that the air carrier has no~~  
54 ~~facility for fueling highway vehicles from the tank in which the~~  
55 ~~aviation fuel is stored. In calculating the new or additional~~  
56 ~~Florida full-time equivalent employee positions, any full-time~~  
57 ~~equivalent employee positions of parent or subsidiary~~  
58 ~~corporations which existed before January 1, 1996, shall not be~~  
59 ~~counted toward reaching the Florida employment increase~~  
60 ~~thresholds. The refund allowed under this paragraph is in~~  
61 ~~furtherance of the goals and policies of the State Comprehensive~~  
62 ~~Plan set forth in s. 187.201(16)(a), (b)1., 2., (17)(a), (b)1.,~~  
63 ~~4., (19)(a), (b)5., (21)(a), (b)1., 2., 4., 7., 9., and 12.~~

64 ~~(c) If, before July 1, 2001, the number of full-time~~  
65 ~~equivalent employee positions created or added to the air~~  
66 ~~carrier's Florida workforce falls below 250, the exemption~~  
67 ~~granted pursuant to this section shall not apply during the~~  
68 ~~period in which the air carrier has fewer than the 250~~  
69 ~~additional employees.~~

70 ~~(d) The exemption taken by credit or refund pursuant to~~  
71 ~~paragraph (b) shall apply only under the terms and conditions~~  
72 ~~set forth therein. If any part of that paragraph is judicially~~  
73 ~~declared to be unconstitutional or invalid, the validity of any~~  
74 ~~provisions taxing aviation fuel shall not be affected and all~~  
75 ~~fuel exempted pursuant to paragraph (b) shall be subject to tax~~  
76 ~~as if the exemption was never enacted. Every person benefiting~~  
77 ~~from such exemption shall be liable for and make payment of all~~  
78 ~~taxes for which a credit or refund was granted.~~

79 ~~(b)(e)~~1. Sales of aviation fuel to, and exclusively used  
 80 for flight training through a school of aeronautics or college  
 81 of aviation by, a college based in this state which is a tax-  
 82 exempt organization under s. 501(c)(3) of the Internal Revenue  
 83 Code or a university based in this state are exempt from the tax  
 84 imposed by this part if the college or university:

85 a. Is accredited by or has applied for accreditation by  
 86 the Aviation Accreditation Board International; and

87 b. Offers a graduate program in aeronautical or aerospace  
 88 engineering or offers flight training through a school of  
 89 aeronautics or college of aviation.

90 2. A licensed wholesaler or terminal supplier that sells  
 91 aviation fuel to a college or university qualified under this  
 92 paragraph and that does not collect the aviation fuel tax from  
 93 the college or university on such sale may receive an ultimate  
 94 vendor credit for the 3.3-cent ~~6.9-cent~~ excise tax previously  
 95 paid on the aviation fuel delivered to such college or  
 96 university.

97 3. A college or university qualified under this paragraph  
 98 which purchases aviation fuel from a retail supplier, including  
 99 a fixed-base operator, and pays the 3.3-cent ~~6.9-cent~~ excise tax  
 100 on the purchase may apply for and receive a refund of the  
 101 aviation fuel tax paid.

102 (2)(a) An excise tax of 3.3 ~~6.9~~ cents per gallon is  
 103 imposed on each gallon of kerosene in the same manner as  
 104 prescribed for diesel fuel under ss. 206.87(2) and 206.872.

105 (b) The exemptions provided by s. 206.874 shall apply to  
106 kerosene if the dyeing and marking requirements of s. 206.8741  
107 are met.

108 (c) Kerosene prepackaged in containers of 5 gallons or  
109 less and labeled "Not for Use in a Motor Vehicle" is exempt from  
110 the taxes imposed by this part when sold for home heating and  
111 cooking. Packagers may qualify for a refund of taxes previously  
112 paid, as prescribed by the department.

