# Finance and Tax Committee

Thursday, March 19, 2015

3:00 p.m. – 6:00 p.m.

Morris Hall

MEETING PACKET

Steve Crisafulli
Speaker

Matt Gaetz
Chair

# The Florida House of Representatives

## Finance and Tax Committee

**Steve Crisafulli**
**Speaker**

**Matt Gaetz**
**Chair**

## AGENDA

March 19, 2015
3:00 p.m. – 6:00 p.m.
Morris Hall

I. Call to Order/Roll Call

II. Chair's Opening Remarks

III. ***Consideration of the following proposed committee bill(s):***
PCB FTC 15-02 -- Hospital Capital Recovery
PCB FTC 15-03 -- Public Records Exemption

***Consideration of the following bill(s):***
HB 173 Property Tax Exemptions by Goodson
CS/HB 179 Public Records/Tax Collectors by Government Operations Subcommittee, Eagle
HJR 299 Homestead Exemption/Living Spouse of Deceased Combat-Disabled Veteran by Plakon
HB 617 Utility Projects by Goodson
PCS for HB 259 -- Small Business Saturday Sales Tax Holiday by Fant
PCS for HB 695 -- Ad Valorem Taxation

IV. Closing Remarks and Adjournment

221 Capitol Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4812 Fax: (850) 413-0356

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FTC 15-02 Capital Recovery
**SPONSOR(S):** Finance & Tax Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Finance & Tax Committee | | Wolfgang | Langston |

### SUMMARY ANALYSIS

This bill requires hospital districts and county hospitals to collect and submit to an approved provider under contract with the Department of Financial Services (department) information on claims, and denial of claims, for payment for medical services issued to insurers and governmental entities. Using this information, the approved provider under contract with the department will calculate a "denial rate", which will affect whether the hospital district can levy additional ad valorem taxes or the county hospital can receive additional county funding.

Beginning in the 2017-2018 fiscal year, a hospital district may only levy increased ad valorem taxes, or a county hospital may only receive increased appropriations or ad valorem taxes from the county in the year following the timely submission of its report to the approved provider under contract with the department if one of the following criteria are met:

- The denial rate for the hospital district or county hospital was less than or equal to 10 percent for the reports submitted based on fiscal years 2015-2016, 2017-2018, and 2017-2018 (these reports will impact hospital district or county hospital funding for fiscal years 2017-2018, 2018-2019, and 2019-2020, respectively), or
- The denial rate for the hospital district or county hospital was less than or equal to 7 percent for reports based on fiscal year 2018-2019 and each year thereafter (these reports will impact hospital district or county hospital funding for fiscal year 2020-2021 and each year thereafter); or
- The hospital district or county hospital has reduced its denial rate by 33 percent within the previous three fiscal years and by 66 percent within the five previous fiscal years.

The approved provider under contract with the department will provide the denial rates to the relevant hospital district or county hospital and provide a complete list of the denial rates of all the hospital districts and county hospitals to the Legislature.

The Revenue Estimating Conference has not estimated the revenue impacts of this bill. Staff estimates the impact on local government tax revenues is indeterminate, contingent on whether or not the affected entities meet the denial rate requirements of the bill. The bill appropriates $400 thousand in recurring General Revenue in fiscal year 2015-2016 to the department to contract with an approved provider to calculate denial rates and authorizes $60 thousand in nonrecurring revenue for start-up costs of the program.

**This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.**

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

County Hospitals

Chapter 155, F.S., governs county hospitals. This chapter has been in place since 1941 and governs the way that counties can fund, regulate, and run county hospitals. These statutes specifically authorize county governments to levy ad valorem taxes for hospital capital expenditures[1] and allow the county to "allocate to the hospital funds any other moneys in possession" of the board of county commissioners.[2]

There are 4 county-operated hospital systems in the state of Florida, including Jackson Memorial, Weems Memorial, Doctors' Memorial, and The Centers. During the fiscal year ending September 30, 2013, these hospitals received approximately $360 million in funding from the counties operating them, with the vast majority ($356.9 million) going to Jackson Memorial.

Counties may also appropriate funds to a hospital not owned or operated by the county, including privately owned hospitals or hospitals owned by special districts.

Special Districts

A "special district" is "a local unit of special purpose...government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet."[3] Special districts are created to provide a variety of services, such as mosquito control, beach facilities, children's services,[4] fire control and rescue,[5] drainage control,[6] or hospital services.

A "dependent special district" is a special district meeting at least one of the following criteria:

- The members of the district governing body are identical to those on the governing body of a county or municipality;
- The members of the governing body are appointed by the governing body of a single county or municipality;
- The members of the district's governing body may be removed at will by the governing body of a single county or municipality; or
- The district budget is subject to approval or veto by the governing body of a single county or municipality.[7]

An "independent special district" is a special district meeting none of the above four criteria.[8]

Hospital Districts

Hospital districts are a type of special district. Florida has 31 active hospital and healthcare taxing districts, of which 5 are dependent districts and 26 are independent. Nineteen of those districts have the authority to levy ad valorem taxes, including 1 dependent district and 18 independent districts. Hospital districts may consist of one hospital or several hospitals and medical facilities. Additionally, counties have the authority to have their own public hospitals and levy ad valorem taxes to support building and operating those hospitals.

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[1] Section 155.25, F.S.
[2] Section 155.24, F.S.
[3] Section 189.403(1), F.S.
[4] Section 125.901, F.S.
[5] Section 191.002, F.S.
[6] Section 298.01, F.S.
[7] Section 189.403(2), F.S.
[8] Section 189.403(3), F.S.

The ad valorem millage rate adopted by hospital districts for Fiscal Year 2014-2015 varies from 0 mills (Citrus County, Gadsden County, Madison County, and Lower Florida Keys) to 3.2908 mills (Hendry County). The taxes associated with the above tax rates vary from $0 (same list as 0 mill levy) to $155.7 million (North Broward). The total levy for all districts combined was $443.5 million for fiscal years ending in 2014.

A substantial portion of the revenues generated by a hospital or medical facility are from charges for patient care that are reimbursed by Medicare, Medicaid, or an insurance company. The claims that hospitals submit to these third party providers are either reimbursed at some contracted rate or denied. Denial can be caused by a wide variety of factors, many of which can be due to errors on the part of the hospital submitting the claim. Hospitals that enact policies and procedures to minimize denials can recover substantial revenues that otherwise might be lost.

The South Broward Hospital District, as one example, has a managed care collections capital recovery approach that has helped its hospitals increase profitability and decrease reliance on ad valorem tax revenues. The district hired a third party to assist in revising their processes in order to reduce the number of denials.[9]

**Effect of Proposed Changes**

The bill requires that each hospital district or county hospital submit a capital recovery report to the approved provider under contract with the Department of Financial Services (department) within 60 calendar days of the end of the fiscal year, which is defined as the period between October 1 and September 30. The report must contain data on all claims submitted electronically by a county hospital or all medical facilities in a hospital district to a government entity or insurance company for payment during the fiscal year, along with data on the response/payment status of all such claims. A certified public accountant must attest that the report is accurate, complete, and consistent with generally accepted accounting principles.

Each hospital district or county hospital may prepare the report itself, or it may hire an approved provider to prepare the report on its behalf. The report is used by the department's approved provider to calculate a denial rate. The denial rate is defined as the dollar value of all unpaid electronically submitted claims (based on the contracted or published rate for such claims) as a percentage of the total claims submitted electronically during the same time period. Any claims made to an insurer that has declared bankruptcy are removed from the calculation of the denial rate.

An approved provider is a business that obtains at least 85% of its revenues from denied claims management practices, has been in existence for at least 5 years, and employs at least 30 certified claims specialists. A certified claims specialist is an individual who is certified by an entity that uses nationally recognized claims management principles to establish baseline competence for claims specialists. The department must maintain a list of approved certification providers.

Within 90 calendar days of receiving the capital recovery report, the approved provider under contract with the department must evaluate the data contained in each report to determine the denial rate of each hospital district or county hospital. If a report is deemed incomplete because it does not contain enough data to calculate a denial rate, the department must notify the district or county hospital, which then has 15 business days to provide further data. The department must report the hospital district and county hospital denial rates to the Legislature by March 1 of each year.

The bill ties increases in certain funding to an entity's denial rate. As part of this process, the bill defines "county funding" as funds appropriated by a county government to support a hospital or the proceeds of an ad valorem tax levied by a county to support a hospital. Beginning in the 2017-2018 fiscal year, a hospital district may only levy increased ad valorem taxes or a county hospital may only receive increased county funding in the year following submission of a capital recovery report if one of the following criteria are met:

[9] Presentation to the House Finance & Tax Committee, 1/22/2015

- The denial rate for the hospital district or county hospital was less than or equal to 10 percent for the reports submitted based fiscal years 2015-2016, 2017-2018, 2017-2018 (these reports will impact hospital district or county hospital funding for fiscal years 2017-2018, 2018-2019, and 2019-2020, respectively), or
- The denial rate for the hospital district or county hospital was less than or equal to 7 percent for reports based on fiscal year 2018-2019 and each year thereafter (these reports will impact hospital district or county hospital funding for fiscal year 2020-2021 and each year thereafter); or
- The hospital district or county hospital has reduced its denial rate by 33 percent within the previous 3 fiscal years and by 66 percent within the 5 previous fiscal years.

This restriction on levying or receiving increased ad valorem revenues also applies to hospital districts and county hospitals which fail to submit a timely completed report.

The department may adopt emergency rules to implement this section and clarify what data must be submitted as part of the capital recovery report.

The bill contains a finding of important state interest.

B. SECTION DIRECTORY:

Section 1: Creates s. 155.50, F.S., to set forth the capital recovery practices necessary for hospital districts and county hospitals to have in place to levy or receive additional revenues.

Section 2: Provides a finding of important state interest.

Section 3: Provides an appropriation.

Section 4: Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill appropriates $400 thousand in recurring General Revenue to the Department of Financial Services to contract with an approved provider to calculate denial rates and appropriates $60 thousand in nonrecurring General Revenue to initiate the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   For counties that fund county hospitals that fail to meet the denial rates set out in this bill, the county would be prohibited from providing those hospitals with increased appropriations or increased ad valorem tax levies dedicated to supporting a hospital. For hospital districts that fail to meet the denial rates set out in this bill, the hospital district would be prohibited from collecting additional ad valorem revenues for its hospitals and medical facilities.

2. Expenditures:

   Hospital districts and county hospitals will be required to develop and submit to the Department of Financial Services capital recovery reports. The cost of these reports is unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage hospital districts and county hospitals to hire approved providers to assist them in calculating and reducing their denial rates. Reduction in the denial rates and the potential reduction in tax revenues could shift costs away from the taxpayers and to insurers.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill places a reporting requirement on county hospitals, which may require the expenditure of funds. The bill appears to qualify for an exemption from Art. VII, section 18(a), of the Florida Constitution because the county hospital reporting requirement is likely to have an insignificant fiscal impact.

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Financial Services emergency and regular rulemaking authority to specify the type and form of the data it needs for the calculation of the denial rates.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to capital recovery; creating s. 155.50, F.S.; providing definitions; requiring the Department of Financial Services to maintain a list of claims specialist certification providers on its website; specifying the information to be included in a capital recovery report; defining the method used to calculate a denial rate; requiring hospital districts and county hospitals to comply with capital recovery reporting requirements; requiring the Department of Financial Services to contract with an approved provider, to calculate denial rates for certain hospital districts and county hospitals; prohibiting hospital districts and county hospitals from receiving increased tax revenues if they fail to timely submit a complete report; requiring the department to maintain a list of approved providers; requiring hospital districts and county hospitals to meet specified requirements prior to levying or receiving increased tax revenues; clarifying that the section does not provide additional authority to increase the maximum authorized millage rates; clarifying that this section supersedes special acts; providing the Department of Financial Services with regular and emergency rulemaking authority to specify the type and form of data necessary to calculate a denial rate; providing a

statement of important state interest; providing an appropriation; providing an effective date.

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

Section 1. Section 155.50, Florida Statutes, is created to read:

155.50 Capital recovery requirements for tax supported hospitals .—

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

(a) "Approved provider" means a business that generates at least eighty-five percent of its revenues from denied claims management, that has been in existence for at least five years, and that employs at least thirty certified claims specialists.

(b) "Certified claims specialist" means an individual who is certified by an entity that uses nationally recognized claims management principles to establish a baseline competency for claims specialists. The department shall maintain a list of recognized certification providers on its website.

(c) "Claim" means an itemized statement of healthcare services and costs from a health care provider or facility submitted to a governmental entity or a third party for payment.

(d) "Denial value" means the gross amount of all zero paid line items on billed claims submitted in a given fiscal year for which specific payment is expected but for which no payment has been received within 30 days, as indicated in remittance advice

electronically transmitted by insurers or governmental entities.

(e) "Denial rate" means the denial value divided by the total gross value of claims electronically billed during the fiscal year reflected on the hospital district or county hospital's claims submissions. The fiscal year for the denial value and the fiscal year for the gross value of claims must be the same year. If an insurer declares bankruptcy all claims issued to and claim denials by that insurer shall be removed from the numerator and denominator of this calculation.

(f) "Department" means the Department of Financial Services.

(g) "Hospital district" means any dependent or independent special district that levies ad valorem taxes to support the operations of one or more hospitals or other medical facilities.

(h) "County Funding" means funds appropriated by a county government to support a hospital or the proceeds of an ad valorem tax levied by a county to support a hospital.

(i) "County hospital" means any hospital receiving county funding.

(j) "Increased tax revenues" means an increase in ad valorem tax revenues levied by a hospital district or an increase in county funding for a county hospital for a fiscal year in comparison to the levying or funding entity's immediately prior fiscal year.

(k) "Capital recovery report" means a report of claims to an insurer or governmental entity and related claims denials for

all of the claims of hospitals and other medical facility operations of a hospital district or a county hospital that shall:

1. Include all claims data electronically submitted by all hospitals and other medical facilities and operations of the hospital district or county hospitals to a governmental entity or insurer and remittance advice or responses electronically transmitted by insurers or governmental entities in an electronic format that the approved provider hired by the department can use to calculate denial rates; and

2. Include an attestation by a certified public accountant that the billing information reflected in the report is accurate, complete, and consistent with generally accepted accounting principles.

3. Comply with federal and state confidentiality standards.

(l) "Fiscal year" means the period commencing on October 1 and ending on September 30 of each year.

(m) "Specific payment" means the reimbursement amount expected based on the Centers for Medicare and Medicaid Services' fee schedule or the contracted rates specific to each insurer.

(2)(a) The department shall contract with an approved provider to receive capital recovery reports and calculate the denial rate for each hospital district or county hospital based on the data submitted in the capital recovery reports.

(b) Any approved provider contracted by the department may not also work in any capacity for any hospital district or county hospital that is required to submit a capital recovery report pursuant to this section.

(3) Every hospital district or county hospital must complete and submit to the approved provider under contract with the department a capital recovery report within 60 calendar days following the end of the fiscal year. The hospital district or county hospital may develop its own capital recovery report according to the requirements of this section or it may hire an approved provider to develop the capital recovery report. The first capital recovery report shall be due following the 2015-2016 fiscal year.

(4) Within 90 calendar days of receiving the complete capital recovery report, the approved provider under contract with the department shall calculate the denial rate for the hospital district or county hospital based on the data submitted in the capital recovery report and notify the board of the hospital district or county hospital of the denial rate. The report will be deemed incomplete until the approved provider under contract with the department has sufficient data in the proper format to allow it to accurately calculate a denial rate for the hospital district or county hospital. If the approved provider under contract with the department receives an incomplete report, the approved provider shall notify the governing board of the hospital district or county hospital. The

hospital district or county hospital shall have fifteen business days from the date the approved provider under contract with the department issues the notification to provide the complete report to the approved provider. If the hospital district or county hospital fails to provide the complete report within fifteen business days, the hospital district or county hospital may not levy or receive increased tax revenues for the fiscal year following the year in which the capital recovery report was due.

(5) The department shall establish a list of at least five approved providers that meet the requirements of this section.

(6) A hospital district or county hospital may levy or receive increased tax revenues for the fiscal years 2017-2018, 2018-2019, and 2019-2020 only if the denial rate calculated from the capital recovery report submitted to the approved provider under contract with the department in the immediately preceding fiscal year is ten percent or less. A hospital district or county hospital may levy or receive increased tax revenues for each fiscal year after 2019-2020 only if the denial rate calculated from the capital recovery report submitted to the approved provider under contract with the department in the immediately preceding fiscal year is seven percent or less. If the hospital district or county hospital fails to meet the denial rates described in this subsection, it may increase tax revenues if it can demonstrate that within the prior three years it has reduced its claim denial rate by thirty three percent and

reduced its claim denial rate by sixty-six percent in the prior five years.

(7) Nothing in this section authorizes a hospital district to increase its millage beyond the millage specified in its authorizing act or beyond 10 mills if the tax revenues are received from the county. The provisions of this section are in addition to any other statute or special act. To the extent that this section conflicts with any special act, resolution or ordinance, this section supersedes the special act, resolution or ordinance.

(8) The department may promulgate rules to clarify the type and form of records to be submitted as part of the capital recovery report that will be necessary to calculate a denial rate for each hospital district or county hospital. The department is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), for the purpose of implementing this section.

(9) By March 1 of each year, the department or an approved provider hired by the department shall submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature the denial rates for each county hospital and hospital district.

Section 2. The Legislature finds that this act fulfills an important state interest.

Section 3. For the 2015-2016 fiscal year, the sums of $400,000 in recurring funds and $60,000 in nonrecurring funds,

from the General Revenue Fund are appropriated to the Department of Financial Services to contract with an appropriate provider for the receipt of capital recovery reports from hospital districts and county hospitals and the calculation of the denial rate for each such district or hospital to implement the provisions of this act.

Section 4. This act shall take effect July 1, 2015.

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: Finance & Tax Committee

Representative Moskowitz offered the following:

**Amendment**

Remove lines 52-118 and insert:

been received within 60 days, as indicated in remittance advice electronically transmitted by insurers or governmental entities.

(e) "Denial rate" means the denial value divided by the total gross value of claims electronically billed during the fiscal year reflected on the hospital district or county hospital's claims submissions. The fiscal year for the denial value and the fiscal year for the gross value of claims must be the same year. If an insurer declares bankruptcy all claims issued to and claim denials by that insurer shall be removed from the numerator and denominator of this calculation.

(f) "Department" means the Department of Financial Services.

(g) "Hospital district" means any dependent or independent special district that levies ad valorem taxes to support the operations of one or more hospitals or other medical facilities.

(h) "County Funding" means funds appropriated by a county government to support a hospital or the proceeds of an ad valorem tax levied by a county to support a hospital.

(i) "County hospital" means any hospital receiving county funding.

(j) "Increased tax revenues" means an increase in ad valorem tax revenues levied by a hospital district or an increase in county funding for a county hospital for a fiscal year in comparison to the levying or funding entity's immediately prior fiscal year.

(k) "Capital recovery report" means a report of claims to an insurer or governmental entity and related claims denials for all of the claims of hospitals and other medical facility operations of a hospital district or a county hospital that shall:

1. Include all claims data electronically submitted by all hospitals and other medical facilities and operations of the hospital district or county hospitals to a governmental entity or insurer and remittance advice or responses electronically transmitted by insurers or governmental entities in an

electronic format that the approved provider hired by the department can use to calculate denial rates; and

2. Include an attestation by a certified public accountant that the billing information reflected in the report is accurate, complete, and consistent with generally accepted accounting principles.

3. Comply with federal and state confidentiality standards.

(l) "Fiscal year" means the period commencing on October 1 and ending on September 30 of each year.

(m) "Specific payment" means the reimbursement amount expected based on the Centers for Medicare and Medicaid Services' fee schedule or the contracted rates specific to each insurer.

(2)(a) The department shall contract with an approved provider to receive capital recovery reports and calculate the denial rate for each hospital district or county hospital based on the data submitted in the capital recovery reports.

(b) Any approved provider contracted by the department may not also work in any capacity for any hospital district or county hospital that is required to submit a capital recovery report pursuant to this section.

(3) Every hospital district or county hospital must complete and submit to the approved provider under contract with the department a capital recovery report within 90 calendar days

following the end of the fiscal year. The hospital district or county hospital may develop its own capital recovery report according to the requirements of this section or it may hire an approved provider to develop the capital recovery report. The first capital recovery report shall be due following the 2015-2016 fiscal year.

(4) Within 60 calendar days of receiving the complete

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FTC 15-03 Public Records Exemption
**SPONSOR(S):** Finance & Tax Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Finance & Tax Committee | | Wolfgang | Langston |

### SUMMARY ANALYSIS

The companion proposed committee bill (PCB FTC 15-02), an act relating to hospital capital recovery, requires hospital districts and county hospitals to collect and submit to an approved provider under contract with the Department of Financial Services (department) information on claims, and denial of claims, for payment for medical services issued to insurers and governmental entities. Using this information, the approved provider under contract with the department will calculate a "denial rate", which will affect whether the hospital district can levy additional ad valorem taxes or the county hospital can receive certain additional county funding.

This bill, which is linked to the passage of PCB FTC 15-02, creates a public records exemption for personally identifiable health information obtained as part of the hospital capital recovery review, including information covered by the federal Health Insurance Portability and Accountability Act of 1996. The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

The bill provides an effective date that is contingent on the passage of the hospital capital recovery PCB or similar legislation.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

PCB FTC 15-02

The bill requires that each hospital district or county hospital submit a capital recovery report to the approved provider under contract with the Department of Financial Services (department) within 60 calendar days of the end of the fiscal year. The report must contain data on all claims submitted electronically by a county hospital or all medical facilities in a hospital district to a government entity or insurance company for payment during the fiscal year, along with data on the response/payment status of all such claims. A certified public accountant must attest that the report is accurate, complete, and consistent with generally accepted accounting principles.