113 (d) Sales of kerosene in quantities of 5 gallons or less  
114 by a person not licensed under this chapter who has no  
115 facilities for placing kerosene in the fuel supply system of a  
116 motor vehicle may qualify for a refund of taxes paid. Refunds of  
117 taxes paid shall be limited to sales for use in home heating or  
118 cooking and shall be documented as prescribed by the department.

119 (3) An excise tax of 3.3 ~~6.9~~ cents per gallon is imposed  
120 on each gallon of aviation gasoline in the manner prescribed by  
121 paragraph (2)(a). However, the exemptions allowed by paragraph  
122 (2)(b) do not apply to aviation gasoline.

123 (4) Any licensed wholesaler or terminal supplier that  
124 delivers undyed kerosene to a residence for home heating or  
125 cooking may receive a credit or refund as the ultimate vendor of  
126 the kerosene for the 3.3-cent ~~6.9-cent~~ excise tax previously  
127 paid.

128 (5) Any licensed wholesaler or terminal supplier that  
129 delivers undyed kerosene to a retail dealer not licensed as a  
130 wholesaler or terminal supplier for sale as a home heating or

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131 cooking fuel may receive a credit or refund as the ultimate  
132 vendor of the kerosene for the 3.3-cent ~~6.9-cents~~ excise tax  
133 previously paid, provided the retail dealer has no facility for  
134 fueling highway vehicles from the tank in which the kerosene is  
135 stored.

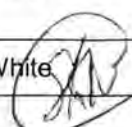
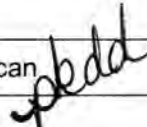
136 (6) Any person who fails to meet the requirements of this  
137 section is subject to a backup tax as provided by s. 206.873.

138 Section 3. Except as otherwise expressly provided in this  
139 act, this act shall take effect July 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7001      PCB LGAS 16-01      Special District Accountability  
**SPONSOR(S):** Local Government Affairs Subcommittee, Ray  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Local Government Affairs Subcommittee	13 Y, 0 N	Miller	Miller
1) Economic Development & Tourism Subcommittee		White 	Duncan 
2) Local & Federal Affairs Committee			

### SUMMARY ANALYSIS

“Special Districts” are a type of limited local government created to perform specific services within a described geographic area. Sometimes called special taxing districts, most are created either by special act (independent special districts) or county or municipal ordinance (dependent special districts). The Special District Accountability Program in the Department of Economic Opportunity (DEO) is responsible for creating and maintaining a current list of all special districts in Florida, as provided in ch. 189, F.S., the Uniform Special District Accountability Act.

When a special district fails to meet certain statutory responsibilities, no longer functions, or informs DEO it is no longer active, DEO is required to follow the statutory process before declaring the district inactive. This includes documenting one or more statutory criteria for inactive status, publishing notice in the area of the district of DEO’s intent to declare the district inactive, and documenting the lack of any objection to declaring the district inactive. DEO is required to deliver written notice of the declaration of inactive status to specific authorities. If the district was created by special act, notice is delivered to the Speaker of the House, the President of the Senate, and the standing committees in each chamber responsible for special district oversight. If the district was created by local ordinance, notice is delivered to the governing body of the county or municipality that created the district. A special district declared inactive may not collect taxes, assessments, or fees while the declaration is in effect.

A special district declared inactive still exists until its legal authority is repealed by the creating entity. Currently, this means DEO continues to list active and inactive districts on the official list.

HB 7001 amends ch. 189, F.S., by excluding districts declared inactive from the official list of special districts. The bill requires DEO to remove all districts declared inactive from the official list and place them on a separate listing exclusively for inactive districts. A district would be removed from the inactive list only if DEO declared it to have resumed active status, the district is merged with another entity of local government, or the district is dissolved.