Each hospital district or county hospital may prepare the report itself, or it may hire an approved provider to prepare the report on its behalf. The report is used by the department's approved provider to calculate a denial rate. The denial rate is defined as the dollar value of all unpaid electronically submitted claims (based on the contracted or published rate for such claims) as a percentage of the total claims submitted electronically during the same time period. Any claims made to an insurer that has declared bankruptcy are removed from the calculation of the denial rate.

If the hospital district or county hospital does not meet denial rate benchmarks set in the bill or if it does not timely submit a capital recovery report to the department, then the hospital district will not be able to increase its tax revenues and the county hospital will not be able to receive additional county funding.

[1] Section 24(c), Art. I of the State Constitution.
[2] *See* s. 119.15, F.S.

**Effect of Proposed Changes**

This bill provides that personally identifiable information in the capital recovery report required by PCB FTC 15-02 is confidential and exempt[3] from public record requirements. It allows the information to be provided only to the department or an approved provider unless any identifying patient information is removed. The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.[4]

The bill provides an effective date that is contingent upon the passage of PCB FTC 15-02 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law to create a public record exemption for personally identifiable information in a capital recovery report.

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date contingent upon the passage of PCB FTC 15-02 or similar legislation.

## 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:

[3] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).

[4] Section 24(c), Art. I of the State Constitution.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement
Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal identifying information contained in a capital recovery report. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its stated purpose.

Right to Privacy
Article I, s. 23 of the State Constitution grants all Florida citizens the right to privacy. Consequently, Florida courts have recognized patients' rights to secure the confidentiality of their health information (medical records); however, that right must be balanced with and yields to any compelling state interest.[5]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[5] *See State v. Johnson*, 814 So.2d 390 (Fla .2002); distinguished in *Limbaugh v. State of Florida* 887 So.2d 387 (Fla. 4th DCA 2004); and *Rasmussen v. S. Fla. Blood Serv. Inc.*, 500 So.2d 533 (Fla. 1987) (privacy interests of blood donors defeated AIDS victim's claim to obtain via subpoena names and addresses of blood donors who may have contributed the tainted blood).

A bill to be entitled

An act relating to public records; creating s. 155.51, F.S.; exempting from public records requirements personally identifiable health information obtained in a capital recovery report; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 155.51, Florida Statutes, is created to read:

155.51 Public records for capital recovery reports.—

(1)(a) Personally identifiable health information obtained pursuant to s. 155.50, including, but not limited to, information covered by the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA of 1996), is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Such confidential and exempt information may only be disclosed:

1. To the Department of Financial Services under s. 155.50.

2. To an approved provider under section 155.50.

3. To any individual or entity if any identifying patient

information has been removed and the information is presented purely as numerical data or denial rates as defined in section 155.50.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature

Section 2. The Legislature finds that it is a public necessity to protect an individual's personally identifiable health information, including, but not limited to, information covered by the federal HIPAA of 1996, that is obtained by the Department of Financial Services or an approved provider under s. 155.50, Florida Statutes. The Legislature finds that it is a public necessity to ensure responsible management of public funds used by hospital districts and county hospitals, and state review of the billing practices of these hospital districts and county hospitals is an important step toward responsible management of those public funds. The Legislature further finds that an individual's personal health information is traditionally a private and confidential matter, and public disclosure of such health information could negatively affect a person's business or personal relationships. Therefore, it is the finding of the Legislature that such information must be made 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 on the same date

that PCB FTC 15-02 or similar legislation establishing hospital capital recovery practices takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 173 Property Tax Exemptions
**SPONSOR(S):** Goodson
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Finance & Tax Committee | | Wolfgang EW | Langston |
| 2) Local & Federal Affairs Committee | | | |

### SUMMARY ANALYSIS

The bill increases the existing ad valorem tax exemption for residents who are widows, widowers, blind, or totally and permanently disabled from $500 to $5,000 of value.

The Revenue Estimating Conference on January 1, 2015, conducted an analysis of the impacts of the bill. The bill is expected to have no impact in the 2015-2016 fiscal year, then a negative revenue impact to local governments of approximately $41.9 million beginning in the 2016-2017 fiscal year, assuming current millage rates.

The bill becomes effective upon becoming law, but only applies to tax years beginning on or after January 1, 2016.

**This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.**

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Property Taxation in Florida

Local governments, including counties, school districts, and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.[1] Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

Ad valorem tax rates are capped by the state constitution as follows:[2]

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by voters for special districts.

Taxes levied for the payment of bonds and taxes levied for periods not longer than two years, when authorized by a vote of the electors, are not subject to millage limitations. Millage rates vary among local governments and are fixed by ordinance or resolution of the taxing authority's governing body.[3]

Regardless of the body imposing the taxes, two county constitutional officers have primary responsibility for the administration and collection of ad valorem taxes. The county property appraiser calculates the fair market value, assessed value and the value of applicable exemptions of the property. The tax collector collects all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county and distributes the taxes to each taxing authority.[4]

The Department of Revenue (DOR) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.[5] Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.[6]

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.[7] However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.[8]

Federal, state, and county governments are immune from taxation but municipalities are not subdivisions of the state and may be subject to taxation absent an express exemption.[9] The Florida

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[1] FLA. CONST. art VII, s. 9,
[2] A mill is defined as 1/1000 of a dollar, or $1 per $1000 of taxable value.
[3] Section 200.001(7), F.S.
[4] Section 197.383, F.S.
[5] Section 195.002, F.S.
[6] Chapter 195, F.S.
[7] FLA. CONST. art VII, s. 2.
[8] See, for example, *Moore v. Palm Beach County,* 731 So. 2d 754 (Fla. 4th DCA 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).
[9] "Exemption" presupposes the existence of a power to tax, while "immunity" implies the absence of it. See *Turner v. Florida State Fair Authority*, 974 So. 2d 470 (Fla. 2d DCA 2008); *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005).

Constitution grants property tax relief in the form of certain valuation differentials,[10] assessment limitations,[11] and exemptions,[12] including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

Since the 1968 revision of the Florida Constitution has been in place, it has contained a specific exemption 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."[13] This exemption is effectuated in s. 196.202, F.S., for every person who is a bona fide resident of this state. An applicant for the exemption may apply for the exemption before receiving the necessary documentation from the United States Department of Veterans Affairs or its predecessor, or the Social Security Administration. Upon receipt of the documentation, the exemption shall is granted as of the date of the original application, and any excess taxes paid are refunded.

**Proposed Changes**

The bill increases from $500 to $5,000 of value exempt from ad valorem taxation for residents who are widows, widowers, blind, or totally and permanently disabled. The bill specifies that the increase applies to tax years beginning on or after January 1, 2016.

B. SECTION DIRECTORY:

**Section 1** of the bill amends s. 196.202, F.S., to increase the exemption for residents who are widows, widowers, blind, or totally and permanently disabled from $500 to $5,000.

**Section 2** specifies that the increase applies to tax years beginning on or after January 1, 2016.

**Section 3** provides that the act shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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[10] FLA. CONST. art VII, s. 4,., authorizes valuation differentials, which are based on character or use of property.

[11] FLA. CONST. art VII, s. 4(c), authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to 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. This provision is known as the "Granny Flats" assessment limitation.

[12] FLA. CONST. art VII, s. 3, provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

[13] FLA. CONST. art VII, s. 3(b).

2. The Revenue Estimating Conference on January 1, 2015, conducted an analysis of the impacts of the bill. The bill is expected to have no impact in the 2015-2016 fiscal year, then a negative revenue impact to local governments of approximately $41.9 million beginning in the 2016-2017 fiscal year, assuming current millage rates.

3. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida residents who are widows, widowers, blind, or totally and permanently disabled will pay less property tax.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18(b), of the Florida Constitution may apply because this bill reduces local government's ability to raise ad valorem revenues. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to property tax exemptions; amending s. 196.202, F.S.; increasing the property tax exemption for residents who are widows, widowers, blind, or totally and permanently disabled; providing applicability; providing an effective date.

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

Section 1. Subsection (1) of section 196.202, Florida Statutes, is amended to read:

196.202 Property of widows, widowers, blind persons, and persons totally and permanently disabled.—

(1) Property to the value of $5,000 ~~$500~~ of every widow, widower, blind person, or totally and permanently disabled person who is a bona fide resident of this state is exempt from taxation. As used in this section, the term "totally and permanently disabled person" means a person who is currently certified by a physician licensed in this state, by the United States Department of Veterans Affairs or its predecessor, or by the Social Security Administration to be totally and permanently disabled.

Section 2. The amendments made by this act to s. 196.202(1), Florida Statutes, apply to tax years beginning on or after January 1, 2016.

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

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 179 Public Records/Tax Collectors
**SPONSOR(S):** Government Operations Subcommittee; Eagle and others
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 200

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Local Government Affairs Subcommittee | 9 Y, 0 N | Zaborske | Miller |
| 2) Government Operations Subcommittee | 11 Y, 0 N, As CS | Williamson | Williamson |
| 3) Finance & Tax Committee | | Pewitt | Langston |

## SUMMARY ANALYSIS

In 2011, tax collectors were given authority to electronically send certain notices. Tax collectors may send notices of taxation to taxpayers by e-mail if the taxpayer has applied to participate in a prepayment installment plan, or if the tax collector has received express consent from the taxpayer to do so. Under current law, the taxpayer's e-mail address is a public record, and a government agency must post on its website that all e-mail addresses are public records.

The bill creates a public record exemption for a taxpayer's e-mail address held by a tax collector for the following purposes:

- Sending the taxpayer a quarterly tax notice for prepayment of estimated taxes;
- Obtaining the taxpayer's consent to send the tax notice;
- Sending the taxpayer an additional tax notice or delinquent tax notice; or
- Sending a third party, mortgagee, or vendee a tax notice.

If the tax collector holds an e-mail address for any other purpose, it is not exempt from public record requirements.

The public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2020, 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 state or local governments.

The bill has an effective date of July 1, 2015.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Public Records Law
Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Records Exemptions
The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

The Open Government Sunset Review Act[2] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:[3]

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

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[4]

Exempt versus Confidential and Exempt
There is a difference between records the Legislature has determined to be exempt and those that have been determined to be confidential and exempt.[5] If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.[6] Also, if the information is deemed to be confidential it may be released only to those persons and entities designated in statute.[7] However, the agency is not prohibited from disclosing the records in all circumstances where the records are exempt only.[8]

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[1] Art I., s. 24(c), Fla. Const.
[2] *See* s. 119.15, F.S.
[3] S. 119.15(6)(b), F.S.
[4] S. 119.15(3), F.S.
[5] *WFTV, Inc. v. Sch. Bd. of Seminole County,* 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review den.,* 892 So.2d 1015 (Fla. 2004).
[6] *Id.*
[7] *Id.*
[8] *See Williams v. City of Minneola,* 575 So.2d 683, 687 (Fla. 5th DCA), *review den.,* 589 So.2d 289 (Fla. 1991).

Tax Collectors' E-mail Notices

In 2011, tax collectors were given authority to send electronically certain notices. Tax collectors may send notices of taxation to taxpayers by e-mail if the taxpayer has applied to participate in a prepayment installment plan,[9] or if the tax collector has received express consent from the taxpayer to do so.[10] Under current law, the taxpayer's e-mail address is a public record, and a government agency must post on its website that all e-mail addresses are public records.[11]

**Effect of Proposed Changes**

The bill creates a public record exemption for e-mail addresses held by local tax collectors for the purpose of sending certain notices and obtaining consent from the taxpayer to send the tax notice via e-mail. Specifically, a taxpayer's e-mail address held by a tax collector is exempt from public record requirements for the purpose of:

- Sending the taxpayer a quarterly tax notice for prepayment of estimated taxes;
- Obtaining the taxpayer's consent to send the tax notice;
- Sending the taxpayer an additional tax notice or delinquent tax notice; or
- Sending a third party, mortgagee, or vendee a tax notice.

If the tax collector holds an e-mail address for any other purpose, it is not exempt from public record requirements. For example, if the tax collector for the above-mentioned reasons holds an e-mail address and the same e-mail address is held for a purpose other than those reasons, then the e-mail address would be protected from public disclosure in the former example, but not in the latter example. As such, it is unclear how tax collector offices will distinguish between those public record requests for e-mail addresses that are exempt under the bill and those that are still available for public disclosure, when the same e-mail address is involved.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, 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. The public necessity statement provides that e-mail addresses are unique to individuals and, when combined with other personal identifying information, can be used for identity theft, taxpayer scams, and other invasive contacts. It further provides that the public availability of personal e-mail addresses invites and exacerbates thriving and well-documented criminal activities and puts taxpayers at an increased risk of harm, and that making e-mail addresses confidential would significantly curtail such harm. No information is available as to whether scams or frauds have been perpetrated utilizing any Florida property tax notices.

B. SECTION DIRECTORY:

**Section 1:** Creates s. 197.3225, F.S., providing an exemption from public records requirements for e-mail addresses held by tax collectors for certain tax notice purposes; provides for further legislative review and repeal of the exemption under the Open Government Sunset Review Act.

**Section 2:** Provides a public necessity statement.

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[9] S. 197.222(3), F.S.

[10] Ss. 197.322(3), 197.343, and 197.344(1), F.S.

[11] S. 668.6076, F.S., (requiring "[a]ny agency . . . or legislative entity that operates a website and uses electronic mail . . . post the following statement . . . : Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.").

**Section 3:** Provides an effective date of July 1, 2015.

## 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 a fiscal 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:

   *See* FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on tax collectors because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, tax collectors could incur costs associated with redacting the exempt e-mail addresses prior to releasing a record. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of tax collectors.

To the extent the public record exemption encourages taxpayers to choose to receive certain information via e-mail, tax collectors could reduce the amount of money spent on postage.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Vote Requirement
   Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the e-mail address of a taxpayer held for use under certain circumstances. The bill's public necessity statement suggests that public records disclosures combining e-mail addresses with other personal identifying information could harm taxpayers. No information is available on whether there are any documented instances of such harm in relation to any taxpayer notices underlying the proposed exemption.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues
Section 2 of the bill sets forth the public necessity statement. As written, a taxpayer's e-mail address is exempt if held by a tax collector for the purpose of obtaining the consent of the taxpayer for the electronic transmission of a tax notice and sending a tax notice, but does not specifically state which types of tax notices (a quarterly tax notice for prepayment of estimated taxes, an additional tax notice or delinquent tax notice, and a tax notice to a designated third party, mortgagee, or vendee).

Other Comments: Department of Revenue
According to the Department of Revenue, the list of documents in the bill may not be an exhaustive list of official documents authorized to be sent to and from tax collectors by e-mail.[12] It is unclear if the omission from the list of certain purposes for which a tax collector holds a taxpayer's e-mail address is intentional or not.[13]

Other Comments: E-mail Correspondence
Using e-mail correspondence comes with some risks. "Phishing," for example, "is a scam typically carried out through unsolicited email and/or websites that pose as legitimate sites and lure unsuspecting victims to provide personal and financial information."[14] As recently as January 8, 2015, the Internal Revenue Service on its website warned consumers about e-mail scams where consumers receive an e-mail claiming that a payment through the Electronic Federal Tax Payment System was rejected and directing the recipient to a bogus link, which, when clicked, downloads malicious software (malware) that infects the victim's computer and sends back personal and financial information from the computer to use to commit identity theft.[15] No information is available on whether similar scams have been perpetrated utilizing Florida property tax notices.

In 2004, Florida enacted the Electronic Mail Communications Act[16] "to promote the integrity of electronic commerce and . . . to protect the public and legitimate businesses from deceptive and unsolicited commercial electronic mail."[17] The Act generally prohibits sending spam e-mails that falsify

[12] Ss. 197.182(1)(m), 197.432(7), and 197.472(5), F.S.
[13] Department of Revenue, Legislative Bill Analysis of HB 179 (July 1, 2015) (on file with the Government Operations Subcommittee).
[14] Internal Revenue Service, Report Phishing and Online Scams, available at http://www.irs.gov/uac/Report-Phishing (accessed January 30, 2015).
[15] Beware of e-Mail Scams about Electronic Federal Tax Payments, http://www.irs.gov/uac/Beware-of-e-Mail-Scams-about-Electronic-Federal-Tax-Payments (accessed January 30, 2015).
[16] Ch. 2004-233, L.O.F.; 2004SB2574; codified at ss. 668.60 - 668.610, F.S.
[17] S. 668.601, F.S.

the email routing information, or contain false or misleading information. Under the Act, spammers may be sued by the Attorney General and Internet Service Providers, and may have to pay actual damages or damages of $500 for each unlawful message, as well as attorney's fees and costs. Additionally, under the Act, a person commits a misdemeanor of the first degree or a felony of the third degree[18] if the person transmits to an e-mail address held by a Florida resident certain unsolicited commercial electronic mail messages.[19] Current law also criminalizes the use of personal identification information, including e-mail addresses.[20]

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2015, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The committee substitute provides that taxpayer e-mail addresses are exempt from public record requirements, instead of confidential and exempt, if held by a tax collector for certain purposes.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

[18] S. 668.608, F.S.

[19] S. 668.603, F.S. Specifically, the Act prohibits transmitting an unsolicited commercial electronic mail message to an e-mail address held by a Florida resident which uses a third party's Internet domain name without permission, contains falsified or missing routing information misleading information in identifying the point of origin or the transmission path, contains false or misleading information in the subject line, or contains false or deceptive information in the body of the message designed to cause damage. S. 668.603(1)(a)-(d), F.S.

[20] S. 817.568, F.S.

A bill to be entitled

An act relating to public records; creating s. 197.3225, F.S.; providing an exemption from public records requirements for e-mail addresses obtained by a tax collector for the purpose of electronically sending certain tax notices or obtaining the consent of a taxpayer for electronic transmission of certain tax notices; providing for future 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. Section 197.3225, Florida Statutes, is created to read:

197.3225 Public records exemption; taxpayer e-mail addresses.—

(1) A taxpayer's e-mail address held by a tax collector for any of the following purposes is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Sending a quarterly tax notice for prepayment of estimated taxes to the taxpayer pursuant to s. 197.222(3).

(b) Obtaining the taxpayer's consent to send the tax notice described in s. 197.322(3).

(c) Sending an additional tax notice or delinquent tax notice to the taxpayer pursuant to s. 197.343.

(d) Sending a tax notice to a designated third party, mortgagee, or vendee pursuant to s. 197.344(1).

(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the e-mail address of a taxpayer which is held by a tax collector for the purpose of sending a tax notice or obtaining the consent of the taxpayer to the electronic transmission of a tax notice be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. E-mail, rather than traditional postal mail, is increasingly used as a means for communicating and conducting business, including official state and local business such as the payment of taxes. In order to conduct business electronically with a tax collector, the taxpayer must report his or her personal e-mail address. Under current law, e-mail addresses are public records available to anyone for any purpose. However, such addresses are unique to the individual and, when combined with other personal identifying information, can be used for identity theft, taxpayer scams, and other invasive contacts. The public availability of personal e-mail addresses invites and exacerbates thriving and well-documented criminal activities and puts taxpayers at increased risk of harm. Such harm would be significantly curtailed by the creation

of the public records exemption.

Section 3. This act shall take effect July 1, 2015.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 299 Homestead Exemption/Living Spouse of Deceased Combat-Disabled Veteran
**SPONSOR(S):** Plakon
**TIED BILLS:** **IDEN./SIM. BILLS:** SJR 910

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Finance & Tax Committee | | Dugan PD | Langston |
| 2) Veteran & Military Affairs Subcommittee | | | |
| 3) Local & Federal Affairs Committee | | | |

### SUMMARY ANALYSIS

Article VII, section 6(e) of the Florida Constitution provides a discount from the amount of ad valorem tax otherwise owed on the homestead property of an honorably discharged veteran who is age 65 or older and is partially or totally permanently disabled as a result of combat. The discount is equal to the percentage of the veteran's disability as determined by the United States Department of Veterans Affairs.

The joint resolution proposes an amendment to the Florida Constitution to allow the ad valorem discount to carry over to the surviving spouse of a veteran receiving the discount if the surviving spouse holds legal or beneficial title to the homestead and permanently resides thereon. The discount would apply to the property until the surviving spouse remarries or sells, or otherwise disposes of, the property. If the spouse sells the property, the discount may be transferred to the surviving spouse's new residence, not to exceed the amount granted from the most recent ad valorem tax roll, as long as the residence is used as the surviving spouse's permanent residence and he or she does not remarry. The proposed constitutional amendment is self-executing and does not require implementing legislation.

The proposed constitutional amendment is effective January 3, 2017, if approved by the voters.

On February 6, 2015, the Revenue Estimating Conference estimated that, if the voters approve this constitutional amendment, beginning with the January 2018 tax rolls and assuming current millage rates, the estimated statewide revenue impact to local governments would be a negative $200,000 beginning in Fiscal Year 2018-19.

The Division of Elections within the Department of State estimates the full publication costs for advertising the proposed constitutional amendment to be approximately $146,031.78.

**For the proposed constitutional amendment to be placed on the ballot at the general election in November 2016, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.**

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current 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]

### Exemptions

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding school district levies.

Case law precedent provides that the Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[6]

Article VII, section 3 of the Florida Constitution provides for other specific exemptions from property taxes, including, but not limited to, exemptions for widows and widowers, blind persons, persons who are totally and permanently disabled.