The bill also makes conforming technical changes to related statutes. Section 189.071(2), F.S., is amended to clarify its provisions on merger or dissolution of dependent districts created and operating under special law apply to *active* districts. Sections 189.071(3) and 189.072(3), F.S., each authorizing dissolution by special act if a district meets any of the statutory criteria for being declared inactive, are amended to remove the same redundant alternative phrase “or that has already been declared inactive.”

The bill has a potential impact on DEO expenditures by requiring the creation and maintenance of a separate list for inactive districts. However, with the present flexibility in formatting and features already programmed into the Special District Accountability Program website, any additional expenses are likely minimal.

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



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,<sup>1</sup> special act,<sup>2</sup> local ordinance,<sup>3</sup> or by rule of the Governor and Cabinet.<sup>4</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>5</sup> A special district may be "dependent"<sup>6</sup> or "independent."<sup>7</sup>

The Special District Accountability Program within the Department of Economic Opportunity (DEO) is responsible for maintaining and electronically publishing the official list of all special districts in Florida.<sup>8</sup> The official list currently reports all active special districts as well as those declared inactive by DEO.

According to DEO's Special District Accountability Program official list, the state currently has 1,663 active special districts comprised of 636 dependent and 1,027 independent special districts. Ten special districts are inactive.<sup>9</sup>

Whether dependent or independent, when a special district no longer fully functions or fails to meet its statutory responsibilities, DEO is required to declare that district inactive by following a specified process.<sup>10</sup> DEO must first document the factual basis for declaring the district inactive.

A special district may be declared inactive if it meets one of six specific factors:

- The registered agent of the district, the chair of the district governing body, or the governing body of the appropriate local general-purpose government:
  - Provides DEO with written notice that the district has taken no action for 2 or more years.<sup>11</sup>

<sup>1</sup> Section 189.031(3), F.S.

<sup>2</sup> Id.

<sup>3</sup> Section 189.02(1), F.S.

<sup>4</sup> Section 190.005(1), F.S. *See, generally, s. 189.012(6), F.S.*

<sup>5</sup> *2015 – 2016 Local Gov't Formation Manual*, p. 67, at

<http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2836> (accessed 9/28/2015).

<sup>6</sup> Section 189.012(2), F.S. A special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of governing body of a single county or municipality.

<sup>7</sup> Section 189.012(3), F.S. A special district that is not a dependent district.

<sup>8</sup> Sections 189.061(1), 189.064(2), F.S. DEO maintains the current official list at

<https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (accessed 9/28/2015).

<sup>9</sup> Florida DEO, Official List of Special Districts Online, *available at*

<https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm> (accessed 11/25/2015).

<sup>10</sup> Section 189.062(1), F.S. Prior to 2014, the former statute required DEO to document the existence of one of five criteria listed in paragraph (1)(a), publication and service under paragraph (1)(b) of a notice of intent to declare the district inactive, and the lack of any administrative appeal of the declaration within 21 days of that publication. Section 189.4044, F.S. (2013). In 2014, as ch. 189, F.S., was extensively revised and restructured, the word "or" was added at the end of s. 189.062(1)(a)6, F.S., apparently allowing DEO either to document one of the six criteria *or* publish notice of intent to declare inactive and find no appeal is filed. Chapter 2014-22, s. 24, Laws of Florida. During the 2015 regular legislative session, the Florida Senate passed CS/SB 1388, its version of a bill resolving technical issues stemming from the 2014 revisions, which would have amended s. 189.062(1)(a)6., F.S., by removing the word "or." CS/SB 1388 (2015), s. 11, at line 414 (bill did not pass the Legislature). DEO still uses the 3-step process as described in the 2013 statute.

<sup>11</sup> Section 189.062(1)(a)1., F.S.

- Provides DEO with written notice that the district has not had any members on its governing body or insufficient numbers to constitute a quorum for 2 or more years.<sup>12</sup>
- Fails to respond to an inquiry from DEO within 21 days.<sup>13</sup>
- Following statutory procedure,<sup>14</sup> DEO determines the district failed to file specified reports,<sup>15</sup> including required financial reports.<sup>16</sup>
- For more than 1 year, no registered office or agent for the district was on file with DEO.<sup>17</sup>
- The governing body of the district unanimously adopts a resolution declaring the district inactive and provides documentation of the resolution to DEO.<sup>18</sup>

Once DEO determines which criterion applies to the district, notice of the proposed declaration of inactive status is published by DEO, the local general-purpose government for the area where the district is located, or the district itself.<sup>19</sup> The notice must state that any objections to declaring the district inactive must be filed with DEO pursuant to chapter 120, F.S.,<sup>20</sup> within 21 days after the publication date.<sup>21</sup> If no objection is filed within the 21 day period, DEO declares the district inactive.<sup>22</sup>

After declaring certain special districts as being inactive, DEO must send written notice of the declaration to the authorities which created the district. If the district was created by special act, DEO sends written notice to the Speaker of the House, the President of the Senate, and the standing committees in each chamber responsible for special district oversight.<sup>23</sup>

The property and assets of a special district declared inactive by DEO are first used to pay any debts of the district. Any remaining property or assets then escheat to the county or municipality in which the district was located. If the district's assets are insufficient to pay its outstanding debts, the local general-purpose government in which the district was located may assess and levy within the territory of the inactive district such taxes as necessary to pay the remaining debt.<sup>24</sup>

A district declared inactive may not collect taxes, fees, or assessments.<sup>25</sup> This prohibition continues until the declaration of invalidity is withdrawn or revoked by DEO<sup>26</sup> or invalidated in an administrative proceeding<sup>27</sup> or civil action<sup>28</sup> timely brought by the governing body of the special district.<sup>29</sup> Failure of the special district to challenge (or prevail against) the declaration of inactive status enables DEO to enforce the statute through a petition for enforcement in circuit court.<sup>30</sup>

<sup>12</sup> Section 189.062(1)(a)2., F.S.

<sup>13</sup> Section 189.062(1)(a)3., F.S.

<sup>14</sup> Section 189.067, F.S.

<sup>15</sup> Section 189.066, F.S.

<sup>16</sup> Section 189.062(1)(a)4., F.S. *See, ss.* 189.016(9), 218.32, 218.39, F.S.

<sup>17</sup> Section 189.062(1)(a)5., F.S.

<sup>18</sup> Section 189.062(1)(a)6., F.S.

<sup>19</sup> Publication must be in a newspaper of general circulation in the county or municipality where the district is located and a copy sent by certified mail to the district's registered agent or chair of the district's governing body, if any.

<sup>20</sup> The Florida Administrative Procedure Act.

<sup>21</sup> Section 189.062(10)(b), F.S. The published notice also must include the name of the district, the law under which it was organized and operating, and a description of the district's territory.

<sup>22</sup> Section 189.062(1)(c), F.S.

<sup>23</sup> Section 189.062(3), F.S. The statute provides that the declaration of inactive status is sufficient notice under art. III, s. 10 of the Florida Constitution to authorize the repeal of special laws creating or amending the charter of the inactive district. This statute stands in lieu of the normal requirement for publication of notice of intent to file a local bill at least 30 days before introducing the bill in the Legislature, under s. 11.02, F.S.

<sup>24</sup> Section 189.062(2), F.S.

<sup>25</sup> Section 189.062(5), F.S.

<sup>26</sup> Section 189.062(5)(a), F.S.

<sup>27</sup> Section 189.062(5)(b)1., F.S. Administrative proceedings are conducted pursuant to s. 120.569, F.S.

<sup>28</sup> Section 189.062(5)(b)2., F.S. The action for declaratory and injunctive relief is brought under ch. 86, F.S.

<sup>29</sup> The special district must initiate the legal challenge within 30 days after the date the written notice of the department's declaration of inactive status is provided to the special district. Section 189.062(5)(b), F.S.