Military Service

The State of Florida has granted a number of ad valorem tax exemptions for current and former military service members.

Article VII, section 3 of the Florida Constitution provides an exemption from property taxes for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature. The Legislature implemented this provision through s. 196.173, F.S.

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[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] *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall,* 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney,* 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

Article VII, section 6(f) of the Florida Constitution authorizes the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed. The Legislature implemented this provision through s. 196.081, F.S. That section currently provides a full exemption from ad valorem taxes on property that is owned and used as a homestead by an honorably discharged veteran who is totally and permanently disabled as a result of combat and is a permanent Florida resident on January 1 of the tax year for which the exemption is claim.[7] In addition, the full exemption may be claimed on property that is owned and used as a homestead by the surviving spouse of an honorably discharged veteran who died from service-connected causes while on active duty;[8] the veteran must have been a permanent Florida resident on January 1 of the year in which he or she died.[9] The current full exemption under this section does not apply to partially disabled veterans.

In addition, article VII, section 6(e) of the Florida Constitution provides a discount on the amount of ad valorem tax otherwise owed on the homestead property of an honorably discharged veteran who is age 65 or older and is partially or totally permanently disabled as a result of combat. The discount is equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.[10] The discount is limited to veterans with a combat related disability, and not all service-connected disabilities are combat related.[11] Further, current law does not allow the spouse of a veteran receiving this discount to claim the benefit if he or she survives the veteran.

In 2014, 6,595 veterans received the combat-disabled ad valorem tax discount which amounted to a statewide property value discount of $336,648,499.[12] According to the Florida Department of Veterans Affairs, there are more than 731,000 veterans over the age of 65 residing in Florida.[13] The U. S. Department of Veterans Affairs indicates that there were 177,664 veterans over the age of 55 in Florida receiving compensation for service-related conditions at the end of Fiscal Year 2013.[14]

**Effect of Proposed Changes**

The joint resolution proposes an amendment to the Florida Constitution that would allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who received the discount provided in article VII, section 6(e) of the Florida Constitution if the surviving spouse holds legal or beneficial title to the homestead and permanently resides thereon. The discount would be equal to the percentage of discount received by the veteran, which is based on the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.

The discount would apply to the property until the surviving spouse remarries or sells, or otherwise disposes of, the property. If the spouse sells the property, the discount may be transferred to the surviving spouse's new residence, not to exceed the amount granted from the most recent ad valorem

[7] s. 196.081(1), F.S.
[8] s. 196.081(4), F.S.
[9] s. 196.081(4), F.S.
[10] The U.S. Department of Veterans Affairs (USDVA) assigns a percentage evaluation from 0-percent to 100-percent (in 10-percent increments) for the amount of disability that the USDVA determines the veteran has sustained. The resulting disability percentage rating determines the level of a veteran's monthly disability compensation.
[11] United States Department of Veterans Affairs, Office of Public and Intergovernmental Affairs, Federal Benefits for Veterans, Dependents and Survivors, Chapter 2-Service-connected Disabilities, available at: http://www.va.gov/opa/publications/benefits_book/benefits_chap02.asp (last viewed March 13, 2015)
[12] Revenue Estimating Conference, *Spouses/Combat Disabled Vets Exemption: HJR 299 (*February 5, 2015).
[13] Florida Department of Veterans Affairs website, Fast Facts, available at: http://floridavets.org/our-veterans/profilefast-facts/ (last viewed March 13, 2015).
[14] The USDVA provides data in 20 year increments. There was no data available that provided the number of veterans receiving disability compensation in a range that began at age 65. U.S. Department of Veterans Affairs, Veterans Benefits Administration, *Annual Benefits Report: Fiscal Year 2013*, http://www.benefits.va.gov/REPORTS/abr/ABR-Combined-FY13-09262014.pdf (last visited March 13, 2015).

tax roll, as long as the residence is used as the surviving spouse's permanent residence and he or she does not remarry.

The proposed constitutional amendment is self-executing and does not require implementing legislation.

The proposed amendment is effective January 3, 2017, if approved by the voters. This effective date results in the exemption first applying to the 2018 tax rolls.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections (division) within the Department of State estimates the full publication costs for advertising the proposed amendment to be approximately $135.97 per word, for a total publishing cost of approximately $146,031.78.[15]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On February 6, 2015, the Revenue Estimating Conference estimated that, if the voters approve this constitutional amendment, beginning with the January 2018 tax rolls and assuming current millage rates, the estimated statewide revenue impact to local governments would be negative $200,000 beginning in Fiscal Year 2018-19.[16]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposed amendment is approved by the electorate and implemented by the Legislature, surviving spouses of certain veterans could receive property tax relief.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[15] Department of State, Agency Analysis 2015 Bill SB 910, companion to HJR 299 (March 9, 2015).
[16] Revenue Estimating Conference, *Spouses/Combat Disabled Vets Exemption: HJR 299 (*February 5, 2015).

1. Applicability of Municipality/County Mandates Provision:

   Not applicable to joint resolutions.

2. Other:

   The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.[17] The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by the a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.[18]

   Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose. Without an effective date, the amendment becomes effective on the first Tuesday after the first Monday in the January following the election, which will be January 3, 2017.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   The ballot summary is 83 words in length. Section 101.161, F.S., requires that the ballot summary not exceed 75 words. The Florida Supreme Court has found such a requirement implicit in Article XI, s. 5 of the Florida Constitution. *See Armstrong v. Harris*, 773 So.2d 7 (Fla. 2000).

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[17] Art. XI, s. 1 of the Florida Constitution.
[18] Art. XI, s. 5 of the Florida Constitution.

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII of the State Constitution to authorize the living spouse of a deceased veteran, who upon his or her death was aged 65 or older, partially or permanently disabled as a result of combat, and honorably discharged, to receive a discount on the payment of ad valorem taxes on homestead property based on the percentage of the veteran's disability and to specify that the exemption is transferrable to another residence if the spouse remains unmarried and uses the residence as his or her primary residence.

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

That the following amendment to Section 6 of Article VII of the State Constitution is 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 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner,

shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are

permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant either or both of the following additional homestead tax exemptions:

(1) An exemption not exceeding fifty thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars; or

(2) An exemption equal to the assessed value of the property to any person who has the legal or equitable title to real estate with a just value less than two hundred and fifty thousand dollars and who has maintained thereon the permanent residence of the owner for not less than twenty-five years and who has attained age sixty-five and whose household income does not exceed the income limitation prescribed in paragraph (1).

The general law must allow counties and municipalities to grant these additional exemptions, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes

in the cost of living.

(e)(1) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection is self-executing and does not require implementing legislation.

(2) If a partially or totally permanently disabled veteran, as described in paragraph (1), predeceases his or her spouse and if, upon the death of the veteran, the spouse holds the legal or beneficial title to the homestead and permanently

resides thereon, the exemption from taxation carries over to the benefit of the veteran's spouse until he or she remarries or sells or otherwise disposes of the property. If the spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence as long as the residence is used as his or her primary residence and he or she does not remarry.

(f) By general law and subject to conditions and limitations specified therein, the Legislature may provide ad valorem tax relief equal to the total amount or a portion of the ad valorem tax otherwise owed on homestead property to the:

(1) Surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces.

(2) Surviving spouse of a first responder who died in the line of duty.

(3) As used in this subsection and as further defined by general law, the term:

a. "First responder" means a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic.

b. "In the line of duty" means arising out of and in the actual performance of duty required by employment as a first responder.

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

CONSTITUTIONAL AMENDMENT

ARTICLE VII

SECTION 6

TAX EXEMPTION FOR SPOUSES OF DECEASED COMBAT-DISABLED VETERANS.—Proposing an amendment to the State Constitution to authorize the living spouse of a deceased veteran, who upon death was aged 65 or older, partially or permanently disabled as a result of combat, and honorably discharged, to receive a discount on ad valorem taxes assessed on homestead property based on the percentage of the veteran's disability. The exemption is transferrable to another residence if the spouse remains unmarried and uses it as the primary residence.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 617 Utility Projects
**SPONSOR(S):** Goodson
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1102

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Energy & Utilities Subcommittee | 11 Y, 1 N | Keating | Keating |
| 2) Finance & Tax Committee | | Pewitt | Langston |
| 3) Regulatory Affairs Committee | | | |

### SUMMARY ANALYSIS

The bill establishes a new financing mechanism – "Utility Cost Containment Bonds" – available to an intergovernmental authority to finance or refinance, on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity (including the authority itself), projects related to water, wastewater, or storm water service. The creation of this financing mechanism, referred to as securitization, is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible utility projects for these entities.

In summary, the financing mechanism created by the bill operates as follows:

- A "local agency" applies to the intergovernmental utility authority to finance the costs of an eligible project using "utility cost containment bonds."
- The intergovernmental utility authority adopts a "financing resolution" setting forth certain requirements for issuance of the bonds. (To finance the project, the intergovernmental utility authority may form a single-purpose limited liability company or, together with two or more of its members or other public agencies, may create a new single-purpose entity to perform the duties and responsibilities of the authority under the bill.)
- The bonds are secured by the revenues from a separate "utility project charge" stated on the bill of each present and future customer of the services specified in the financing resolution.
- This charge is imposed by the intergovernmental utility authority on behalf of the local government receiving financing for an eligible project.
- The intergovernmental utility authority and the local government enter into a servicing agreement under which the local government collects the charge.
- The moneys from the charge are transferred to the intergovernmental utility authority and used to secure bonds issued for the benefit of the local government.
- The moneys collected from the charge are held in trust for the benefit of the bondholders. These moneys are not considered revenues of the local government but are treated as revenues of the intergovernmental utility authority.
- The intergovernmental utility authority is not permitted to file bankruptcy while any of the bonds are outstanding.

The Florida Governmental Utility Authority is the only intergovernmental authority that currently meets the criteria to provide financing under the bill. FGUA's current purpose is to own and operate a public utility system for the provision of water and wastewater service.

The bill does not impact state government revenues or expenditures. The bill may reduce local government expenditures by reducing financing costs for water, wastewater, or stormwater utility projects for utilities owned and operated by a local agency, including any municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

*Financing Authority of Local Government Entities for Public Works Projects*

Local governments are authorized under current law to issue bonds, revenue certificates, and other forms of indebtedness related to the provision of public works projects.

Upon a resolution, a county may issue water revenue bonds, sewer revenue bonds, or general obligation bonds to pay all or part of the cost to purchase, construct, improve, extend, enlarge, or reconstruct water supply systems or sewage disposal systems.[1] Water revenue bonds are payable solely from water service charges.[2] Sewer revenue bonds are payable solely from sewer service charges.[3] Neither type of revenue bond pledges the property, credit, or general tax revenue of the county. General obligation bonds are payable from ad valorem taxes alone or from ad valorem taxes with an additional secured pledge of water service charges, sewer service charges, special assessments, or a combination of these sources.[4] Issuance of general obligation bonds, as required by the State Constitution,[5] requires approval by referendum, and a county is required to levy annually a special tax upon all taxable property within the county to pay the principle and interest as it becomes due.[6] Counties may also create special water and sewer districts to serve unincorporated areas, and the district's board may issue revenue bonds to finance all or part of the cost of a water system, sewer system, or both. Such bonds are payable from the revenues derived from operation of the utility system as provided by law and the authorizing resolution of the district's board.[7]

Upon approval of a municipality's governing body, a municipality may issue revenue bonds, general obligation bonds, ad valorem bonds, or improvement bonds to finance capital expenditures made for a public purpose. Revenue bonds are payable from sources other than ad valorem taxes and are not secured by a pledge of the property, credit, or general tax revenue of the municipality. General obligation bonds are payable from any special taxes levied for the purpose of repayment and any other sources as provided by the authorizing ordinance or resolution. Such bonds are secured by the full faith and credit and taxing power of the municipality and may require approval by referendum. Ad valorem bonds are payable from the proceeds of ad valorem taxes and, as required by the State Constitution[8], require approval by referendum. Improvement bonds are special obligations payable solely from the proceeds of special assessments levied for a project.[9]

Further, a municipality may issue mortgage revenue certificates or debentures to acquire, construct, or extend public works, including, among other things, water and alternative water supply facilities, sewage collection and disposal facilities, gas plants and distribution systems, and stormwater

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[1] Section 153.03(1) and (2), F.S.
[2] Section 153.02(9), F.S.
[3] Section 153.02(10), F.S.
[4] Section 153.02(11), F.S.
[5] S. 12, Article VII, of the State Constitution (providing that counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation only "to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation.")
[6] Section 153.07, F.S.
[7] Section 153.63(1), F.S. Such bonds may also be secured by the pledge of special assessments or the full faith and credit of the district.
[8] See Footnote 5.
[9] Section 166.101, F.S., et seq.

projects.[10] These instruments constitute a lien only against the property and revenue of the utility. These instruments may not impose any tax liability upon any real or personal property in the municipality and may not constitute a debt against the issuing municipality.[11]

The Division of Bond Finance (DBF) of the State Board of Administration provides information to, and collects information from, units of local government[12] concerning the issuance of bonds by such entities.[13] Each unit of local government must provide DBF a complete description of its new general obligation bonds and revenue bonds and must provide advanced notice of the impending sale of a new issue of bonds.[14] According to DBF, a public utility generally finances projects with revenue bonds, securing the debt with a pledge of net revenues of the utility system. These net revenues consist of the income of the public utility remaining after paying expenses necessary to operate and maintain the utility. DBF notes that this current practice requires the efficient operation of the utility system to assure that sufficient net revenues are available to pay debt service.

*Creation and Financing Authority of Intergovernmental Utility Authorities*

The Florida Interlocal Cooperation Act of 1969 (Act) is intended to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.[15] The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.[16] Under such an agreement, the local governmental units may create a separate legal or administrative entity "to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."[17] A separate entity created by an interlocal agreement possesses the authority specified in the agreement.[18] Among the authority granted such an entity is the power to authorize, issue, and sell bonds.[19]

The Act specifically addresses the establishment of such entities to provide water service or sewer service (hereinafter referred to as "intergovernmental utility authorities" or "IGUAs"). Section 163.01(7)(g), F.S., authorizes the creation of IGUAs to acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including water and alternative water supply facilities, wastewater facilities, and water reuse facilities.[20] An IGUA created under this provision may also finance such facilities on behalf of any person. The membership of an IGUA created under this provision is limited to two or more special districts, municipalities, or counties of the state. The IGUA's facilities may serve populations "within or outside of the members of the entity" but not within the service area of an existing utility system. IGUAs are not subject to regulation by the Public Service Commission.

An IGUA created under section 163.07(g), F.S., may finance or refinance the acquisition, construction, expansion, and improvement of facilities through the issuance of bonds, notes, or other obligations. Except as may be limited by the interlocal agreement under which the entity is created, all of the

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[10] Sections 180.06 and 180.08, F.S.
[11] Section 180.08, F.S.
[12] "Unit of local government" is defined in s. 218.369, F.S., as "a county, municipality, special district, district school board, local agency, authority, or consolidated city-county government or any other local governmental body or public body corporate and politic authorized or created by general or special law and granted the power to issue general obligation or revenue bonds."
[13] Section 218.37, F.S.
[14] *Id.* DBF is authorized only to collect information concerning these bonds; it does not exercise any substantive authority to review or approve these transactions.
[15] Section 163.01(2), F.S.
[16] Section 163.01(5), F.S.
[17] Section 163.01(2), F.S.
[18] Section 163.01(7)(b), F.S.
[19] Section 163.01(7)(d), F.S.
[20] Section 163.01(7)(g), F.S.

privileges, benefits, powers, and terms of the statutes relating to counties[21] and municipalities[22] are fully applicable to the IGUA. Bonds, notes, and other obligations issued by the IGUA are issued on behalf of the public agencies that are members of the IGUA.[23]

The Florida Governmental Utility Authority (FGUA) was formed in 1999 pursuant to s. 163.01(7)(g), F.S. As noted on its website, FGUA is a separate legal entity created by interlocal agreement with the limited purpose of owning and operating a public utility system. It provides retail water and wastewater utility services in several portions of the state. The FGUA consists of 14 counties: Alachua, Citrus, Collier, Hardee, Hillsborough, Lake, Lee, Marion, Orange, Pasco, Polk, Putnam, Seminole, and Volusia counties have systems in the FGUA.[24] FGUA's governing board is comprised of seven members representing Citrus, DeSoto, Hendry, Lee, Marion, Pasco, and Polk counties.[25] Each board member is a county employee appointed by their local government.[26]

*Utility Securitization Financing in Florida*

Following the severe tropical storm seasons that Florida faced in 2004 and 2005, the Legislature created a new financing mechanism, referred to as securitization, by which investor-owned electric utilities could petition the Public Service Commission for issuance of a financing order authorizing the utility to issue bonds through a separate legal entity.[27] If granted, the financing order was required to establish a nonbypassable charge to the utility's customers in order to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. The purpose of this mechanism was to allow the utilities access to low-cost financing to cover storm recovery costs and replenishment of storm reserve funds. This mechanism has been implemented in only one instance.[28]

Effect of Proposed Changes

The bill establishes a new mechanism – "Utility Cost Containment Bonds" – available to an intergovernmental authority to finance, on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity (including the IGUA itself), projects related to water, wastewater, or stormwater service. The creation of this financing mechanism, referred to as securitization, is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible projects.

In summary, the financing mechanism created by the bill operates as follows:

- A "local agency" applies to the intergovernmental utility authority to finance the costs of an eligible project using "utility cost containment bonds."
- The intergovernmental utility authority adopts a "financing resolution" setting forth certain requirements for issuance of the bonds. (To finance the project, the intergovernmental utility authority may form a single-purpose limited liability company or, together with two or more of its members or other public agencies, may create a new single-purpose entity to perform the duties and responsibilities of the authority under the bill.)
- The bonds are secured by the revenues from a separate "utility project charge" stated on the bill of each present and future customer of the services specified in the financing resolution.
- This charge is imposed by the intergovernmental utility authority on behalf of the local government receiving financing for an eligible project.

[21] Section 125.01, F.S.
[22] Section 166.021, F.S.
[23] Section 163.01(7)(g)7., F.S.
[24] http://www.fgua.com/fgua-history (last accessed March 9, 2015).
[25] http://www.fgua.com/the-board (last accessed March 9, 2015).
[26] *Id.*
[27] Section 366.8260, F.S.
[28] Docket No. 060038-EI, Florida Public Service Commission.

- The intergovernmental utility authority and the local government enter into a servicing agreement under which the local government collects the charge.
- The moneys from the charge are transferred to the intergovernmental utility authority and used to secure bonds issued for the benefit of the local government.
- The moneys collected from the charge are held in trust for the benefit of the bondholders. These moneys are not considered revenues of the local government but are treated as revenues of the intergovernmental utility authority.
- The intergovernmental utility authority is not permitted to file bankruptcy while any of the bonds are outstanding.

The Florida Governmental Utility Authority is the only intergovernmental authority that currently meets the criteria to provide financing under the bill. Thus, the bill expands FGUA's original purpose of owning and operating a public utility system.

*Definitions*

The bill provides the following definitions:

- **"Authority"** means an entity, including a successor to the powers and functions of such entity, created pursuant to s. 163.01(7)(g), F.S., that provides public utility services and whose membership consists of at least three counties.[29]

- **"Cost,"** as applied to a utility project or portion of a utility project financed under this section, means any of the following:
  - Any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a utility project.
  - The expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal.
  - Finance charges.
  - Interest, as determined by the authority.
  - Provisions for working capital and debt service reserves.
  - Expenses for extensions, enlargements, additions, replacements, renovations, and improvements.
  - Expenses for architectural, engineering, financial, accounting, and legal services, and for plans, specifications, estimates, and administration.
  - Any other expenses necessary or incidental to determining the feasibility of constructing a utility project or incidental to the construction, acquisition, or financing of a utility project.

- **"Customer"** means a person receiving water, wastewater, or stormwater service from a publicly owned utility.

- **"Financing cost"** means any of the following:
  - Interest and redemption premiums that are payable on utility cost containment bonds.
  - The cost of retiring the principal of utility cost containment bonds, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption.
  - The cost related to issuing or servicing utility cost containment bonds, including payment under an interest rate swap agreement, and any types of fee.
  - A payment or expense associated with a bond insurance policy; financial guaranty; contract, agreement, or other credit or liquidity enhancement for bonds; or contract,

[29] Only the Florida Governmental Utility Authority currently meets this definition.

agreement, or other financial agreement entered into in connection with utility cost containment bonds.
    - Any coverage charges.
    - The funding of one or more reserve accounts related to utility cost containment bonds.

- **"Finance" or "financing"** includes refinancing.

- **"Financing resolution"** means a resolution adopted by the governing body of an authority that finances or refinances a utility project with utility cost containment bonds and that imposes a utility project charge in connection with the utility cost containment bonds. A financing resolution may be separate from a resolution authorizing the issuance of the bonds.

- **"Governing body"** means the body that governs a local agency.

- **"Local agency"** means a member of the authority, or an agency or subdivision of that member, that is sponsoring or refinancing a utility project, or any municipality, county, authority, special district, public corporation, regional water authority, or other governmental entity of the state that is sponsoring or refinancing a utility project.[30]

- **"Public utility services"** means water, wastewater, or stormwater services provided by a publicly owned utility. The term does not include Internet or cable services.

- **"Publicly owned utility"** means a utility furnishing retail or wholesale water, wastewater, or stormwater services that is owned and operated by a local agency. The term includes any successor to the powers and functions of such a utility.

- **"Revenue"** means income and receipts of the authority related to the financing of utility projects and issuance of utility cost containment bonds, including any of the following:
    - Bond purchase agreements.
    - Bonds acquired by the authority.
    - Installment sale agreements and other revenue-producing agreements entered into by the authority.
    - Utility projects financed or refinanced by the authority.
    - Grants and other sources of income.
    - Moneys paid by a local agency.
    - Interlocal agreements with a local agency, including all service agreements.
    - Interest or other income from any investment of money in any fund or account established for the payment of principal, interest, or premiums on utility cost containment bonds, or the deposit of proceeds of utility cost containment bonds.

- **"Utility cost containment bonds"** means bonds, notes, commercial paper, variable rate securities, and any other evidences of indebtedness issued by an authority, the proceeds of which are used directly or indirectly to pay or reimburse a local agency or its publicly owned utility for the costs of a utility project and which are secured by a pledge of, and are payable from, utility project property.

- **"Utility project"** means the acquisition, construction, installation, retrofitting, rebuilding, or other addition to or improvement of any equipment, device, structure, process, facility, technology, rights, or property located in or out of the state that is used in connection with the operations of a publicly owned utility.

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[30] Because FGUA provides "public utility services" (water and wastewater services) that may be supported by a financeable "utility project," it appears to qualify as an authority or other governmental entity of the state and would meet the definition of a "local agency." Thus, FGUA could be both an "authority" and a "local agency" under the bill. See Comments section for further discussion.

- **"Utility project charge"** means a charge levied on customers of a publicly owned utility to pay the financing costs of utility cost containment bonds issued pursuant to the bill. The term includes any authorized adjustment to the utility project charge.

- **"Utility project property"** means the property right created by the bill, including the right, title, and interest of an authority in any of the following:
    - The financing resolution, the utility project charge, and any adjustment to the utility project charge.
    - The financing costs of the utility cost containment bonds and all revenues, and all collections, claims, payments, moneys, or proceeds for, or arising from, the utility project charge.
    - All rights to obtain adjustments to the utility project charge pursuant to the bill.

*Local Agency Authority*

The bill provides that a local agency that owns and operates a publicly owned utility may apply to the intergovernmental utility authority to finance the costs of a utility project using the proceeds of utility cost containment bonds. In its application, the local agency must specify the utility project to be financed, the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

Before applying, the governing body of the local agency must determine the following:

- The project to be financed is a utility project.[31]
- The local agency will finance costs of the utility project and the associated financing costs will be paid from utility project property (i.e., the charge to utility customers).
- Based on the best information available, the rates charged to the local agency's retail customers by the publicly owned utility, including the utility project charge resulting from the financing of the utility project with utility cost containment bonds, are expected to be lower than the rates that would be charged if the project was financed with bonds payable from revenues of the publicly owned utility.

If a local agency that has outstanding utility cost containment bonds ceases to operate a water, wastewater, stormwater utility, directly or through its publicly owned utility, any successor entity must assume and perform all obligations of the local agency and its publicly owned utility and assume the servicing agreement with the authority while the utility cost containment bonds remain outstanding.

*Powers of the Intergovernmental Utility Authority*

In addition to its existing powers under s. 163.01(7)(g), F.S., the bill provides that an intergovernmental utility authority may issue utility cost containment bonds to finance or refinance utility projects; to refinance debt of a local agency previously issued to finance or refinance such projects, if the refinancing results in present value savings; or, upon approval of a local agency, to refinance previously issued utility cost containment bonds.

To finance a utility project, the authority may form a single-purpose limited liability company and authorize the company to adopt the financing resolution. Alternatively the authority and two or more of its members or other public agencies may create a new single-purpose entity by interlocal agreement. Either type of entity may be created by the authority solely for the purposes of performing the duties and responsibilities of the authority and is treated as an authority for purposes of the bill.

[31] This determination is deemed "final and conclusive" by the bill.

The governing body of an authority that is financing the costs of an eligible utility project must adopt a financing resolution and impose a utility project charge. All provisions of the financing resolution are binding on the authority. The financing resolution must include the following:

- A description of the financial calculation method the authority will use to determine the utility project charge. The calculation method must include a periodic adjustment methodology to be applied at least annually to the utility project charge. The adjustment methodology may not be changed. The authority must establish the allocation of the utility project charge among classes of customers of the publicly owned utility. The decisions of the authority are final and conclusive.
- A requirement that each customer in the class or classes of customers specified in the financing resolution who receives water, wastewater, or stormwater service through the publicly owned utility must pay the utility project charge, regardless of whether the customer has an agreement to receive water, wastewater, or stormwater service from a person other than the publicly owned utility.
- A requirement that the utility project charge be charged separately from other charges on the bill of each customer of the utility that is in the class or classes of customers specified in the financing resolution.
- A requirement that the authority enter into a servicing agreement with the local agency or its publicly owned utility to collect the utility project charge.

The authority may require in the financing resolution that, in the event of default by the local agency or its publicly owned utility, the authority must order the sequestration and payment to the beneficiaries of the revenues arising from the utility project property (discussed in detail, below) if the beneficiaries apply for payment of the revenues under a lien.

With respect to regional water projects, the authority must work with local agencies that request assistance to determine the most cost-effective manner of financing. If these entities determine that issuance of utility cost containment bonds will result in lower financing costs for a project, the authority must issue the bonds at the request of the local agencies.

*Utility Project Charges*

The bill requires the authority to impose a utility project charge sufficient to ensure timely payment of all financing costs with respect to utility cost containment bonds. The charge must be based on estimates of water, wastewater, or stormwater service usage. The authority may require information from the local agency or its publicly owned utility to establish the charge.

The utility project charge is a nonbypassable charge on all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution at the time of its adoption. If a customer who is subject to the charge enters into an agreement to purchase water, wastewater, or stormwater service from a supplier other than the publicly owned utility, the customer remains liable for payment of the charge if the customer received any service or benefit from the utility after the date the charge was imposed.

At least annually, and at any other interval specified in the financing resolution and related documents, the authority must determine whether adjustments to the utility project charge are required and, if so, make the necessary adjustments to correct for any overcollection or undercollection of financing costs from the charge or to otherwise ensure timely payment of the financing costs of the bonds, including payment of any required debt service coverage. The authority may require information from the local agency or its publicly owned utility to adjust the charge. If an adjustment is deemed necessary, it must be made using the methodology specified in the financing resolution. An adjustment may not impose the charge upon a class of customers not previously subject to the charge under the financing resolution.

Revenues from a utility project charge are deemed special revenues of the authority and do not constitute revenue of the local agency or its publicly owned utility for any purpose. The local agency or its publicly owned utility must act as a servicing agent for collecting the charge pursuant to a servicing agreement to be required by the financing resolution. The money collected must be held in trust for the exclusive benefit of the persons entitled to have the financing costs paid from the utility project charge.

The timely and complete payment of all utility project charges by the customer is a condition of receiving water, wastewater, or stormwater service from the publicly owned utility. The bill authorizes the local agency or its publicly owned utility to use its established collection policies and remedies under law to enforce collection of the charge. A customer liable for a utility project charge is not permitted to withhold payment of any portion of the charge.

The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state or any other entity is not permitted to reduce, impair, or otherwise adjust the utility project charge, except for the periodic adjustments that the authority is required to make pursuant to the financing resolution.

*Utility Project Property*

The bill provides that the utility project charge constitutes utility project property when a financing resolution authorizing the charge becomes effective. As defined by the bill, utility project property constitutes property, including contracts that secure utility cost containment bonds, whether or not the revenues and proceeds arising with respect to the utility project property have accrued. The utility project property continuously exists as property for all purposes for the period provided in the financing resolution or until all financing costs with respect to the related utility cost containment bonds are paid in full, whichever occurs first.

Upon the effective date of the financing resolution, the utility project property is subject to a first priority statutory lien to secure the payment of the utility cost containment bonds. The lien secures the payment of all financing costs that exist at that time or that subsequently arise to the holders of the bonds, the trustee or representative for the holders of the bonds, and any other entity specified in the financing resolution or the documents relating to the bonds. The lien attaches to the utility project property regardless of the current ownership of the utility project property, including any local agency or its publicly owned utility, the authority, or other person. Upon the effective date of the financing resolution, the lien is valid and enforceable against the owner of the utility project property and all third parties, and additional public notice is not required. The lien is a continuously perfected lien on all revenues and proceeds generated from the utility project property, regardless of whether the revenues or proceeds have accrued.

All revenues with respect to utility project property related to utility cost containment bonds, including payments of the utility project charge, must first be applied to the payment of the financing costs of the bonds then due, including the funding of reserves for the bonds. Any excess revenues will be applied as determined by the authority for the benefit of the utility for which the bonds were issued.

*Utility Cost Containment Bonds*

The bill provides that the proceeds of utility cost containment bonds made available to the local agency or its publicly owned utility must be used for the utility project identified in the application for financing of the project or used to refinance indebtedness of the local agency that financed or refinanced the project.

The bonds must be issued pursuant to the provisions of the bill and the procedures specified for intergovernmental utility authorities under s. 163.01(7)(g)8., F.S., and may be validated pursuant to existing procedures for such entities under s. 163.01(7)(g)9., F.S.

The authority must pledge all utility project property as security for payment of the bonds. All rights of the authority with respect to the pledged property are for the benefit of and enforceable by the beneficiaries of the pledge as provided in the related financing documents. If utility project property is pledged as security for the payment of utility cost containment bonds, the local agency or its publicly owned utility must enter into a contract with the authority which requires that the local agency or its utility:

- Continue to operate the utility, including the utility project that is being financed or refinanced.
- Collect the utility project charge from customers for the benefit and account of the authority and the beneficiaries of the pledge of the charge.
- Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

The utility cost containment bonds are nonrecourse to the credit or any assets of the local agency or the publicly owned utility but are payable from, and secured by a pledge of, the utility project property relating to the bonds and any additional security or credit enhancement specified in the documents relating to the bonds. If the authority is financing the project through a single-purpose limited liability company, the bonds are payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This represents the exclusive method of perfecting a pledge of utility project property by the company.

The issuance of utility cost containment bonds does not obligate the state or any political subdivision of the state to levy or to pledge any form of taxation to pay the bonds or to make any appropriation for their payment. The bill provides that each bond must contain on its face the following statement or a similar statement: "Neither the full faith and credit nor the taxing power of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of, or interest on, this bond."

The authority may not rescind, alter, or amend any resolution or document that pledges utility cost charges for payment of utility cost containment bonds.

Subject to the terms of the pledge document, the validity and relative priority of a pledge is not defeated or adversely affected by the commingling of revenues generated by the utility project property with other funds of the local agency or the publicly owned utility collecting a utility project charge on behalf of an authority.

The bill provides that financing costs in connection with utility cost containment bonds are a special obligation of the authority and do not constitute a liability of the state or any political subdivision of the state. Financing costs are not a pledge of the full faith and credit of the state or any political subdivision, including the authority, but are payable solely from the funds identified in the documents relating to the bonds. This does not preclude guarantees or credit enhancements in connection with the bonds.

Except as provided in the bill with respect to adjustments to a utility project charge, recovery of the financing costs for utility cost containment bonds from the utility project charge is irrevocable. Further, the authority is prohibited from: rescinding, altering, or amending the applicable financing resolution to revalue or revise the financing costs of the bonds for ratemaking purposes; determining that the financing costs for the related bonds or the utility project charge is unjust or unreasonable; or in any way reducing or impairing the value of utility project property that includes the charge. The amount of revenues arising with respect to the financing costs for the related bonds or the charge are not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the charge are fully met and discharged.

Further, except as provided in the bill with respect to adjustments to a utility project charge, the bill establishes a pledge that the state may not limit or alter the financing costs or the utility project property, including the utility project charge associated with the bonds, or any rights related to the utility

project property until all financing costs with respect to the bonds are fully discharged. This provision does not preclude limitation or alteration if adequate provision is made by law to protect the owners of the bonds. The state's pledge may be included by the authority in the governing documents for the bonds.

*Bankruptcy Prohibition*

The bill provides that, notwithstanding any other law, an authority that has issued utility cost containment bonds may not become a debtor under the United States Bankruptcy Code or become the subject of any similar case or proceeding under any other state or federal law if any payment obligation from utility project property remains with respect to the bonds. Further, no governmental officer or organization may authorize the authority to become such a debtor or become subject to such a case or proceeding in this circumstance.

*Construction*

The bill provides for its liberal construction to effectively carry out its intent and purposes. Further, the bill expressly grants and confers upon public entities all incidental powers necessary to carry the bill into effect.

B. SECTION DIRECTORY:

**Section 1.** Creates an unnumbered section of law to be cited as the Utility Cost Containment Bond Act.

**Section 2.** Provides an effective date of July 1, 2015.

## 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:

   Indeterminate. The bill may reduce local government expenditures by reducing financing costs for water, wastewater, or stormwater utility projects for utilities owned and operated by a local agency, including any municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Customers may benefit from lower financing costs for local agency utility projects, if the resulting savings are passed through to customers. The bill does not require that savings be passed through to customers.

D. FISCAL COMMENTS:

The creation of the utility cost containment bond financing mechanism is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate on bonds issued to fund eligible local agency utility projects. The lower rate could result in lower financing costs for these projects.

Because the intergovernmental utility authority (or a single purpose limited liability company created by the authority or a new single-purpose entity formed by interlocal agreement) is the obligor on the bonds, the debt from an issuance of utility cost containment bonds will not be reflected on the local agency or utility's balance sheet. Also, revenues from the utility project charge and expenses for debt service on the bonds will not be reflected on the local agency or utility's financial statements.

A local agency that uses this financing mechanism may have less incentive to carefully control operating expenses of its public utility, because bondholders are paid from the separate fee regardless of the utility's financial condition. Also, the mechanism may encourage the issuance of additional debt because the debt is paid from the revenues of the authority regardless of any change in the utility's operating expenses.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

*Financing of Projects of the Intergovernmental Utility Authority*

The bill requires interaction between the local agency and the intergovernmental utility authority in certain instances, including the requirement that a local agency apply to the authority for financing and the requirement that the authority enter into a servicing agreement with the local agency. However, as defined in the bill, it appears that an intergovernmental utility authority could seek financing itself as a "local agency," creating a situation in which the authority must seek approval from itself and enter into an agreement with itself. The bill authorizes the authority to form a single-purpose limited liability company or, together with two or more of its members, to create a new single-purpose entity by local agreement to perform the intergovernmental utility authority duties. If the authority creates one of these

entities, it may avoid a situation in which it must apply to itself for financing or enter into a servicing agreement with itself. However, the authority may have a role in the governance of either entity.

*Establishment of Utility Project Charges*

The bill provides that the governing body of an authority that is financing the costs of a utility project must adopt a financing resolution and impose a utility project charge, and the decisions of the authority are final and conclusive. A local agency that uses this financing mechanism is not required to be or to become a member of the authority. Though the authority may require and utilize information from the local agency or its publicly owned utility in setting utility project charges and rate classes, a local agency that does not become a member of the authority does not appear to have a formal role in the adoption of a financing resolution setting the charge and rate classes. In turn, the customers of those local agencies' public utilities may lack representation in this rate-setting process.

*Application of Utility Project Charges*

The bill provides that if a customer who is subject to a utility project charge enters into an agreement to purchase water, wastewater, or stormwater service from a provider other than the utility, that customer remains liable for the charge if the customer has received any service or benefit from the utility after the date the charge was imposed. The timely and complete payment of all utility project charges by the customer is a condition of receiving water, wastewater, or stormwater service from the publicly owned utility.

Because the charge is applied to and remains the liability of a customer – even when that customer is no longer truly a customer of the publicly-owned utility – the bill appears to allow the authority to impose the equivalent of a special assessment, but on persons rather than property.[32] Thus, it is not clear how customer liability will attach in certain circumstances. For example, a customer, whether a property owner or tenant, who moves out of the local agency's jurisdiction and begins to take service from a different provider could arguably remain liable for a share of the utility project charge under the bill, either indefinitely or until a new customer begins to take service at the previous customer's service location and to pay the charge. This provision may need clarification.

Stormwater service is not a traditional utility service directly provided to a particular end-use customer. Thus, it is not clear how stormwater service customers will be designated by the authority or how payment of a charge related to stormwater service can be made a condition of receiving the service.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[32] The charges established in this provision can be distinguished from charges established in similar provisions found in s. 366.8260, F.S., related to storm-cost recovery financing for investor-owned electric utilities. Section 366.8260, F.S., addresses a scenario in which retail competition for electricity may be introduced in the state and customers would have the choice to select an alternative electricity supplier. In this scenario, the customer would continue to receive transmission and/or distribution service from the investor-owned electric utility and, therefore, would remain a true customer of the utility for purposes of liability for the charge.

A bill to be entitled

An act relating to utility projects; providing a short title; providing definitions; authorizing certain local government entities to finance the costs of a utility project by issuing utility cost containment bonds upon application by a local agency; specifying application requirements; requiring a successor entity of a local agency to assume and perform the obligations of the local agency with respect to the financing of a utility project; providing procedures for local agencies to use when applying to finance a utility project using utility cost containment bonds; authorizing an authority to issue utility cost containment bonds for specified purposes related to utility projects; authorizing an authority to form alternate entities to finance utility projects; requiring the governing body of the authority to adopt a financing resolution and impose a utility project charge on customers of a publicly owned utility as a condition of utility project financing; specifying required and optional provisions of the financing resolution; specifying powers of the authority; requiring the local agency or its publicly owned utility to assist the authority in the establishment or adjustment of the utility project charge; requiring that customers of the public utility specified in the

financing resolution pay the utility project charge; providing for adjustment of the utility project charge; establishing ownership of the revenues of the utility project charge; requiring the local agency or its publicly owned utility to collect the utility project charge; conditioning a customer's receipt of public utility services on payment of the utility project charge; authorizing a local agency or its publicly owned utility to use available remedies to enforce collection of the utility project charge; providing that the pledge of the utility project charge to secure payment of bonds issued to finance the utility project is irrevocable and cannot be reduced or impaired except under certain conditions; providing that a utility project charge constitutes utility project property; providing that utility project property is subject to a lien to secure payment of costs relating to utility cost containment bonds; establishing payment priorities for the use of revenues of the utility project property; providing for the issuance and validation of utility cost containment bonds; securing the payment of utility cost containment bonds and related costs; providing that utility cost containment bonds do not obligate the state or any political subdivision and are not backed by their full faith and credit and taxing

power; requiring that certain disclosures be printed on utility cost containment bonds; providing that financing costs related to utility cost containment bonds are an obligation of the authority only; providing limitations on the state's ability to alter financing costs or utility project property under certain circumstances; prohibiting an authority with outstanding payment obligations on utility cost containment bonds from becoming a debtor under certain federal or state laws; providing for construction; endowing public entities with certain powers; providing an effective date.

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

Section 1. Utility Cost Containment Bond Act.—

(1) SHORT TITLE.—This section may be cited as the "Utility Cost Containment Bond Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Authority" means an entity created under s. 163.01(7)(g), Florida Statutes, that provides public utility services and whose membership consists of at least three counties. The term includes any successor to the powers and functions of such an entity.

(b) "Cost," as applied to a utility project or a portion of a utility project financed under this section, means:

1. Any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a utility project;

2. The expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal;

3. Finance charges;

4. Interest, as determined by the authority;

5. Provisions for working capital and debt service reserves;

6. Expenses for extensions, enlargements, additions, replacements, renovations, and improvements;

7. Expenses for architectural, engineering, financial, accounting, and legal services, plans, specifications, estimates, and administration; or

8. Any other expenses necessary or incidental to determining the feasibility of constructing a utility project or incidental to the construction, acquisition, or financing of a utility project.

(c) "Customer" means a person receiving water, wastewater, or stormwater service from a publicly owned utility.

(d) "Financing cost" means:

1. Interest and redemption premiums that are payable on

utility cost containment bonds;

2. The cost of retiring the principal of utility cost containment bonds, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption;

3. The cost related to issuing or servicing utility cost containment bonds, including any payment under an interest rate swap agreement and any type of fee;

4. A payment or expense associated with a bond insurance policy; financial guaranty; contract, agreement, or other credit or liquidity enhancement for bonds; or contract, agreement, or other financial agreement entered into in connection with utility cost containment bonds;

5. Any coverage charges; or

6. The funding of one or more reserve accounts relating to utility cost containment bonds.

(e) "Finance" or "financing" includes refinancing.

(f) "Financing resolution" means a resolution adopted by the governing body of an authority that provides for the financing or refinancing of a utility project with utility cost containment bonds and that imposes a utility project charge in connection with the utility cost containment bonds in accordance with subsection (4). A financing resolution may be separate from a resolution authorizing the issuance of the bonds.

(g) "Governing body" means the body that governs a local agency.

(h) "Local agency" means a member of the authority, or an agency or subdivision of that member, that is sponsoring or refinancing a utility project, or any municipality, county, authority, special district, public corporation, regional water authority, or other governmental entity of the state that is sponsoring or refinancing a utility project.

(i) "Public utility services" means water, wastewater, or stormwater services provided by a publicly owned utility. The term does not include Internet or cable services.

(j) "Publicly owned utility" means a utility providing retail or wholesale water, wastewater, or stormwater services that is owned and operated by a local agency. The term includes any successor to the powers and functions of such a utility.

(k) "Revenue" means income and receipts of the authority related to the financing of utility projects and issuance of utility cost containment bonds, including any of the following:

1. Bond purchase agreements;

2. Bonds acquired by the authority;

3. Installment sales agreements and other revenue-producing agreements entered into by the authority;

4. Utility projects financed or refinanced by the authority;

5. Grants and other sources of income;

6. Moneys paid by a local agency;

7. Interlocal agreements with a local agency, including all service agreements; or

8. Interest or other income from any investment of money in any fund or account established for the payment of principal, interest, or premiums on utility cost containment bonds, or the deposit of proceeds of utility cost containment bonds.