<sup>30</sup> Section 189.062(5)(c), F.S. The enforcement action is brought in the circuit court in and for Leon County.

Declaring a special district to be inactive does not dissolve the district or otherwise cease its legal existence. Subsequent action is required to repeal the legal authority creating the district, whether by the Legislature<sup>31</sup> or the entity that created the district.<sup>32</sup>

### **Effect of the Proposed Changes**

The bill modifies the reporting duties of DEO in two ways. First, the bill excludes all districts declared inactive from the official list of special districts. Second, the bill requires DEO to create a separate list of all special districts declared inactive under s. 189.062, F.S. Districts are to remain on the inactive list until restored to active status, merged with another entity,<sup>33</sup> or dissolved.<sup>34</sup>

The bill also removes redundant language referring to whether a special district meets one of the criteria to be declared inactive or in fact has been declared inactive by DEO.

#### **B. SECTION DIRECTORY:**

- Section 1: Creates s. 189.061(7), F.S., requiring all districts declared inactive under s. 189.062, F.S., be excluded from the official list of special districts.
- Section 2: Creates s. 189.062(6), F.S., requiring DEO immediately remove districts declared inactive from the official list of special districts and to create a separate list of all districts declared inactive.
- Section 3: Makes clarifying changes to s. 189.071, F.S., specifying that certain merger or dissolution actions pertain to an active special district, and removing redundant language.
- Section 4: Makes a clarifying change to s. 189.072(3), F.S., by removing redundant language.
- Section 5: Provides the effective date of the bill is July 1, 2016.

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

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

- 1. Revenues:  
None
- 2. Expenditures:  
None (see Fiscal Comments below)

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

- 1. Revenues:  
None

<sup>31</sup> Sections 189.071(3), 189.072(3), F.S.

<sup>32</sup> Section 189.062(4), F.S. Unless otherwise provided by law or ordinance, dissolution of a special district transfers title to all district property to the local general-purpose government, which also must assume all debts of the dissolved district. Section 189.076(2), F.S.

<sup>33</sup> Sections 189.071, 189.074, F.S.

<sup>34</sup> Sections 189.071, 189.072, F.S. The official declaration of inactive status does not repeal the legal authority creating the district or otherwise dissolve the special district.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

DEO may have an increase in operating expenses to create and maintain a separate list of special districts declared inactive, however that increase appears to be inconsequential due to the present structure of reporting options for the official list currently used on the DEO website.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to implicate the provisions of article VII, s. 18, Florida Constitution.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires implementation through administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to special district accountability;  
 3           amending s. 189.061, F.S.; requiring the Department of  
 4           Economic Opportunity to exclude inactive special  
 5           districts from the official list of special districts;  
 6           amending s. 189.062, F.S.; requiring the department to  
 7           remove special districts declared inactive from the  
 8           official list of special districts; requiring the  
 9           department to keep a separate list of inactive  
 10          districts; amending ss. 189.071 and 189.072, F.S.;  
 11          conforming provisions to changes made by this act;  
 12          providing an effective date.

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

15  
 16           Section 1. Subsection (1) of section 189.061, Florida  
 17   Statutes, is amended to read:

18           189.061 Official list of special districts.—

19           (1) (a) The department shall maintain the official list of  
 20   special districts. The official list of special districts shall  
 21   include all special districts in this state and shall indicate  
 22   the independent or dependent status of each district. All  
 23   special districts on the list shall be sorted by county. The  
 24   definitions in s. 189.012 shall be the criteria for  
 25   determination of the independent or dependent status of each  
 26   special district on the official list. The status of community

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27 development districts shall be independent on the official list  
28 of special districts.

29 (b) The official list shall exclude all districts declared  
30 inactive as provided in s. 189.062.

31 Section 2. Subsection (6) is added to section 189.062,  
32 Florida Statutes, to read:

33 189.062 Special procedures for inactive districts.—

34 (6) (a) The department shall immediately remove each  
35 special district declared inactive as provided in this section  
36 from the official list of special districts maintained as  
37 provided in ss. 189.061 and 189.064.