(l) "Utility cost containment bonds" means bonds, notes, commercial paper, variable rate securities, and any other evidence of indebtedness issued by an authority the proceeds of which are used directly or indirectly to pay or reimburse a local agency or its publicly owned utility for the costs of a utility project and which are secured by a pledge of, and are payable from, utility project property.

(m) "Utility project" means the acquisition, construction, installation, retrofitting, rebuilding, or other addition to or improvement of any equipment, device, structure, process, facility, technology, rights, or property located within or outside this state which is used in connection with the operations of a publicly owned utility.

(n) "Utility project charge" means a charge levied on customers of a publicly owned utility to pay the financing costs of utility cost containment bonds issued under subsection (4). The term includes any adjustments to the utility project charge under subsection (5).

(o) "Utility project property" means the property right created pursuant to subsection (6), including the right, title, and interest of an authority in any of the following:

1. The financing resolution, the utility project charge,

and any adjustment to the utility project charge established in accordance with subsection (5);

2. The financing costs of the utility cost containment bonds and all revenues, and all collections, claims, payments, moneys, or proceeds for, or arising from, the utility project charge; or

3. All rights to obtain adjustments to the utility project charge pursuant to subsection (5).

(3) UTILITY PROJECTS.—

(a) A local agency that owns and operates a publicly owned utility may apply to an authority to finance the costs of a utility project using the proceeds of utility cost containment bonds. In its application to the authority, the local agency shall specify the utility project to be financed by the utility cost containment bonds and the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

(b) A local agency may not apply to an authority for the financing of a utility project under this section unless the governing body has determined, in a duly noticed public meeting, all of the following:

1. The project to be financed is a utility project.

2. The local agency will finance costs of the utility project, and the costs associated with the financing will be paid from utility project property, including the utility project charge for the utility cost containment bonds.

3. Based on the best information available to the governing body, the rates charged to the local agency's retail customers by the publicly owned utility, including the utility project charge resulting from the financing of the utility project with utility cost containment bonds, are expected to be lower than the rates that would be charged if the project were financed with bonds payable from revenues of the publicly owned utility.

(c) A determination by the governing body that a project to be financed with utility cost containment bonds is a utility project is final and conclusive, and the utility cost containment bonds issued to finance the utility project and the utility project charge shall be valid and enforceable as set forth in the financing resolution and the documents relating to the utility cost containment bonds.

(d) If a local agency that has outstanding utility cost containment bonds ceases to operate a water, wastewater, or stormwater utility, directly or through its publicly owned utility, references in this section to the local agency or to its publicly owned utility shall be to the successor entity. The successor entity shall assume and perform all obligations of the local agency and its publicly owned utility required by this section and shall assume the servicing agreement required under subsection (4) while the utility cost containment bonds remain outstanding.

(4) FINANCING UTILITY PROJECTS.—

(a) An authority may issue utility cost containment bonds to finance or refinance utility projects; refinance debt of a local agency incurred in financing or refinancing utility projects, provided such refinancing results in present value savings to the local agency; or, with the approval of the local agency, refinance previously issued utility cost containment bonds.

1. To finance a utility project, the authority may:

a. Form a single-purpose limited liability company and authorize the company to adopt the financing resolution of such utility project; or

b. Create a new single-purpose entity by interlocal agreement under s. 163.01, Florida Statutes, the membership of which shall consist of the authority and two or more of its members or other public agencies.

2. A single-purpose limited liability company or a single-purpose entity may be created by the authority solely for the purpose of performing the duties and responsibilities of the authority specified in this section and shall constitute an authority for all purposes of this section. Reference to the authority includes a company or entity created under this paragraph.

(b) The governing body of an authority that is financing the costs of a utility project shall adopt a financing resolution and shall impose a utility project charge as described in subsection (5). All provisions of a financing

resolution adopted pursuant to this section are binding on the authority.

1. The financing resolution must:

a. Provide a brief description of the financial calculation method the authority will use in determining the utility project charge. The calculation method shall include a periodic adjustment methodology to be applied at least annually to the utility project charge. The authority shall establish the allocation of the utility project charge among classes of customers of the publicly owned utility. The decision of the authority shall be final and conclusive, and the method of calculating the utility project charge and the periodic adjustment may not be changed;

b. Require each customer in the class or classes of customers specified in the financing resolution who receives water, wastewater, or stormwater service through the publicly owned utility to pay the utility project charge regardless of whether the customer has an agreement to receive water, wastewater, or stormwater service from a person other than the publicly owned utility;

c. Require that the utility project charge be charged separately from other charges on the bill of customers of the publicly owned utility in the class or classes of customers specified in the financing resolution; and

d. Require that the authority enter into a servicing agreement with the local agency or its publicly owned utility to

collect the utility project charge.

2. The authority may require in the financing resolution that, in the event of a default by the local agency or its publicly owned utility with respect to revenues from the utility project property, the authority, upon application by the beneficiaries of the statutory lien as set forth in subsection (6), shall order the sequestration and payment to the beneficiaries of revenues arising from utility project property. This subparagraph does not limit any other remedies available to the beneficiaries by reason of default.

(c) An authority has all the powers provided in this section and s. 163.01(7)(g), Florida Statutes.

(d) Each authority shall work with local agencies that request assistance to determine the most cost-effective manner of financing regional water projects. If the entities determine that the issuance of utility cost containment bonds will result in lower financing costs for a project, the authority shall cooperate with such local agencies and, if requested by the local agencies, issue utility cost containment bonds as provided in this section.

(5) UTILITY PROJECT CHARGE.—

(a) The authority shall impose a sufficient utility project charge, based on estimates of water, wastewater, or stormwater service usage, to ensure timely payment of all financing costs with respect to utility cost containment bonds. The local agency or its publicly owned utility shall provide the

authority with information concerning the publicly owned utility which may be required by the authority in establishing the utility project charge.

(b) The utility project charge is a nonbypassable charge to all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution upon its adoption. If a customer of a publicly owned utility that is subject to a utility project charge enters into an agreement to purchase water, wastewater, or stormwater service from a supplier other than the publicly owned utility, the customer remains liable for the payment of the utility project charge if the customer has received any service or benefit from the publicly owned utility after the date the utility project charge was imposed.

(c) The authority shall determine at least annually and at such additional intervals as provided in the financing resolution and documents related to the applicable utility cost containment bonds whether adjustments to the utility project charge are required. The authority shall use the adjustment to correct for any overcollection or undercollection of financing costs from the utility project charge or to make any other adjustment necessary to ensure the timely payment of the financing costs of the utility cost containment bonds, including adjustment of the utility project charge to pay any debt service coverage requirement for the utility cost containment bonds. The local agency or its publicly owned utility shall provide the

authority with information concerning the publicly owned utility which may be required by the authority in adjusting the utility project charge.

1. If the authority determines that an adjustment to the utility project charge is required, the adjustment shall be made using the methodology specified in the financing resolution.

2. The adjustment may not impose the utility project charge on a class of customers that was not subject to the utility project charge pursuant to the financing resolution imposing the utility project charge.

(d) Revenues from a utility project charge are special revenues of the authority and do not constitute revenue of the local agency or its publicly owned utility for any purpose, including any dedication, commitment, or pledge of revenue, receipts, or other income that the local agency or its publicly owned utility has made or will make for the security of any of its obligations.

(e) The local agency or its publicly owned utility shall act as a servicing agent for collecting the utility project charge throughout the duration of the servicing agreement required by the financing resolution. The local agency or its publicly owned utility shall hold the money collected in trust for the exclusive benefit of the persons entitled to have the financing costs paid from the utility project charge, and the money does not lose its designation as revenues of the authority by virtue of possession by the local agency or its publicly

owned utility.

(f) The customer must make timely and complete payment of all utility project charges as a condition of receiving water, wastewater, or stormwater service from the publicly owned utility. The local agency or its publicly owned utility may use its established collection policies and remedies provided under law to enforce collection of the utility project charge. A customer liable for a utility project charge may not withhold payment, in whole or in part, thereof.

(g) The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state, or any other entity, may not reduce, impair, or otherwise adjust the utility project charge, except that the authority shall implement the periodic adjustments to the utility project charge as provided under this subsection.

(6) UTILITY PROJECT PROPERTY.—

(a) A utility project charge constitutes utility project property on the effective date of the financing resolution authorizing such utility project charge. Utility project property constitutes property, including for contracts securing utility cost containment bonds, regardless of whether the revenues and proceeds arising with respect to the utility project property have accrued. Utility project property shall continuously exist as property for all purposes with all of the rights and privileges of this section through the end of the period provided in the financing resolution or until all

financing costs with respect to the related utility cost containment bonds are paid in full, whichever occurs first.

(b) Upon the effective date of the financing resolution, the utility project property is subject to a first-priority statutory lien to secure the payment of the utility cost containment bonds.

1. The lien secures the payment of all financing costs then existing or subsequently arising to the holders of the utility cost containment bonds, the trustees or representatives of the holders of the utility cost containment bonds, and any other entity specified in the financing resolution or the documents relating to the utility cost containment bonds.

2. The lien attaches to the utility project property regardless of the current ownership of the utility project property, including any local agency or its publicly owned utility, the authority, or any other person.

3. Upon the effective date of the financing resolution, the lien is valid and enforceable against the owner of the utility project property and all third parties, and additional public notice is not required.

4. The lien is a continuously perfected lien on all revenues and proceeds generated from the utility project property regardless of whether the revenues or proceeds have accrued.

(c) All revenues with respect to utility project property related to utility cost containment bonds, including payments of

the utility project charge, shall be applied first to the payment of the financing costs of the utility cost containment bonds then due, including the funding of reserves for the utility cost containment bonds. Any excess revenues shall be applied as determined by the authority for the benefit of the utility for which the utility cost containment bonds were issued.

(7) UTILITY COST CONTAINMENT BONDS.—

(a) Utility cost containment bonds shall be issued within the parameters of the financing provided by the authority pursuant to this section. The proceeds of the utility cost containment bonds made available to the local agency or its publicly owned utility shall be used for the utility project identified in the application for financing of the utility project or used to refinance indebtedness of the local agency which financed or refinanced utility projects.

(b) Utility cost containment bonds shall be issued as set forth in this section and s. 163.01(7)(g)8., Florida Statutes, and may be validated pursuant to s. 163.01(7)(g)9., Florida Statutes.

(c) The authority shall pledge the utility project property as security for the payment of the utility cost containment bonds. All rights of an authority with respect to utility project property pledged as security for the payment of utility cost containment bonds shall be for the benefit of, and enforceable by, the beneficiaries of the pledge to the extent

provided in the financing documents relating to the utility cost containment bonds.

1. If utility project property is pledged as security for the payment of utility cost containment bonds, the local agency or its publicly owned utility shall enter into a contract with the authority which requires, at a minimum, that the publicly owned utility:

a. Continue to operate its publicly owned utility, including the utility project that is being financed or refinanced;

b. Collect the utility project charge from customers for the benefit and account of the authority and the beneficiaries of the pledge of the utility project charge; and

c. Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

2. The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state or any other entity may not reduce, impair, or otherwise adjust the utility project charge, except that the authority shall implement periodic adjustments to the utility project charge as provided under subsection (5).

(d) Utility cost containment bonds shall be nonrecourse to the credit or any assets of the local agency or the publicly owned utility but shall be payable from, and secured by a pledge of the utility project property relating to the utility cost containment bonds and any additional security or credit

enhancement specified in the documents relating to the utility cost containment bonds. If, pursuant to subsection (4), the authority is financing the project through a single-purpose limited liability company, the utility cost containment bonds shall be payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This paragraph shall be the exclusive method of perfecting a pledge of utility project property by the company securing the payment of financing costs under any agreement of the company in connection with the issuance of utility cost containment bonds.

(e) The issuance of utility cost containment bonds does not obligate the state or any political subdivision thereof to levy or to pledge any form of taxation to pay the utility cost containment bonds or to make any appropriation for their payment. Each utility cost containment bond must contain on its face a statement in substantially the following form:

"Neither the full faith and credit nor the taxing power of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of, or interest on, this bond."

(f) Notwithstanding any other law or this section, a financing resolution or other resolution of the authority, or documents relating to utility cost containment bonds, the authority may not rescind, alter, or amend any resolution or

document that pledges utility cost charges for payment of utility cost containment bonds.

(g) Subject to the terms of any pledge document created under this section, the validity and relative priority of a pledge is not defeated or adversely affected by the commingling of revenues generated by the utility project property with other funds of the local agency or the publicly owned utility collecting a utility project charge on behalf of an authority.

(h) Financing costs in connection with utility cost containment bonds are a special obligation of the authority and do not constitute a liability of the state or any political subdivision thereof. Financing costs are not a pledge of the full faith and credit of the state or any political subdivision thereof, including the authority, but are payable solely from the funds identified in the documents relating to the utility cost containment bonds. This paragraph does not preclude guarantees or credit enhancements in connection with utility cost containment bonds.

(i) Except as otherwise provided in this section with respect to adjustments to a utility project charge, the recovery of the financing costs for the utility cost containment bonds from the utility project charge shall be irrevocable, and the authority does not have the power, by rescinding, altering, or amending the applicable financing resolution, to revalue or revise for ratemaking purposes the financing costs of utility cost containment bonds; to determine that the financing costs

for the related utility cost containment bonds or the utility project charge is unjust or unreasonable; or to in any way reduce or impair the value of utility project property that includes the utility project charge, either directly or indirectly. The amount of revenues arising with respect to the financing costs for the related utility cost containment bonds or the utility project charge are not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the utility project charge are fully met and discharged.

(j) Except as provided in subsection (5) with respect to adjustments to a utility project charge, the state pledges and agrees with the owners of utility cost containment bonds that the state may not limit or alter the financing costs or the utility project property, including the utility project charge, relating to the utility cost containment bonds, or any rights related to the utility project property, until all financing costs with respect to the utility cost containment bonds are fully met and discharged. This paragraph does not preclude limitation or alteration if adequate provision is made by law to protect the owners. The authority may include the state's pledge in the governing documents for utility cost containment bonds.

(8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other law, an authority that issued utility cost containment bonds may not, and a governmental officer or organization may not authorize the authority to, become a debtor under the United

States Bankruptcy Code or become the subject of any similar case or proceeding under any other state or federal law if any payment obligation from utility project property remains with respect to the utility cost containment bonds.

(9) CONSTRUCTION.—This section and all grants of power and authority in this section shall be liberally construed to effectuate their purposes. All incidental powers necessary to carry this section into effect are expressly granted to, and conferred upon, public entities.

Section 2. This act shall take effect July 1, 2015.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 259 Small Business Saturday Sales Tax Holiday
**SPONSOR(S):** Finance & Tax Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Finance & Tax Committee | | Dugan | Langston |

### SUMMARY ANALYSIS

Current law authorizes the levy and collection of sales and use tax and discretionary sales surtaxes, as well as exemptions and credits to such taxes, applicable to certain items or uses under specified circumstances. There are currently more than 200 different exemptions.

In prior years, the Legislature has enacted temporary periods (commonly called "sales tax holidays") during which certain items were exempted from the state sales tax and county discretionary sales surtaxes. The length of the exemption periods, the type of exempt items, and the value of the exemption have varied over the years.

The proposed committee substitute establishes a one day sales tax holiday on November 28, 2015. During the holiday, items that are sold by certain small businesses are exempt from the state sales tax and county discretionary sales surtaxes. "Small business" is defined as a sales tax dealer, as defined in s. 212.06, F.S., that registered with the Department of Revenue (DOR or department) and began operation no later than March 3, 2015, and that owed and remitted less than $200,000 in sales tax to the department during the one-year period ending September 30, 2015.

The DOR is authorized to adopt emergency rules to implement the proposed committee substitute.

On March 13, 2015, the Revenue Estimating Conference estimated the bill to have a $32.7 million nonrecurring negative impact on General Revenue and a $7.3 million nonrecurring negative impact on local government revenue.

The bill provides a nonrecurring General Revenue appropriation of $211,775 to DOR to administer the provisions of the act.

The proposed committee substitute has an effective date of July 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

Small Business Saturday

In 2010, American Express instituted a Small Business Saturday incentive for their cardholders who shopped at small, independent business on the Saturday after "Black Friday."[1] It is estimated that consumers spent $5.5 billion at small, independent businesses on Small Business Saturday in 2012, with pre-holiday surveys estimated at $5.3 billion.[2]

Sales Tax

Current law levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 200 different exemptions.[3] Generally, sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

In addition to the state tax, s. 212.055, F.S., authorizes eight distinct sales surtaxes that can be levied at the county level, at the discretion of certain local governing authorities and, with one exception, only if approved by referendum of the voters in a county. The allowed tax rates vary, as do the groups of counties that may levy the surtaxes. All of the discretionary sales surtaxes apply to the same transactions occurring in the county subject to the state sales and use tax imposed by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.[4] The discretionary sales surtaxes are levied in addition to the state sales and use tax.

Sales Tax Holidays

Since 1998, the Legislature has enacted 19 temporary periods (commonly called "sales tax holidays") during which certain household items, household appliances, clothing, footwear, books, and/or school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

Back to School Holidays

Florida has enacted a "back to school" sales tax holidays twelve times since 1998. The length of the exemption periods has varied from 3 to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently $100. Books valued at $50 or less were exempted in five periods. School supplies have been included starting in 2001, with the value threshold increasing from $10 to $15. In 2013, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of $750 or less were exempted. In 2014, the first $750 of the sales price of personal computers and related

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[1] American Express, *Small Business Saturday,* available at: https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shopsmall-homepage-about (last visited March 13, 2015).

[2] Cynthia Magnuson-Allen, *U.S. Consumers Spent $5.5 Billion 'Shopping Small' on Saturday*, November 27, 2012, available at http://www.nfib.com/article/m-nfib-and-american-expres-61497/ (last visited March 13, 2015).

[3] For a list of exemptions and history, see REC, 2014 Florida Tax Handbook. Exemptions are estimated to total about $12 billion.

[4] The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

accessories purchased for noncommercial home or personal use were exempted. The following table describes the history of back to school sales tax holidays in Florida:

| Dates | Length | TAX EXEMPTION THRESHOLDS | | | | |
|---|---|---|---|---|---|---|
| | | Clothing/ Footwear | Wallets/ Bags | Books | Computers | School Supplies |
| August 15-21, 1998 | 7 days | $50 or less | N/A | N/A | N/A | N/A |
| July 31-August 8, 1999 | 9 days | $100 or less | $100 or less | N/A | N/A | N/A |
| July 29-August 6, 2000 | 9 days | $100 or less | $100 or less | N/A | N/A | N/A |
| July 28-August 5, 2001 | 9 days | $50 or less | $50 or less | N/A | N/A | $10 or less |
| July 24-August 1, 2004 | 9 days | $50 or less | $50 or less | $50 or less | N/A | $10 or less |
| July 23-31, 2005 | 9 days | $50 or less | $50 or less | $50 or less | N/A | $10 or less |
| July 22-30, 2006 | 9 days | $50 or less | $50 or less | $50 or less | N/A | $10 or less |
| August 4-13, 2007 | 10 days | $50 or less | $50 or less | $50 or less | N/A | $10 or less |
| August 13-15, 2010 | 3 days | $50 or less | $50 or less | $50 or less | N/A | $10 or less |
| August 12-14, 2011 | 3 days | $75 or less | $75 or less | N/A | N/A | $15 or less |
| August 3-5, 2012 | 3 days | $75 or less | $75 or less | N/A | N/A | $15 or less |
| August 2-4, 2013 | 3 days | $75 or less | $75 or less | N/A | $750 or less | $15 or less |
| August 1-3, 2014 | 3 days | $100 or less | $100 or less | N/A | First $750 of the sales price | $15 or less |

Hurricane Preparedness Holidays

Florida has enacted sales tax holidays for certain hurricane preparedness items in 2005, 2006, 2007, and 2014. The state established periods where items below certain thresholds were exempt from tax. Items included in all four holidays were:

- portable self-powered light sources selling for $20 or less,
- portable self-powered radios, two-way radios, or weather band radios selling for $50 or less,
- tarpaulins or other flexible waterproof sheeting selling for $50 or less,
- self-contained first-aid kits selling for $30 or less,
- ground anchor systems or tie-down kits selling for $50 or less,
- gas or diesel fuel tanks selling for $25 or less,
- packages of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less, and
- nonelectric food storage coolers selling for $30 or less.

In 2005, portable generators selling for $750 or less were exempted. In 2006 and 2007, the threshold for generators was increased to $1,000, and several additional items were added, such as:

- reusable ice or items sold as artificial ice selling for $10 or less,
- cell phone chargers selling for $40 or less,
- cell phone batteries selling for $60 or less, and
- storm shutter devices selling for $1,000 or less.

In 2014, portable generators selling for $750 or less and reusable ice selling for $10 or less were exempted.

In 2005 and 2007 the hurricane preparedness holidays ran from June 1 through June 12, in 2006 the Holiday was from May 21 through June 1. In 2014, the hurricane preparedness holiday ran from May 31 through June 8.

Energy Efficient Appliance Holidays

From October 5 through October 11, 2006, Florida exempted energy-efficient products priced under $1,500 and that met or exceeded the requirements of the federal ENERGY STAR program.[5] The following items were exempted:

- refrigerators,
- dishwashers,
- clothes washers,
- air conditioners,
- ceiling fans,
- light bulbs,
- dehumidifiers, and
- thermostats.