38 (b) The department shall create a separate list of all  
39 special districts declared inactive as provided in this section  
40 and shall maintain each such district on such inactive list  
41 until the department determines that the district has resumed  
42 active status, the district is merged as provided in s. 189.071  
43 or s. 189.074, or the district is dissolved as provided in s.  
44 189.071 or s. 189.072.

45 Section 3. Subsections (2) and (3) of section 189.071,  
46 Florida Statutes, are amended to read:

47 189.071 Merger or dissolution of a dependent special  
48 district.—

49 (2) The merger or dissolution of an active a dependent  
50 special district created and operating pursuant to a special act  
51 may be effectuated only by further act of the Legislature unless  
52 otherwise provided by general law.

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53 (3) A dependent special district that meets any criteria  
 54 for being declared inactive, ~~or that has already been declared~~  
 55 ~~inactive,~~ pursuant to s. 189.062 may be dissolved or merged by  
 56 special act without a referendum.

57 Section 4. Subsection (3) of section 189.072, Florida  
 58 Statutes, is amended to read:

59 189.072 Dissolution of an independent special district.—

60 (3) INACTIVE INDEPENDENT SPECIAL DISTRICTS.—An independent  
 61 special district that meets any criteria for being declared  
 62 ~~inactive, or that has already been declared inactive,~~ pursuant  
 63 to s. 189.062 may be dissolved by special act without a  
 64 referendum. If an inactive independent special district was  
 65 created by a county or municipality through a referendum, the  
 66 county or municipality that created the district may dissolve  
 67 the district after publishing notice as described in s. 189.062.

68 Section 5. This act shall take effect July 1, 2016.

DEO & Enterprise  
Florida, Inc.





# **FLORIDA ENTERPRISE FUND: DIVERSIFY FLORIDA'S ECONOMY & SUPPORT SMALL BUSINESS**

**Presentation to  
Florida House of Representatives Economic  
Development & Tourism Subcommittee  
December 2, 2015**



# Background of Governor's Recommendations

- The Governor, together with Enterprise Florida, is committed to working with the legislature and stakeholders to improve the economic development process.
- The Governor, together with Enterprise Florida, has proposed reforms after giving careful thought to Legislative concerns including:
  1. Dedicating funds so that they do not revert (Slide 10)
  2. Eliminating escrow and creating trust fund (Slide 11)
  3. Eliminating waivers (Slide 12)
  4. Streamlined approval process (Slide 13)
- Also looked at how our top competitor states do economic development for areas of improvement:
  - Texas
  - New York
  - Georgia
  - South Carolina

## OUR MODEL



# Texas Enterprise Fund: \$285 M

- Funds remain available until awarded  
*(Florida Enterprise Fund would model after Texas)*
- Streamlined approval process to only require Governor, Senate President & Speaker of the House  
*(Florida Enterprise Fund would model after Texas)*
- No special waivers used for projects  
*(Florida Enterprise Fund would model after Texas)*
- Dedicated account accrues interest  
*(Florida Enterprise Fund would model after Texas)*

# COMPETITOR



# NEW YORK: \$150 M AVAILABLE

- Funds remain available until awarded  
*(Florida Enterprise Fund proposal)*
- No special waivers used for projects  
*(Florida Enterprise Fund proposal)*

## COMPETITOR



# GEORGIA: \$46 M AVAILABLE

- Funds remain available until awarded  
*(Florida Enterprise Fund proposal)*
- No special waivers for projects  
*(Florida Enterprise Fund proposal)*
- Dedicated account accrues interest  
*(Florida Enterprise Fund proposal)*

# COMPETITOR



# S. CAROLINA: \$58M AVAILABLE

- Funds remain available until awarded  
*(Florida Enterprise Fund proposal)*
- No special waivers used for projects  
*(Florida Enterprise Fund proposal)*
- Dedicated account accrues interest  
*(Florida Enterprise Fund proposal)*



# **\$250 Million Proposed Florida Enterprise Fund**

- **Bring in line with biggest competitor states.**
- **One-time appropriation.**
- **Streamlined approval process to only require approval of Governor, Senate President & Speaker of the House.**
- **Money remains available until it is spent and will not revert.**
- **Dedicated funding will fall in line with business planning, not on a fiscal year-to-year basis.**
- **Continues strong accountability that protects taxpayer money until jobs are created.**

# Responsive Reforms



Legislative Requests	Proposal
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Help Small Business	Included	✓
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Consistent Deals	Waivers Eliminated	✓
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Help Rural Communities	Adding Rural Representation	✓
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Greater Transparency	Streamlined Process	✓
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# Responsive Reforms Continued



## Legislative Requests

## Florida Enterprise Fund

Eliminate Escrow

Escrow Eliminated



Limit on waivers

Waivers Eliminated



Limit incentive contracts to 10 years

Limits contracts to 10 years



Earn higher interest rates

Increase interest from .25% up to 1.4%



Larger voice in decisions

Legislative input over \$1M



Reversions minimalized

Reversions Eliminated





# Dedicating Funds So They Do Not Revert

- **Too many closing fund dollars have been reverted over the past four years due to the disalignment of business job creation timelines and state fiscal years.**
- **Like Texas, the proposed Florida Enterprise Fund will allow dollars to carry over to compete for jobs.**
- **Like Texas, the proposed Florida Enterprise Fund will allow EFI to negotiate the best deal for taxpayers.**
- **Like Texas, the proposed Florida Enterprise Fund will provide greater certainty for business and greater predictability for taxpayers.**

# Eliminating Escrow and Creating a Trust Fund



- **The current escrow system provides a 0.25 percent return for taxpayers and lacks transparency.**
- **Like Texas, the proposed Florida Enterprise Fund will accrue a higher rate of interest at 1.4 percent.**
- **Like Texas, the proposed Florida Enterprise Fund will provide enhanced transparency with no third party involvement.**
- **Like Texas, the interest earned in the proposed Florida Enterprise Fund will facilitate more deals and more jobs for Floridians.**

# Eliminating Waivers



- **The proposed Florida Enterprise Fund will eliminate waivers.**
- **The proposed Florida Enterprise Fund will streamline the process and enable greater participation by small businesses.**
- **The proposed Florida Enterprise Fund will maintain project approval flexibility for rural communities.**
- **Reform the return on investment requirements by requiring a 10 percent annualized return on top of the original amount invested in a company.**

# Streamlined Approval Process



- **Like Texas, the proposed Florida Enterprise Fund will eliminate the need to schedule special committee meetings.**
- **Like Texas, only the Governor, Senate President and Speaker of the House approve or reject offers.**
- **The Legislature approves or rejects any project over \$1 million, which expands their current authority.**



# Why Florida Enterprise Fund Proposal?

*“This is about diversifying the economy, which is the entire reason we created this organization in the first place. I think it’s time to double down on that.”*

**Mark Wilson, President of the Florida Chamber**

- **A more diverse, robust economy that’s able to protect the state through a recession.**
- **Small businesses empowered to expand.**
- **Make Florida first in the nation for job creation.**
- **Attract more large manufacturers and corporate headquarters.**

# Empowering Small Business



- **Expanding and supporting small business is critical to growing jobs and diversifying Florida's economy.**
- **The current process is too complex and burdensome for small businesses to participate in EFI incentives.**
- **Like Texas, the proposed Florida Enterprise Fund will streamline the process, opening the door for small businesses to succeed.**
- **Like Texas, the proposed Florida Enterprise Fund will have the resources to recruit and retain both large and small companies.**