From September 19 through September 21, 2014, Florida exempted the first $1,500 of the sales price for certain new ENERGY STAR products and certain new WaterSense products.[6]

The new ENERGY STAR products eligible for the 2014 holiday were:

- Room air conditioners,
- Air purifiers,
- Ceiling fans,
- Clothes washers,
- Clothes dryers,
- Dehumidifiers,
- Dishwashers,
- Freezers,
- Refrigerators,
- Water heaters,
- Swimming pool pumps, and
- Light bulbs.

The new WaterSense products eligible for the 2014 holiday were:

- Bathroom sink faucets,
- Faucet accessories,
- High-efficiency toilets and urinals,
- Showerheads, and
- Weather or sensor-based irrigation controllers.

**Effect of Proposed Changes**

The proposed committee substitute establishes a one day sales tax holiday on November 28, 2015. During the holiday, items that are sold by certain "small businesses" are exempt from the state sales tax and county discretionary sales surtaxes.

The proposed committee substitute defines "small business" as a dealer, as defined in s. 212.06, F.S., that registered with the DOR and began operation no later than March 3, 2015, and that owed and

[5] ENERGY STAR products must meet energy efficiency standards established by the U.S. Environmental Protection Agency.
[6] WaterSense labeled products and meet the US Environmental Protection Agency specifications for water efficiency and performance.

remitted less than $200,000 in sales tax to the department during the one-year period ending September 30, 2015. If the business has not been in operation for a complete year as of September 30, 2015, the business may qualify if it owed and remitted less than $200,000 in sales tax from the first day of operation until September 30, 2015.

If the business is eligible to file a consolidated return (e.g., has multiple places of business), the total sales tax owed and remitted by the business' locations must be less than $200,000 during the applicable period ending September 30, 2015.

The sales tax holiday is limited to the retail sale, as defined in s. 212.02(14), F.S., of items or articles of tangible personal property, as defined in 212.02(19), F.S., having a sales price of $1,000 or less per item.

The DOR may adopt emergency rules to implement the proposed committee substitute.

B. SECTION DIRECTORY:

Section 1. Provides definitions; provides sales tax may not be collected during a specified period from certain small businesses.

Section 2. Provides an appropriation.

Section 3. Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On March 3, 2015, the Revenue Estimating Conference estimated the bill to have a $32.7 million, nonrecurring negative impact on General Revenue.

2. Expenditures:

   The bill provides a nonrecurring General Revenue appropriation of $211,775 to DOR to administer the provisions of the act.

   According to the DOR bill analysis,[7] the department projects an operational impact of $211,775 in Fiscal Year 2015-2016 to produce a Tax Information Publication for the sales tax holiday in the proposed committee substitute.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   On March 3, 2015, the Revenue Estimating Conference estimated the bill to have a $7.3 million nonrecurring negative impact on local government revenue.

2. Expenditures:

   None.

[7] DOR, Agency Analysis of 2015 HB 259, page 7 (February 10, 2015).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed committee substitute may increase the amount of sales at retail for the small businesses impacted by the bill.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The term "Small Business Saturday" is trademarked by American Express.[8]

B. RULE-MAKING AUTHORITY:

The DOR is granted emergency rulemaking authority to implement the provisions of the proposed committee substitute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[8] See U.S. Patent and Trademark Office, available at: http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4810:qxjz99.5.2 (last visited February 16, 2015).

A bill to be entitled

An act relating to the Small Business Saturday sales tax holiday; providing definitions; providing that the tax levied under chapter 212, F.S., may not be collected on the sale of items or articles of tangible personal property by certain small businesses during a specified period; providing an appropriation; providing an effective date.

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

Section 1. Small Business Saturday sales tax holiday.—

(1) As used in this section, the term "small business" means a dealer, as defined in s. 212.06, F.S., that registered with the Department of Revenue and began operation no later than March 3, 2015, and that owed and remitted to the Department of Revenue less than $200,000 in total tax under Chapter 212, Florida Statutes, for the one-year period ending September 30, 2015. If the dealer has not been in operation for a complete year as of September 30, 2015, the dealer must owe and remit less than $200,000 in total tax under Chapter 212, for the period beginning with the day the dealer began operation and ending September 30, 2015, in order to qualify as small business under this section. If the dealer is eligible to file a consolidated return pursuant to s. 212.11(1)(e), F.S., the total tax under Chapter 212, Florida Statutes, owed and remitted from

all of the dealer's places of business must be less than $200,000 in the applicable period ending September 30, 2015.

(2) The tax levied under chapter 212, Florida Statutes, may not be collected by a small business during the period from 12:00 a.m. on November 28, 2015, through 11:59 p.m. on November 28, 2015, on the sale at retail, as defined in s. 212.02 (14), Florida Statutes, of any item or article of tangible personal property, as defined in s. 212.02(19), Florida Statutes, having a sales price of $1,000 or less per item.

(3) The Department of Revenue may, and all conditions are deemed to be met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 2. For the 2015-2016 fiscal year, the sum of $211,775 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Revenue for the purpose of implementing the provisions of this act.

Section 3. This act shall take effect July 1, 2015.

PCS for HB 695

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 695 Value Adjustment Boards
**SPONSOR(S):** Finance & Tax Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Finance & Tax Committee | | Dugan PD | Langston |

## SUMMARY ANALYSIS

Currently, property tax payers can contest their property assessments to the value adjustment board (VAB). The proposed committee substitute (PCS) revises the composition, procedures, and oversight of the VAB process. Specifically, the PCS:

- Requires that a petition to the VAB must be signed by the taxpayer or be accompanied by the taxpayer's written authorization for representation.
- Revises provisions related to the exchange of evidence.
- Provides that failure by either party to timely comply with the evidence exchange rules results in the exclusion of the requested evidence unless the request for evidence was made prior to the petition being filed.
- Provides clarification on the confidentiality of information in the evidence exchange process.
- Requires "good cause" to be shown for the initial rescheduling of a hearing.
- Requires the VAB submit the certified assessment roll to the property appraiser by June 1 annually.
- Restricts the qualifications of those who can represent the taxpayer before the VAB.
- Changes composition of the VAB from county commissioners, school board members, and citizen members to all citizen residents of the county appointed by their legislative delegation.
- Specifies that in the appointment/scheduling of special magistrates no consideration is to be given to assessment reductions recommended by any special magistrate.
- Authorizes the school board and county commission to audit the expenses related to the VAB.
- Elaborates on what is required in the VAB's findings of fact and conclusions of law.

Interest rates for disputed property taxes at the VAB are changed from 12 percent to the prime rate

The PCS creates a review process for any county that receives 10,000 or more VAB petitions in one year. If the DOR elects to conduct such a review, the PCS sets forth the way the review is conducted and requires the DOR to report its findings to the Legislature.

The PCS authorizes the property appraiser to contract for services to examine or audit homestead tax exemptions claimed on assessment rolls; contractors are paid from penalties. It also authorizes persons falsely claiming a homestead exemption to enter into a payment plan. A tax lien based on a false homestead claim would be collected in the same manner as, and in addition to, the current ad valorem taxes.

The PCS requires the notice of proposed property tax (the TRIM notice) to contain a breakout of millage attributable to each of the county constitutional officers.

The Revenue Estimating Conference evaluated the impacts of some of the provisions of the PCS and identified several local government revenue impacts. See the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

**This PCS may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.**

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Property Taxes in Florida**

**Current Situation**

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] Citizens may appeal their assessed value informally to the property appraiser, or to the county value adjustment board (VAB) or circuit court.

The Ad Valorem Process

Each property appraiser must submit an assessment roll to the Department of Revenue (DOR) by July 1 of the assessment year to determine if the rolls meet all the appropriate requirements of law relating to form and just value. Assessment rolls include, in addition to taxable value, other information on the property located within the property appraiser's jurisdiction, such as just value, assessed value, and the amount of each exemption or discount.[6]

Step 1

In addition to sending the assessment roll to the DOR, each property appraiser must certify to its taxing authorities the taxable value of all property within its jurisdiction no later than July 1 of the assessment year, unless extended for good cause by the DOR.[7]

Step 2

The taxing authority uses the taxable value provided by the property appraiser to prepare a proposed millage rate (i.e., tax rate) that is levied on the property's taxable value.[8] Within 35 days of certification of the taxable value by the property appraiser (typically by August 4 of the assessment year), the taxing authority must advise the property appraiser of its proposed millage rates.[9]

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[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. 193.114, F.S.
[7] s. 193.023(1), F.S.
[8] s. 200.065(2)(a)1., F.S.
[9] s. 200.065(2)(b), F.S.

Step 3

The property appraiser uses the proposed millage rates provided by the taxing authorities to prepare the notice of proposed property taxes, commonly referred to as the Truth in Millage (TRIM) notice.[10] Generally, the TRIM notice must be mailed no later than 55 days after certification of taxable value by the property appraiser (typically by August 24 of the assessment year).[11]

Step 4

Any property owner who disagrees with the assessment in the TRIM notice or who was denied an exemption or property classification may:

- request an informal meeting with the property appraiser;[12]
- appeal to the county value adjustment board;[13] or
- challenge the assessment in circuit court.[14]

A petition to the VAB may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of the TRIM notice (typically by September 18 of the assessment year).[15] With respect to an issue involving the denial of an exemption, a property classification application, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the TRIM notice (typically September 23 of the assessment year).[16]

Step 5

VAB hearings must begin between 30 and 60 days after the mailing of the TRIM notice (typically between September 23 and October 8 of the assessment year).[17] The VAB must remain in session from day to day until all petitions, complaints, appeals, and disputes are heard.[18] Current law does not establish a date when the VAB hearings must be concluded. As of February 26, 2015, 35 counties had completed their VAB appeals for 2014 and reported that information to the DOR.[19] Miami-Dade and Broward Counties are in the process of completing their 2013 VAB proceedings.

Step 6

After all VAB hearings are held, the VAB-adjusted assessment roll is submitted by the VAB to the property appraiser[20] and to the DOR.[21] After making any adjustments to the assessment rolls caused by the VAB hearings, the property appraiser will certify the tax roll to the tax collector (typically before November 1 of the assessment year or as soon thereafter as the certified tax roll is received by the tax collector).[22]

Step 7

The tax collector will then send tax bills within 20 working days to all properties owing tax within his or her jurisdiction.[23] Property taxes are due once a year, and can be paid beginning November 1st of the

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[10] s. 200.069, F.S.
[11] *See* s. 200.065(2)(b), F.S.
[12] s. 194.011(2), F.S.
[13] s. 194.011(3), F.S.
[14] s. 194.171, F.S.
[15] s. 194.011(3)(d), F.S.
[16] s. 194.011(3)(d), F.S.
[17] s. 194.032(1)(a), F.S.
[18] s. 194.032(3), F.S.
[19] For spreadsheets containing the VAB petition summaries as reported to the DOR, see FLORIDA DEPARTMENT OF REVENUE, PROPERTY TAX DATA PORTAL: VAB SUMMARY available at http://dor.myflorida.com/dor/property/resources/data.html (last visited on March 13, 2015).
[20] s. 193.122(2), F.S.
[21] s. 193.122(1), F.S.
[22] s. 193.122(2), F.S.
[23] s. 197.322(2), (3), F.S.

assessment year.[24] Generally, taxes become delinquent if not paid in full as of April 1st of the year after assessment.[25] Delinquent taxes will accrue interest until paid,[26] and may accrue penalties in certain circumstances.[27]

The following chart summarizes key dates in this process:

| "Typical Deadline"[28] | Actor | Action |
|---|---|---|
| Jan. 1, 2013 | Property Appraiser | Property value is determined as of this date: the "assessment date" |
| July 1, 2013 | Property Appraiser | Submit assessment roll to DOR |
| July 1, 2013 | Property Appraiser | Certify taxable value to Tax Collector |
| Aug. 4, 2013 | Tax Collector | Submit proposed millage rates to Property Appraiser |
| Aug. 24, 2013 | Property Appraiser | Mail TRIM notice to Property Owners |
| Sept. 23, 2013 | Property Owner | File petition to VAB |
| Oct. 8, 2013 | VAB | Begin VAB hearings |
| Nov. 1, 2013 | VAB | Submit adjusted assessment roll to Property Appraiser |
| Nov. 28, 2013 | Tax Collector | Mail tax bill to Property Owners |
| March 31, 2014 | Property Owner | Pay tax bill |

**Proposed Changes**

The PCS amends s. 193.122(1), F.S., to require the VAB to complete the certification and submit each final assessment roll to the property appraiser by June 1 following the tax roll year.

**Value Adjustment Board Process**

**Current Situation**

Chapter 194, F.S., provides for administrative and judicial review of ad valorem tax assessments. Each county in Florida has a VAB composed of five members[29] that hears petitions pertaining to property assessments made by the county property appraiser.[30] The VAB hears evidence from both the petitioner and property appraiser as to whether a property is appraised at its fair market value, as well as issues related to tax exemptions, deferments, and portability.[31]

[24] s. 197.333, F.S.
[25] s. 197.333, F.S.
[26] s. 197.152, F.S.
[27] *See* s. 196.161, F.S.
[28] The chart is provided merely for illustrative purposes. The deadline refers to the date the actor typically must take action; however, the deadline may be changed by other circumstances not identified in the chart.
[29] s. 194.015, F.S.
[30] s. 194.011, F.S. The VAB also hears complaints about homestead exemptions and appeals exemption, deferral, or classification decisions. s. 194.032(1)(a), F.S.
[31] Additionally, VABs appoint special magistrates, who are qualified real estate appraisers, personal property appraisers or attorneys, to act as impartial agents in conducting hearings and making recommendations on all petitions. s. 194.035(1), F.S.

Petition Procedures

The property owner may initiate a review by filing a petition with the clerk of the VAB.[32] A petitioner before the VAB may be represented by an attorney or agent.[33] DOR rules state, "The agent need not be a licensed individual or person with specific qualifications and may be any person, including a family member, authorized by the taxpayer to represent them before the value adjustment board."[34] Generally, a petitioner before the VAB must pay all of the non-ad valorem assessments and make a partial payment of the ad valorem taxes before the taxes become delinquent.[35]

The clerk of the VAB[36] is responsible for receiving completed petitions, acknowledging receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling appearances before the value adjustment board. The petitioner may reschedule the hearing a single time by submitting to the clerk a written request to reschedule, at least five calendar days before the day of the originally scheduled hearing.[37] VAB petition forms may be found at the DOR website, the County Property Appraiser's office, and in most counties at the office or website of the VAB Clerk.[38] There is no statutory requirement that the petitioner sign the VAB petition. However, DOR rules state, "A petition filed by an unlicensed agent must also be signed by the taxpayer or accompanied by a written authorization from the taxpayer."[39]

A petitioner is required to provide the property appraiser with a list of evidence, copies of documentation, and summaries of testimony at least 15 days prior to the hearing.[40] If the petitioner provides this information, and sends the appraiser a written request for responsive information, the appraiser must provide a list of evidence and copies of documentation to be presented at the hearing, including the "property record card"[41] but only if the petitioner checks the appropriate box on the form.[42] The property appraiser is not required to provide a copy of the property record card if it is available online. The property record card is a record of assessment information maintained by the property appraiser for assessed properties in his or her jurisdiction. Currently, information submitted to the VAB as evidence generally becomes public record and is subject to Florida's public records laws.[43]

**Proposed Changes**

The PCS amends s. 194.011, F.S., to require that a petition to the VAB must be signed by the taxpayer or be accompanied by the taxpayer's written authorization for representation by a person specified in s. 194.034(1)(a), F.S. A written authorization is valid for 1 tax year, and a new written authorization by the taxpayer shall be required for each subsequent tax year.

The PCS modifies the procedures for the exchange of evidence. When the property appraiser responds to the petitioner's request for evidence, the property appraiser must include the petitioner's property record card (unless available online) and the property record cards for any comparable property listed as evidence (with confidential information redacted). If the petition challenges the assessed value of the property, the evidence list must also include a copy of the form signed by the property appraiser

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[32] s. 194.011(3)(b), F.S.
[33] s. 194.034(1)(a), F.S.
[34] Rule 12D-9.018(3), F.A.C.
[35] s. 194.014(1), F.S.
[36] The county clerk usually serves as the clerk of the value adjustment board. s. 194.015, F.S.
[37] s. 194.032(2)(a), F.S.
[38] s. 194.011(3)(a), F.S.
[39] Rule 12D-9.018(4), F.A.C.
[40] s. 194.011(4)(a), F.S.
[41] s. 194.011(4)(b), F.S.
[42] s. 194.032(2)(a), F.S.
[43] Informal, Fla. Op. Att'y Gen. (April 30, 2010) *available at* http://www.myfloridalegal.com/ago.nsf/Opinions/946D6B5DA86200268525771B00485776; FLORIDA DEPARTMENT OF REVENUE PROPERTY TAX INFORMATIONAL BULLETIN, PTO 10-07 – VALUE ADJUSTMENT BOARD HEARINGS AND CONFIDENTIALITY (May 27, 2010).

documenting adjustments made to the recorded selling price or fair market value of the property pursuant to those factors described in s. 193.011(8), F.S. In current law, s. 193.011, F.S., lists eight factors to be taken into account by the property appraiser in arriving at just valuation. Subsection (8) ("the eighth criteria") of that section is specific to the factor that removes the seller's costs of sale from the sales price as one of the adjustments to price made in arriving at just value. Most property appraisers, when using mass appraisal techniques, reduce the selling price by 15% to account for the eighth criteria. The property appraiser reports its eighth criteria adjustments to the DOR on form DR-493.

Under the PCS, failure by either party to timely comply with the evidence exchange provisions results in the exclusion from consideration by the value adjustment board of any evidence that was requested in writing and not timely provided. Provisions related to evidence exchange only apply to VAB proceedings after the petitioner has served notice of intention to challenge the property appraiser's assessment of value or classification of property pursuant to s. 194.011, F.S. Evidence that is confidential under current law shall remain confidential until it is submitted to the value adjustment board for consideration and admission into the record, unless used for impeachment purposes.

The PCS would require "good cause" to be shown for an initial rescheduling of a hearing. The board will be required to hear all petitions, complaints, appeals, and disputes and must submit the certified assessment roll as to the property appraiser by June 1 annually.

The PCS would restrict people who can represent the taxpayer to:
- a corporate representative of the taxpayer,
- an attorney,
- a person with power of attorney,
- a licensed property appraiser,
- a licensed realtor,
- a certified public accountant, or
- a certified tax specialist retained by the taxpayer.

**Value Adjustment Board Members and Special Magistrates**

**Current Situation**

The VAB membership must consist of two members of the governing body of the county as elected from the membership of the board of said governing body (one of whom shall be elected chairperson), one member of the school board as elected from the membership of the school board, and two citizen members.[44] A quorum of three members of the board must include at least:
- One member of the governing body of the county.
- One member of the school board.
- One citizen member.

In addition, current law requires counties with a population greater than 75,000 to hire special magistrates to conduct valuation hearings.[45] Before conducting hearings, a board must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.[46] Special magistrates must meet the following qualifications:
- A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than five years' experience in the area of ad valorem taxation.
- A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than five years' experience in real property valuation.

[44] s. 194.015, F.S.
[45] s. 194.035, F.S.
[46] s. 194.011(5)(a)2., F.S.

- A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than five years' experience in tangible personal property valuation.

**Proposed Changes**

The PCS provides for five citizen members of the board appointed by the county's local legislative delegation. The membership shall be comprised as follows:
- One member must be an owner of homestead property in the county.
- One member must own commercial property in the county.
- One member must be a licensed appraiser who is a resident of the county (if no resident property appraiser available, the member can be a homestead or commercial property owner who is a resident).
- The remaining two members of the value adjustment board must be residents of the county.

Any three members shall constitute a quorum of the board, and no meeting shall take place unless a quorum is present. The Department of Business and Professional Regulation must provide continuing education credits to appraiser members of value adjustment boards. The PCS makes per diem payments for members of the board mandatory. The PCS further clarifies that counsel may not represent any property appraiser or any tax collector in any administrative or judicial review of property taxes.

The PCS specifies that in the appointment/scheduling of special magistrates no consideration is given to assessment reductions recommended by any special magistrate either in the current year or in any prior year.

**Value Adjustment Board Expenditures**

**Current Situation**

Two-fifths of the expenses of the VAB shall be borne by the district school board and three-fifths by the district county commission. The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board.[47] Current law does not provide the district school board or county commission the authority to audit the expenses related to the VAB process.

**Proposed Changes**

The PCS authorizes the district school board and district county commission to audit the expenses related to the value adjustment board process.

**Determinations of VAB**

**Current Situation**

Current law requires VABs to render a written decision within 20 calendar days after the last day the board is in session.[48] The decision of the VAB must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser.[49] If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the VAB. The clerk of the VAB, upon issuance of a decision, shall notify each taxpayer and the property appraiser of the decision of the VAB. If requested by the DOR, the clerk shall provide

[47] s. 194.035, F.S.
[48] s. 194.034(2), F.S.
[49] s. 194.034(2), F.S.; *see also* rules 12D-9.030, 12D-9.032, and 12D-10.003(3), F.A.C.

to the DOR a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037, F.S., in the manner and form requested.