# Local Officials Support Reforms



- Panama City Mayor Greg Brudnicki
- Palmetto Mayor Shirley Groover Bryant
- Tampa Mayor Bob Buckhorn
- Jacksonville Mayor Lenny Curry
- Orlando Mayor Buddy Dyer
- Ft. Myers Mayor Randall P. Henderson, Jr.
- Hialeah Mayor Carlos Hernandez
- Apalachicola Mayor Van Johnson
- Plant City Mayor Rick Lott
- Naples Mayor John Sorey
- St. Augustine Mayor Nancy Shaver
- North Miami Beach Mayor George Vallejo
- Lakeland Mayor Howard Wiggs



# Local Officials Support Reforms



- City of Miami Commission Chairman Wifredo Gort
- Lee County Commissioner Brian Hamman
- Broward County Commissioner Chip LaMarca
- Flagler County Commissioner Frank Meeker
- Miami-Dade County Commissioner Rebeca Sosa
- Brevard Board of County Commissioners
- Panama City Beach City Commissioners
- Polk County Board of County Commissioners

# Business Leaders Support Reforms



- **Belinda Keiser, Vice Chancellor of Keiser University** said regarding the Florida Enterprise Fund, “But I do hope as well that our Senate President, our Speaker, will reach out to our Governor because the clock is ticking and this is a highly competitive process.”
- **Danny Gaekwad, of Ocala and President of NDS Global,** said, “To keep us on the right track as the best state for business, we need the resources necessary to attract and retain high quality jobs. That’s why the Governor’s commitment to reforming the Quick Action Closing Fund is incredibly important as we move forward. I look forward to working with the Governor and legislature to make these reforms happen.”
- **Jay Beyrouiti, of Pinellas County and President of Monicarla L.T.D** said, “When Enterprise Florida succeeds in recruiting new business, so do Florida families. Governor Scott’s proposal to create the Florida Enterprise Fund and reform the way Florida achieves jobs wins is great news for every family in our state, and I look forward to working with the Legislature to implement these changes.”

# Business Leaders Support Reforms



- **Alan Becker, of Ft. Lauderdale and Vice Chair of Enterprise Florida** said, “For Florida to continue to be the best state for business, we must constantly improve as an organization, and Governor Scott’s recommended reforms to the Quick Action Closing Fund will do that. I believe these four major reforms will provide a strong return on investment for Florida taxpayers while creating more opportunities for Floridians to get a job. I look forward to seeing these improvements come to fruition.”
- **Eric Silagy, of West Palm Beach and President and CEO of Florida Power and Light Company** said, “We all want Florida to not just be the best state to live and work, but the premier place in the world for new job creation. Governor Scott outlined a vision today for improving Enterprise Florida that puts us on a path to accomplish that goal. We look forward to working together to make those improvements a reality so we can continue to attract job creators to our state.”

# Business Leaders Support Reforms



- **Neal Dunn MD, F.A.C.S, of Panama City and Chairman of the Board of Directors for Summit Bank**, said, “There is no doubt that the Quick Action Closing Fund needs to be reformed so Enterprise Florida can continue our goal of bringing businesses to Florida. I applaud the Governor for proposing these reforms to move Florida forward as the best state for job creators and families to succeed.”
- **Brian Lamb, of Hillsborough County and Regional President of Fifth Third Bank** said, “We are working every day to attract businesses to Florida that will diversify our economy and ensure job opportunities are available for everyone who needs it. The Quick Action Closing Fund is necessary to securing those job wins, and Governor Scott’s recommendations will make necessary improvements to help Enterprise Florida achieve our job creation mission.”
- **Stan Connally, Chairman of the Legislative Policy Committee and CEO of Gulf Power**, said “The Governor’s recommended reforms to the Quick Action Closing Fund will help Florida out-compete Texas, our number one job competitor, to become the number one state in the country for business. As part of this board, I look forward to working with the Governor, the Legislature and other stakeholders to see these improvements carried out.”



**Thank you**