In 2011, the Florida Legislature created s. 194.014, F.S., to require taxpayers challenging their assessments to pay at least 75 percent of the ad valorem taxes before those taxes become delinquent. If the VAB determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until the unpaid amount is paid.[50] If the VAB determines that a refund is due, the overpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until a refund is paid.[51] Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice. Under current law, even if a petitioner is successful in an administrative or judicial challenge, he or she is not entitled to recoup the fees charged by his or her representative before the board (i.e., attorney or other professional). These provisions are similar to the provisions that were existing law, prior to 2011, which require taxpayers who file a petition in circuit court to pay the tax collector not less than the amount of tax which the taxpayer admits in good faith to owe. If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in food faith admitted and paid, it enters a judgment against the taxpayer for the deficiency and for interest on the deficiency at a rate of 12 percent.[52]

### Proposed Changes

The PCS elaborates on what is required in the VAB's findings of fact and conclusions of law. Specifically:

- Findings of fact must be based on admitted evidence or a lack thereof.
- Conclusions of law must be logically connected to the findings of fact and must be stated in statutory terms.
- Written decisions must also include a series of checklist forms, as provided by the department, identifying each statutory criterion applicable to the assessment determination.

The PCS changes the amount of interest that accrues on disputed ad valorem property taxes from 12 percent to the bank prime loan rate as determined by the Federal Reserve on July 1 or the first business day thereafter. Currently, the bank prime rate is published on a website titled "H.15 Selected Interest Rates" and is 3.25 percent.[53] The PCS does not change the interest rate for amounts in dispute for court proceedings.

## Reviews of VABs by the DOR

### Current Situation

The DOR has general supervision authority over the assessment and valuation of property so that all property is placed on the assessment rolls and valued according to its just valuation.[54] Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and VABs in administering and collecting ad valorem taxes.[55] The DOR was statutorily directed to conduct training for special magistrates and

[50] s. 194.014(2), F.S.
[51] s. 194.014(2), F.S.
[52] s. 194.192, F.S.
[53] FEDERAL RESERVE, H.15 SELECTED INTEREST RATES (March 9, 2015) *available at* http://www.federalreserve.gov/releases/h15/current/ (last visited March 15, 2015).
[54] s. 195.002, F.S.
[55] ch. 195, F.S.

develop a Uniform Policies and Procedures Manual for use by the VABs.[56] The DOR has created VAB training materials[57] and rules that provide guidance for the VAB process.[58]

Current law provides that the property appraiser may appeal a decision of the VAB to the circuit court.[59] However, first, the property appraiser must notify the DOR that he or she believes that there exists a consistent and continuous violation of the intent of the law or administrative rules by the VAB in its decisions and provide the DOR with certain supporting information. If the DOR finds upon investigation that a consistent and continuous violation of the intent of the law or administrative rules by the board has occurred, it informs the property appraiser, who may then bring suit in circuit court against the VAB for injunctive relief to prohibit continuation of the violation of the law or administrative rules and for a mandatory injunction to restore the assessment roll to its just value in such amount as determined by judicial proceeding. Affected taxpayers have 60 days from the date of the final judicial decision to file an action to contest any altered or changed assessment.

**Proposed Changes**

The PCS sets up a review process for any county that receives 10,000 or more petitions to the VAB in one year. DOR may conduct a review of those counties proceedings as follows:

- The department shall determine whether the values derived by the board comply with the eight valuation criteria considered by the property appraiser s. 193.011, F.S., and professionally accepted appraisal practices.
- The VAB must submit verbatim copies of the proceedings to DOR following the final tax roll certification.
- DOR would statistically sample petitions heard by the value adjustment board requesting a change in the assessment for each class of property (e.g., residential, commercial, industrial, etc.). The department shall adhere to all the standards to which the VABs are required to adhere.
- The VAB must provide the data requested by the department, including documentary evidence presented during the proceedings and written decisions rendered.

The DOR is required to complete its review no later than six months after the VAB has adopted a final determination of the tax roll. The department shall publish the results of each review on the department's website and shall include the following with regard to every parcel for which a petition was filed:

- The name of the owner.
- The address of the property.
- The identification number of the property as used by the value adjustment board clerk, such as the parcel identification number, strap number, alternate key number, or other number.
- The name of the special magistrate who heard the petition, if applicable.
- The initial just value derived by the property appraiser.
- Any change made by the value adjustment board that increased or decreased the just value of the parcel.

Upon publication of the data and findings, DOR shall notify the committees of the Senate and of the House of Representatives having oversight responsibility for taxation, the appropriate value adjustment board, the property appraiser, and the county commission chair or corresponding official under a consolidated charter. Copies of the data and findings shall be provided upon request.

The department shall find the value adjustment board to be in continuous violation of the intent of the law if the department, in its review, determines that less than 90 percent of the petitions randomly

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[56] s. 194.035, F.S.
[57] FLORIDA DEPARTMENT OF REVENUE, 2014 VAB TRAINING (2014) *available at* http://dor.myflorida.com/dor/property/vab/training.html (last visited March 15, 2015).
[58] *See* chapter 12D-9, F.A.C.
[59] s. 194.036(1)(c), F.S.

sampled comply with the statutory valuation criteria set forth in s. 193.011, F.S. and professionally accepted appraisal practices. The PCS allows the property appraiser to file suit in circuit court against the VAB.

The PCS gives the DOR rule making authority to implement this program.

**Fraudulent Homestead Exemption Claims**

**Current Situation**

If delinquent ad valorem taxes are not paid by June 1 of the year after assessment, the County holds a tax certificate sale for real property located in the County on which the taxes became delinquent in that year.[60] A tax lien certificate is an interest bearing first lien representing unpaid delinquent real estate property taxes; however, it does not convey any property rights or ownership to the certificate holder.

The property owner has a period of two years from the date the taxes became delinquent to redeem the tax certificate by paying to the County the total due, including accrued interest.[61] After the two year period, if the taxes remain unpaid, the lien holder may make an application for tax deed auction with the County.[62] If tax deed auction proceedings begin, the property owner must pay all due and delinquent years, plus fees and interest to stop the sale of their property at public auction.[63] If the tax certificate is not redeemed or sold at auction after seven years, the tax certificate is cancelled and considered null and void.[64]

Current law provides that if a property owner was granted a homestead exemption, but was not entitled to it, the property appraiser will send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.[65] The property owner has 30 days to pay the taxes owed, plus penalties and interest.[66] If not paid within 30 days of notice, the property appraiser may file a tax lien;[67] however, it is unclear under current administration of this law whether the property appraiser must file the tax lien. Even if a tax lien is filed, current administration of the law does not follow the tax certificate process described above. Instead, the tax lien remains on the property until it is paid or expires after 20 years.[68]

**Proposed Changes**

The PCS would authorize the property appraiser to contract for services to examine or audit homestead tax exemptions claimed on assessment rolls. Agreements for such contracted services must provide that compensation will consist solely of the penalties collected on the assessments resulting from the examination or audit and the removal of exemptions from previous and current year tax rolls. A property appraiser contracting for such services is entitled the related interest assessed on previous and current year's assessment rolls. After distributing the compensation for such contracted services and the interest retained by the property appraiser, the tax collector shall distribute any back taxes collected under chapter 197.

The PCS would authorize persons determined to have falsely claimed a homestead exemption to enter into a written monthly payment plan with the tax collector for the payment of the taxes, penalties, and interest. A tax lien based on a false homestead claim that is not paid in full or in compliance with a

[60] s. 197.432, F.S.
[61] s. 197.502, F.S.
[62] s. 197.502, F.S.
[63] s. 197.472, F.S.
[64] s. 197.482, F.S.
[65] s. 196.161, F.S.
[66] s. 196.161, F.S.
[67] s. 196.161, F.S.
[68] s. 95.091(1)(b), F.S.

written payment plan shall be included in the next assessment roll and shall be collected in the same manner as, and in addition to, the current ad valorem taxes under chapter 197.

## TRIM Notice Format

### Current Situation

Current law provides the specific elements and required content and format of the TRIM notice, including the information required to appear in columnar form and the information underneath each column heading.[69] The DOR prescribes the TRIM notice forms; however, a property appraiser may use a different form, provided that, among other things, it is substantively similar to the one prescribed by DOR.[70] Although the TRIM notice provides information related to the millage rates and dollar amount of taxes levied,[71] it does not specify how the millage rate and amount of taxes are attributable to the budgets of each constitutional officer.[72]

### Proposed Changes

The PCS amends s. 129.03, F.S., to require the board of county commissioners to specify in the budget summary the proportionate amount of the proposed county tax millage and the proportionate amount of gross ad valorem taxes attributable to the budgets of the sheriff, the property appraiser, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections, respectively. The PCS further amends s. 200.065, F.S., to require the TRIM notice to contain subheading entries for the proportionate amount of gross ad valorem tax or millage attributable to the budget of the sheriff, the property appraiser, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections.

## Auditor General Report

In May of 2014, the Florida Auditor General issued a report on county value adjustment boards and the DOR's oversight.[73] The report made the following findings (the PCS contains language relating to the findings in bold):

- **Independence in the appeal process at the local level may have been compromised due to local officials involved in the process who may not have been impartial and whose operations are funded with the same property tax revenue at stake in the appeal process.** Additionally, enhanced uniformity in the way VABs document compliance with appeal process requirements, and the establishment of general information on Florida's property tax system for use Statewide by all VABs in complying with DOR Rule requiring the VABs to discuss general information on Florida's property tax system and how taxpayers can participate,[74] could promote fairness and consistency in the appeal process.
- Noncompliance with DOR rules for one VAB that gave the appearance of bias and undue influence in the appeal process in at least one instance.
- Special magistrates served on multiple VABs during the same tax year, which appears to be inconsistent with the State Constitution dual office holding prohibition.[75]

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[69] *See* s. 200.069, F.S.
[70] In addition, the property appraiser's office may use a substantially similar form if that office pays related expenses and obtains prior written permission from the DOR's executive director.
[71] This information was added to the required information by Ch. 2009-165, Laws of Fla.
[72] "Constitutional officers" means sheriff, property appraiser, clerk of court and county comptroller, tax collector, and supervisor of elections.
[73] STATE OF FLORIDA AUDITOR GENERAL, COUNTY VALUE ADJUSTMENT BOARDS AND DEPARTMENT OF REVENUE'S OVERSIGHT THEREOF: PERFORMANCE AUDIT (May 2014).
[74] Rule 12D-9.013(1)(i), F.A.C.
[75] *See also* 2012-17 Fla. Op. Att'y Gen. (May 17, 2012) (citing FLA. CONST. ART. II, s. 5(a)).

- **Selection of special magistrates may not have been based solely on experience and qualifications,** contrary to law and DOR rules, and verification of such information was not always documented.
- Special magistrate training was not verified by the DOR prior to issuing statements acknowledging receipt of training, and one VAB did not document special magistrate training in its records.
- Verification of compliance with law and DOR rules relating to VAB prehearing requirements was not always documented.
- VAB organizational meetings were not always held in accordance with the requirements prescribed by DOR rules.
- Prescribed procedures for commencing VAB hearings were not always followed by the VABs, contrary to DOR rules.
- Some VAB's records did not evidence consideration of the property appraiser's presumption of correctness issue, and one VAB did not consider this issue first at hearings, contrary to DOR rules.
- **VAB written decisions were not always sufficiently detailed contrary to law and DOR rules.**[76]
- Public notice of VAB organizational meetings and hearings were not always in accordance with DOR rules.
- VABs did not always allocate expenses between the board of county commissioners and the school board, contrary to law.
- VAB citizen members did not always meet the specific requirements provided in law and DOR rules to serve on the VABs, and verification of such requirements was not always documented.
- **Documentation of taxpayer representation for a hearing was not evident for some petitions, contrary to DOR rules.**

## School District Funding

### Sources of Funds

Florida school districts are funded by support at the federal, state, and local government level. Federal funds are typically used to supplement state and local funds authorized by the Florida Legislature to support various education programs.

Funds for state support to school districts are provided primarily by legislative appropriations. The major portion of state support is distributed through the Florida Education Finance Program (FEFP). The FEFP is the primary mechanism for funding the operating costs of Florida school districts.

Local revenue for school support is derived almost entirely from property taxes levied by Florida's 67 counties. Each school district participating in the state allocation of funds for the operation of schools must levy a millage representing its required local effort (RLE) from property taxes.

### Required Local Effort

Each school district's RLE is determined by a statutory procedure that is initiated by certification of the most recent estimated property tax values[77] of each district by the DOR to the Commissioner of Education (Commissioner) no later than two working days prior to July 19 of the assessment year.[78] No later than July 19 of the assessment year, the Commissioner uses the estimated property tax values to calculate the RLE millage rate that would generate enough property taxes to cover the RLE for that year.[79] For example, the estimated 2013-2014 school taxable value would be certified by the DOR to the Commissioner in July 2013.

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[76] *See* rule 12D-9.030, F.A.C. (relating to recommended decisions) and rule 12D-9.032, F.A.C. (relating to final decisions).
[77] The ad valorem tax process involves numerous steps, and the value of property may change depending on the outcome of informal appeals to the property appraiser, value adjustment board determinations, or circuit court decisions.
[78] s. 1011.62(4)(a)1.a., F.S.
[79] s. 1011.62(4)(a)1.a., F.S.

If a district fails to collect the full amount of its RLE in a prior year because of changes in property values,[80] the Commissioner is authorized to calculate an additional millage rate necessary to generate the amount of uncollected funds.[81] The additional millage rate is referred to as the prior period funding adjustment millage (PPFAM). The PPFAM is typically calculated in July of the year following the assessment. Continuing the above example, the recalculated 2013-2014 school taxable value (after any changes) would be certified by the DOR to the Commissioner in July 2014.

Changes in property values may occur as a result of litigation or VAB petitions attacking the assessed value or inclusion of certain property on the assessment roll.[82] However, until the final adjudication of any litigation or VAB petitions, the assessed value of the contested property is excluded from the computation of a school district's RLE.[83] If final adjudication does not occur prior to the PPFAM calculation in July of the year after assessment, the school district cannot collect the unrealized school funds.

In 2014, the Legislature passed a temporary solution for school districts where the local VAB process delays completion of the certification of the final tax roll for longer than one year.[84] For the 2014-15 fiscal year only, such districts can "speed-up" the levy of 2014 unrealized RLE funds by levying a PPFAM equal to 75 percent of the district's most recent unrealized RLE for which a PPFAM was determined.[85]

B. SECTION DIRECTORY:

**Section 1** amends s. 129.03, F.S., to require the board of county commissioners to specify in the budget summary the proportionate amount of the proposed county tax millage and the proportionate amount of gross ad valorem taxes attributable to county constitutional officers.

**Section 2** amends s. 192.0105, F.S., to conform to changes elsewhere in the PCS that list the persons that can represent a taxpayer before the VAB.

**Section 3** amends s. 193.122(1), F.S., to state that, notwithstanding extension of the roll pursuant to s. 197.323, the value adjustment board must complete all hearings required by s. 194.032, F.S., and certify the assessment roll to the property appraiser by June 1 following the tax year in which the assessments were made.

**Section 4** amends s. 194.011, F.S., to revises provisions related to VAB petitions and VAB evidence exchange procedures.

**Section 5** amends s. 194.014, F.S., to change the interest rate for disputed property tax assessments from 12 percent to the bank prime loan rate established by the federal reserve.

**Section 6** amends 194.015, F.S., to revise the composition of the VAB and authorize county and school board audits of the VAB. Board members can get continuing education credits for their service.

**Section 7** amends s. 194.032, F.S., to revise provisions related to evidence exchange, rehearings, and the VABs timeframe for finishing hearings and certifying the assessment roll.

**Section 8** amends s. 194.034, F.S., to restrict the persons who may represent a person before the VAB and to elaborate on what is required in the VAB's findings of fact and conclusions of law.

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[80] s. 1011.62(4)(c), F.S.
[81] s. 1011.62(4)(e), F.S.
[82] s. 1011.62(4)(c)1., F.S.
[83] s. 1011.62(4)(c)2., (d), F.S.
[84] Ch. 2014-53, Laws of Fla.
[85] s. 1011.62(4)(e)1.c., F.S.

**Section 9** amends s. 194.035, F.S., to specify that value reductions given by special magistrates cannot be considered in the hiring of special magistrates.

**Section 10** creates s. 194.038, F.S., to provide for DOR review of VAB proceedings for counties that receive 10,000 or more petitions.

**Section 11** amends s. 195.002, F.S., to include in DOR's responsibilities administrative review of VABs.

**Section 12** amends s. 196.141, F.S., to allow the property appraiser to contract for services to examine or audit tax exemptions claimed on assessment rolls.

**Section 13** amends s. 196.161, F.S., to authorize homestead fraud perpetrators to enter into a payment plan.

**Section 14** amends s. 200.069, F.S., requires county constitutional officers' budgets to be placed on the TRIM notice.

**Section 15** amends s. 213.30, F.S., to provide authorize the collection of money pursuant to s. 196.141, F.S.

**Section 16** provides a finding of important state interest.

**Section 17** provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOR will be required to provide checklist forms for written decisions by the VAB.

   The PCS states that DOR may conduct a review of the VAB process for counties where more than 10,000 petitions are filed. If DOR conducts this review, it anticipates a cost of $860,039 in fiscal year 2015-2016.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference evaluated the impacts of some of the provisions included in the PCS. Section 12 of the PCS, which authorizes entities that contract with the property appraiser to be paid from penalties, is estimated to have an indeterminate, recurring revenue impact of unknown magnitude and direction. Sections 3 and 7 of the PCS, which require VABs to complete their hearings and certify the assessment roll by June 1, are expected to have a positive indeterminate impact to local government revenues in fiscal year 2016-2017 and a negative indeterminate impact to local government revenues in fiscal year 2017-2018 due to a speed-up in the process. Section 5 of the PCS reduces the interest rates on ad valorem taxes contested in a VAB proceeding. This section is expected to have a positive, recurring impact on local governments of $8.7 million in fiscal year 2015-2016.

2. Expenditures:

The PCS requires local governments to take the following actions, which are likely to require expenditure of local funds:

- Sections 1 and 14 require local governments to break out the budgets of county constitutional officers in the budget summary and the TRIM notice.
- Sections 3 and 7 require VABs to complete hearings and certify the tax roll to the property appraiser prior to June 1 of the year following the assessment year.
- Section 4 requires the property appraiser to provide more information as part of the evidence exchange.
- Section 6 authorizes VAB members to receive per diem expenses without requiring the school board and the board of county commissioners to allow such compensation.
- Section 8 requires that written decisions by the VAB contain checklist forms provided by the department.
- Section 10 authorizes DOR to do a review of the VAB process in counties where 10,000 or more petitions are filed. If DOR conducts such a review, VABs will be required to send their hearing transcripts and evidence to DOR.

The provision in section 7 that requires "good cause" to reschedule a hearing may reduce local government expenditures by shortening the VAB process.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers that successfully dispute ad valorem assessments are expected to receive less revenue as a result of interest paid on disputed tax amounts.

D. FISCAL COMMENTS:

None

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(a), of the Florida Constitution may apply because this PCS may require local governments to take action that requires the expenditure of money. If the PCS does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature. The PCS does contain a statement of important state interest.

B. RULE-MAKING AUTHORITY:

The PCS provides the DOR with rulemaking authority to administer the VAB review process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to ad valorem taxation; amending s. 129.03, F.S.; providing information required on the summary statement of boards of county commissioners; amending s. 192.0105, F.S.; conforming provisions to changes made by the act; amending s. 193.122, F.S.; establishing deadlines for value adjustment boards to complete final assessment roll certifications; amending s. 194.011, F.S.; revising the procedures for filing petitions to the value adjustment board; revising the procedures during a value adjustment board hearing; revising the documentation required to be on an evidence list during a value adjustment board hearing; amending s. 194.014, F.S.; revising the interest rate upon which certain unpaid and overpaid ad valorem taxes accrue; amending s. 194.015, F.S.; revising the membership qualifications of value adjustment board members; authorizing the district school board and district county commission to audit certain expenses of the value adjustment board; amending s. 194.032, F.S.; requiring property appraisers to provide a property record card to a petitioner upon receipt of a petition or notify the petitioner it is available online; requiring a petitioner to show good cause to reschedule a hearing related to an assessment; requiring county

commissioners to address issues concerning assessment rolls by a time certain; amending s. 194.034, F.S.; revising the entities that may represent a taxpayer before the value adjustment board; revising the information required to be in a written decision of a value adjustment board; amending s. 194.035, F.S.; requiring that no consideration is given in the appointment of special magistrates to any assessment reductions recommended by the special magistrate; creating s. 194.038, F.S.; requiring counties, under certain circumstances, to notify the Department of Revenue of petitions contesting tax assessments; requiring the department to conduct reviews of value adjustment board proceedings under certain circumstances; providing review procedures; requiring the department to publish review results; requiring notification to the Legislature of publication of review data and findings; requiring the department to find a value adjustment board to be in violation of the law if certain criteria are met; authorizing a property appraiser to file suit under certain circumstances; requiring the department to adopt rules; amending s. 195.002, F.S.; providing that the department has administrative review powers over value adjustment boards; amending s. 196.141, F.S.; authorizing property appraisers to contract for the

examination and audit of homestead exemption claims; specifying payment for such contracted services and authorizing the property appraiser to retain certain interest earnings; amending s. 196.161, F.S.; authorizing taxpayers who improperly receive a homestead exemption to enter into payment plans for the payment of taxes, interest, and penalties due; authorizing tax collectors to impose service charges to offset the processing costs of payment plans; specifying that certain unpaid tax liens be included in the next assessment roll; amending s. 200.069, F.S., providing information required on the notice of proposed property taxes and non-ad valorem assessments; amending s. 213.30, F.S.; deleting a provision that restricted governmental entities from contracting for certain services regarding the collection of unpaid taxes; providing a statement of important state interest; providing an effective date.

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

Section 1. Effective October 1, 2015, paragraph (b) of subsection (3) of section 129.03, Florida Statutes, is amended to read:

129.03 Preparation and adoption of budget.—

(3) The county budget officer, after tentatively

ascertaining the proposed fiscal policies of the board for the next fiscal year, shall prepare and present to the board a tentative budget for the next fiscal year for each of the funds provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

(b) Upon receipt of the tentative budgets and completion of any revisions, the board shall prepare a statement summarizing all of the adopted tentative budgets. The summary statement must show, for each budget and the total of all budgets, the proposed tax millages, balances, reserves, and the total of each major classification of receipts and expenditures, classified according to the uniform classification of accounts adopted by the appropriate state agency. The board shall specify the proportionate amount of the proposed county tax millage and the proportionate amount of gross ad valorem taxes attributable to the budgets of the sheriff, the property appraiser, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections, respectively. The board shall cause this summary statement to be advertised one time in a newspaper of general circulation published in the county, or by posting at the courthouse door if there is no such newspaper, and the advertisement must appear adjacent to the advertisement required pursuant to s. 200.065.

Section 2. Paragraph (f) of subsection (2) of section

192.0105, Florida Statutes, is amended to read:

192.0105 Taxpayer rights.—There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements that summarize the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue, and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of this state are provided in s. 213.015. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the departmental rules include:

(2) THE RIGHT TO DUE PROCESS.—

(f) The right, in value adjustment board proceedings, to have all evidence presented and considered at a public hearing at the scheduled time, to be represented by a person specified in s. 194.034(1)(a) ~~an attorney or agent~~, to have witnesses sworn and cross-examined, and to examine property appraisers or

evaluators employed by the board who present testimony (see ss. 194.034(1)(a) and (c) and (4), and 194.035(2)).

Section 3. Subsection (1) of section 193.122, Florida Statutes, is amended to read:

193.122 Certificates of value adjustment board and property appraiser; extensions on the assessment rolls.—

(1) The value adjustment board shall certify each assessment roll upon order of the board of county commissioners pursuant to s. 197.323, if applicable, and again after all hearings required by s. 194.032 have been held. These certificates shall be attached to each roll as required by the Department of Revenue. Notwithstanding extension of the roll pursuant to s. 197.323, the value adjustment board must complete all hearings required by s. 194.032 and certify the assessment roll to the property appraiser by June 1 following the tax year in which the assessments were made.

Section 4. Subsection (3) and paragraph (b) of subsection (4) of section 194.011, Florida Statutes, are amended to read:

194.011 Assessment notice; objections to assessments.—

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. A petition to the value adjustment board must be signed by the taxpayer or be accompanied by the taxpayer's written authorization for representation by a person

specified in s. 194.034(1)(a). A written authorization is valid for 1 tax year, and a new written authorization by the taxpayer shall be required for each subsequent tax year. A petition shall also describe the property by parcel number and shall be filed as follows:

(a) The property appraiser shall have available and shall distribute forms prescribed by the Department of Revenue on which the petition shall be made. Such petition shall be sworn to by the petitioner.

(b) The completed petition shall be filed with the clerk of the value adjustment board of the county, who shall acknowledge receipt thereof and promptly furnish a copy thereof to the property appraiser.

(c) The petition shall state the approximate time anticipated by the taxpayer to present and argue his or her petition before the board.

(d) The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser as provided in subsection (1). With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property

appraiser under s. 193.461, s. 193.503, s. 193.625, s. 196.173, or s. 196.193 or notice by the tax collector under s. 197.2425.

(e) A condominium association, cooperative association, or any homeowners' association as defined in s. 723.075, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The condominium association, cooperative association, or homeowners' association as defined in s. 723.075 shall provide the unit owners with notice of its intent to petition the value adjustment board and shall provide at least 20 days for a unit owner to elect, in writing, that his or her unit not be included in the petition.

(f) An owner of contiguous, undeveloped parcels may file with the value adjustment board a single joint petition if the property appraiser determines such parcels are substantially similar in nature.

(g) The individual, agent, or legal entity that signs the petition becomes an agent of the taxpayer for the purpose of serving process to obtain personal jurisdiction over the taxpayer for the entire value adjustment board proceedings, including any appeals of a board decision by the property appraiser pursuant to s. 194.036.

(4)

(b) No later than 7 days before the hearing, if the petitioner has provided the information required under paragraph (a), and if requested in writing by the petitioner, the property appraiser shall provide to the petitioner a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses. The evidence list must contain the property record card for the property that is the subject of the petition as well as the property record card for any comparable property listed as evidence. If the petitioner's property record card is available online from the property appraiser, the property appraiser must notify the petitioner that the property record card is available online, but is not required to provide the property card. If the petition challenges the assessed value of the property, the evidence list must also include a copy of the form signed by the property appraiser documenting adjustments made to the recorded selling price or fair market value of the property pursuant to those factors described in s. 193.011(8) ~~if provided by the clerk. Failure of the property appraiser to timely comply with the requirements of this paragraph shall result in a rescheduling of the hearing.~~ The property appraiser must redact any confidential information contained on any property record card before it is submitted to the petitioner. Failure by either party to timely comply with the requirements of this subsection shall result in the exclusion from consideration by the value

adjustment board of any evidence that was requested in writing and not timely provided.

(c) Provisions related to evidence exchange contained in this section shall only apply to value adjustment board proceedings after the petitioner has served notice of intention to challenge the property appraiser's assessment of value or classification of property pursuant to s. 194.011.

(d) Evidence that is confidential under current law shall remain confidential until it is submitted to the value adjustment board for consideration and admission into the record, unless used for impeachment purposes.

Section 5. Subsection (2) is amended, subsection (3) is added, and all other subsections of section 194.014, Florida Statutes, are renumbered to read:

194.014 Partial payment of ad valorem taxes; proceedings before value adjustment board.—

(2) If the value adjustment board determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at an annual percentage rate equal to the bank prime loan rate on July 1, or the first business day thereafter, of the tax ~~the rate of 12 percent per~~ year, beginning on ~~from~~ the date the taxes became delinquent pursuant to s. 197.333 until the unpaid amount is paid. If the value adjustment board determines that a refund is due, the overpaid amount accrues interest at an annual percentage rate equal to the bank prime loan rate on July 1, or the first

business day thereafter, of the tax ~~the rate of 12 percent per~~ year, beginning on ~~from~~ the date the taxes became delinquent pursuant to s. 197.333 until a refund is paid. Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice issued pursuant to s. 197.322. For purposes of this subsection, the bank prime loan rate means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System.

Section 6. Effective July 1, 2016, section 194.015, Florida Statutes, is amended to read:

194.015 Value adjustment board.—There is hereby created a value adjustment board for each county, which shall consist of five (5) citizen members appointed by the legislative delegation of state representatives and state senators that represent the county. One member must be an owner of homestead property in the county, one member must own commercial property in the county and one member must be a licensed appraiser who is a resident of the county. If no licensed appraiser is available, the legislative delegation may appoint another owner of homestead or commercial property who is a resident of the county. The final two members of the value adjustment board must be residents of the county. Any three members shall constitute a quorum of the board and no meeting shall take place unless a quorum is present. The Department of Business and Professional Regulation must provide continuing education credits to

appraiser members of value adjustment boards. ~~two members of the governing body of the county as elected from the membership of the board of said governing body, one of whom shall be elected chairperson, and one member of the school board as elected from the membership of the school board, and two citizen members, one of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by the school board and must own a business occupying commercial space located within the school district~~. A citizen member may not be a member or an employee of any taxing authority, and may not be a person who represents property owners in any administrative or judicial review of property taxes. ~~The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons. Any three members shall constitute a quorum of the board, except that each quorum must include at least one member of said governing board, at least one member of the school board, and at least one citizen member and no meeting of the board shall take place unless a quorum is present.~~ Members of the board may receive such per diem compensation as is allowed by law for state employees ~~if both bodies elect to allow such compensation~~. The clerk of the governing body of the county shall be the clerk of the value adjustment board. The board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. The private

counsel may not represent ~~the~~ any property appraiser, ~~the~~ any tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. No meeting of the board shall take place unless counsel to the board is present. Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission. The district school board and district county commission may audit the expenses related to the value adjustment board process.

Section 7. Paragraph (a) of subsection (2) of section 194.032, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

194.032 Hearing purposes; timetable.—

(2)(a) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance at least 25 calendar days before the day of the scheduled appearance. The notice must indicate whether the petition has been scheduled to be heard at a particular time or during a block of time. If the petition has been scheduled to be heard within a block of time, the beginning and ending of that block of time must be indicated on the notice; however, as provided in paragraph (b), a petitioner may not be required to wait for more than a reasonable time, not to exceed 2 hours, after the beginning of the block of time. ~~If the petitioner checked the~~

~~appropriate box on the petition form to request a copy of the property record card containing relevant information used in computing the current assessment,~~ T~~t~~he property appraiser must provide a ~~the~~ copy of the property record card containing relevant information used in computing the current assessment, with any confidential information redacted, to the petitioner upon receipt of the petition from the clerk regardless of whether the petitioner initiates evidence exchange, unless the property record card is available online from the property appraiser, in which case the property appraiser must notify the petitioner that the property record card is available online. Upon receipt of the notice, the petitioner, for good cause, may reschedule the hearing a single time by submitting to the clerk a written request to reschedule, at least 5 calendar days before the day of the originally scheduled hearing.

(4) The board must hear all petitions, complaints, appeals, and disputes and must submit the certified assessment roll as required under s. 193.122 to the property appraiser each year by June 1 of the tax year following the assessment date.

Section 8. Paragraph (a) of subsection (1) and subsection (2) of section 194.034, Florida Statutes, are amended to read:

194.034 Hearing procedures; rules.—

(1)(a) Petitioners before the board may be represented by a corporate representative of the taxpayer, an attorney, an individual with power of attorney to act on the behalf of the taxpayer, a licensed property appraiser, a licensed realtor, a

certified public accountant, or a certified tax specialist retained by the taxpayer ~~an attorney or agent~~ and may present testimony and other evidence. The property appraiser or his or her authorized representatives may be represented by an attorney in defending the property appraiser's assessment or opposing an exemption and may present testimony and other evidence. The property appraiser, each petitioner, and all witnesses shall be required, upon the request of either party, to testify under oath as administered by the chairperson of the board. Hearings shall be conducted in the manner prescribed by rules of the department, which rules shall include the right of cross-examination of any witness.

(2) In each case, except if the complaint is withdrawn by the petitioner or if the complaint is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days after the last day the board is in session under s. 194.032. The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. Findings of fact must be based on admitted evidence or a lack thereof. Conclusions of law must be logically connected to the findings of fact and must be stated in statutory terms. Written decisions must also include a series of checklist forms, as provided by the department, identifying each statutory criterion applicable to the assessment determination.

If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of a decision, shall, on a form provided by the Department of Revenue, notify each taxpayer and the property appraiser of the decision of the board. This notification shall be by first-class mail or by electronic means if selected by the taxpayer on the originally filed petition. If requested by the Department of Revenue, the clerk shall provide to the department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

Section 9. Subsection (1) of section 194.035, Florida Statutes, is amended to read:

194.035 Special magistrates; property evaluators.—

(1) In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special

417 magistrates exist. The Department of Revenue shall provide a
418 list of qualified special magistrates to any county with a
419 population of 75,000 or less. Subject to appropriation, the
420 department shall reimburse counties with a population of 75,000
421 or less for payments made to special magistrates appointed for
422 the purpose of taking testimony and making recommendations to
423 the value adjustment board pursuant to this section. The
424 department shall establish a reasonable range for payments per
425 case to special magistrates based on such payments in other
426 counties. Requests for reimbursement of payments outside this
427 range shall be justified by the county. If the total of all
428 requests for reimbursement in any year exceeds the amount
429 available pursuant to this section, payments to all counties
430 shall be prorated accordingly. If a county having a population
431 less than 75,000 does not appoint a special magistrate to hear
432 each petition, the person or persons designated to hear
433 petitions before the value adjustment board or the attorney
434 appointed to advise the value adjustment board shall attend the
435 training provided pursuant to subsection (3), regardless of
436 whether the person would otherwise be required to attend, but
437 shall not be required to pay the tuition fee specified in
438 subsection (3). A special magistrate appointed to hear issues of
439 exemptions and classifications shall be a member of The Florida
440 Bar with no less than 5 years' experience in the area of ad
441 valorem taxation. A special magistrate appointed to hear issues
442 regarding the valuation of real estate shall be a state

certified real estate appraiser with not less than 5 years' experience in real property valuation. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation. A special magistrate need not be a resident of the county in which he or she serves. A special magistrate may not represent a person before the board in any tax year during which he or she has served that board as a special magistrate. Before appointing a special magistrate, a value adjustment board shall verify the special magistrate's qualifications. The value adjustment board shall ensure that the selection of special magistrates is based solely upon the experience and qualifications of the special magistrate and is not influenced by the property appraiser. The special magistrate shall accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, shall include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board. In the appointment of special magistrates and in the scheduling of special magistrates for hearings, the board, board attorney, and board clerk shall ensure that no consideration whatsoever is given to the dollar

amount or percentage amount of any assessment reductions recommended by any special magistrate either in the current year or in any prior year.

Section 9. Section 194.038, Florida Statutes, is created to read:

194.038 Review of value adjustment board proceedings.—

(1) A county that receives 10,000 or more petitions objecting to assessments under s. 194.011 in any one tax year, must notify the department. After notification, the department may conduct a review of the value adjustment board proceedings as follows:

(a) The department shall determine whether the values derived by the board comply with s. 193.011 and professionally accepted appraisal practices. A verbatim copy of the proceedings must be submitted to the department in the manner and form prescribed by the department following the final tax roll certification pursuant to s. 193.122.

(b) The department shall statistically sample petitions heard by the value adjustment board requesting a change in the assessment for each classification of property set forth in s. 194.037(2).

(c) The department shall adhere to all the standards to which the value adjustment boards are required to adhere.

(d) The department and the value adjustment board shall cooperate in conducting these reviews, and each shall make available to the other all matters and records bearing on the

reviews. The value adjustment board must provide the data requested by the department, including documentary evidence presented during the proceedings and written decisions rendered.

(2) The department shall complete its review no later than 6 months after the value adjustment board completes all the hearings for the fiscal year in which the department received notification pursuant to subsection (1). A hearing will be deemed complete pursuant to this section if the value adjustment board has adopted a final determination even if the decision is appealed. The department shall publish the results of each review on the department's website and shall include the following with regard to every parcel for which a petition was filed:

(a) The name of the owner.

(b) The address of the property.

(c) The identification number of the property as used by the value adjustment board clerk, such as the parcel identification number, strap number, alternate key number, or other number.

(d) The name of the special magistrate who heard the petition, if applicable.

(e) The initial just value derived by the property appraiser.

(f) Any change made by the value adjustment board that increased or decreased the just value of the parcel.

(3) Upon publication of the data and findings, the department shall notify the committees of the Senate and of the House of Representatives having oversight responsibility for taxation, the appropriate value adjustment board, the property appraiser, and the county commission chair or corresponding official under a consolidated charter. Copies of the data and findings shall be provided upon request.

(4) The department shall find the value adjustment board to be in continuous violation of the intent of the law if the department, in its review, determines that less than 90 percent of the petitions randomly sampled comply with the criteria in s. 193.011 and professionally accepted appraisal practices. A property appraiser may file suit in circuit court against the value adjustment board pursuant to s. 194.036(1)(c).

(5) The department shall adopt rules to administer this section.

Section 10. Subsection (1) of section 195.002, Florida Statutes, is amended to read:

195.002 Supervision by Department of Revenue.—

(1) The Department of Revenue shall have general supervision of:

(a) T~~t~~he assessment and valuation of property so that all property will be placed on the tax rolls and shall be valued according to its just valuation, as required by the constitution.

(b) Administrative review of value adjustment boards.

(c) ~~It shall also have supervision over~~ T~~t~~ax collection and all other aspects of the administration of such taxes.

The supervision of the department shall consist primarily of aiding and assisting county officers and value adjustment boards in the assessing, reviewing, and collection functions, with particular emphasis on the more technical aspects. In this regard, the department shall conduct schools to upgrade assessment skills of both state and local assessment personnel.

Section 11. Section 196.141, Florida Statutes, is amended to read:

196.141 Homestead exemptions; duty of property appraiser.—

(1) The property appraiser shall examine each claim for exemption filed with or referred to him or her and shall allow the exemption ~~same~~, if found to be in accordance with law, by marking the exemption ~~same~~ approved and by making the proper deductions on the assessment rolls ~~tax books~~.

(2) The property appraiser may contract for services to examine or audit homestead tax exemptions claimed on assessment rolls. Agreements for such contracted services must provide that compensation will consist solely of the penalties imposed pursuant to this chapter and collected on the assessments resulting from the examination or audit and the removal of homestead exemptions from previous and current year tax rolls. A property appraiser contracting for such services is entitled to the interest imposed pursuant to this chapter and collected on

the taxes owed on previous and current years' assessment rolls. After distributing the compensation for such contracted services and the interest that the property appraiser retains, the tax collector shall distribute any back taxes collected under chapter 197.

Section 12. Paragraph (b) of subsection (1) and subsection (2) of section 196.161, Florida Statutes, are amended to read:

196.161 Homestead exemptions; lien imposed on property of person claiming exemption although not a permanent resident.—

(1)

(b) In addition, upon determination by the property appraiser that for any year or years within the prior 10 years a person who was not entitled to a homestead exemption was granted a homestead exemption from ad valorem taxes, ~~it shall be the duty of~~ the property appraiser making such determination shall ~~to~~ serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property shall be identified in the notice of tax lien. Such property which is situated in this state shall be subject to the taxes exempted thereby, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, if a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest. Before ~~any~~ such lien may be filed, the

owner so notified must be given 30 days to pay the taxes, penalties, and interest or to enter into a written monthly payment plan with the tax collector. The tax lien shall be filed for the taxes, penalties, and interest that remain unpaid 30 days after notice. Such tax lien shall remain on the property until the taxes, penalties, and interest are paid in full.

(2) Taxes, penalties, and interest assessed pursuant to this section that are not paid in full, or where the owner fails to remain in compliance with a written payment plan entered into pursuant to paragraph (1)(b) shall be included in the next tax notice and shall be collected in the same manner as, and in addition to, the current ad valorem taxes under chapter 197, including the annual tax certificate sale when appropriate. ~~The collection of the taxes provided in this section shall be in the same manner as existing ad valorem taxes, and the above procedure of recapturing such taxes shall be supplemental to any existing provision under the laws of this state.~~

Section 13. Effective October 1, 2015, subsection (3) and paragraph (a) of subsection (4) of section 200.069, Florida Statutes, are amended to read:

200.069 Notice of proposed property taxes and non-ad valorem assessments.—Pursuant to s. 200.065(2)(b), the property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction and at the expense of the county, shall prepare and deliver by first-class mail to each taxpayer to be

listed on the current year's assessment roll a notice of proposed property taxes, which notice shall contain the elements and use the format provided in the following form. Notwithstanding the provisions of s. 195.022, no county officer shall use a form other than that provided herein. The Department of Revenue may adjust the spacing and placement on the form of the elements listed in this section as it considers necessary based on changes in conditions necessitated by various taxing authorities. If the elements are in the order listed, the placement of the listed columns may be varied at the discretion and expense of the property appraiser, and the property appraiser may use printing technology and devices to complete the form, the spacing, and the placement of the information in the columns. A county officer may use a form other than that provided by the department for purposes of this part, but only if his or her office pays the related expenses and he or she obtains prior written permission from the executive director of the department; however, a county officer may not use a form the substantive content of which is at variance with the form prescribed by the department. The county officer may continue to use such an approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director.

(3) There shall be under each column heading an entry for the county, with subheading entries for the proportionate amount of gross ad valorem tax or millage attributable to the budget of

the sheriff, the property appraiser, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections; the school district levy required pursuant to s. 1011.60(6); other operating school levies; the municipality or municipal service taxing unit or units in which the parcel lies, if any; the water management district levying pursuant to s. 373.503; the independent special districts in which the parcel lies, if any; and for all voted levies for debt service applicable to the parcel, if any.

(4) For each entry listed in subsection (3), there shall appear on the notice the following:

(a) In the first column, a brief, commonly used name for the taxing authority or its governing body. The heading for the county must have subheadings for the sheriff, the property appraiser, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections The entry in the first column for the levy required pursuant to s. 1011.60(6) shall be "By State Law." The entry for other operating school district levies shall be "By Local Board." Both school levy entries shall be indented and preceded by the notation "Public Schools:". For each voted levy for debt service, the entry shall be "Voter Approved Debt Payments."

Section 14. Subsection (3) of section 213.30, Florida Statutes, is amended to read:

213.30 Compensation for information relating to a violation of the tax laws.—

(3) Notwithstanding any other provision of law, this section and section 196.141 are ~~is~~ the sole means by which any person may seek or obtain any moneys as the result of, in relation to, or founded upon the failure by another person to comply with the tax laws of this state. A person's use of any other law to seek or obtain moneys for such failure is in derogation of this section and conflicts with the state's duty to administer the tax laws.

Section 15. The Legislature finds that this act fulfills an important state interest.

Section 16. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2015.

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: Finance & Tax Committee

Representative Berman offered the following:

**Amendment (with title amendment)**

Remove lines 555-614

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

Remove lines 51-63 and insert:

adjustment boards; amending s. 200.069,

# The Petition Process (Detail)

- VAB = Value Adjustment Board
- PA = Property Appraiser
- TP = Taxpayer (Owner or Owner's Agent)