Finance and Tax Committee

Tuesday, December 1, 2015

12:00 p.m. – 3:00 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

December 1, 2015
12:00 p.m. – 3:00 p.m.
Morris Hall

I. Call to Order/Roll Call

II. Chair's Opening Remarks

III. ***Consideration on the following bills:***
HJR 193 Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment by Rodrigues, R., Berman
HB 195 Renewable Energy Source Devices by Rodrigues, R., Berman
HB 347 Utility Projects by Sprowls
HB 499 Ad Valorem Taxation by Avila

IV. Discussion of Governor Scott's Tax Reduction Agenda

V. Discussion of Brownfields Clean-up Tax Incentives

VI. Discussion of Data Center Recruitment Opportunities

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

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

SUMMARY ANALYSIS

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

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

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

Note this provision only applies to residential property.

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

The Revenue Estimating Conference agreed to an estimate of negative indeterminate or zero for HJR 193. If the proposed amendment does not pass, there is no impact; however, if it passes there will be an impact associated with the provisions related to tangible personal property which need no further implementing language. Assuming the legislature also passes HB 195 which includes real property, the combined school and non-school impact beginning in Fiscal Year 2017-18 would be -$17.2 million, growing to -$21.2 million in 2020-21, holding the 2014 statewide average property tax rates constant.

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxes in Florida

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

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

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

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

---

[1] Fla. Const. art. VII, s. 1(a).

[2] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

[3] Fla. Const. art. VII, s. 4.

[4] Fla. Const. art. VII, ss. 3, 4, and 6.

[5] s. 196.031, F.S.

[6] s. 193.011, F.S. *See, also, Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).

[7] The constitutional provisions in art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

[8] Fla. Const. art. VII, s. 4(i).

[9] s. 193.062, F.S.; See also FLORIDA DEPARTMENT OF REVENUE, TANGIBLE PERSONAL PROPERTY, available at http://dor.myflorida.com/dor/property/tpp/ (last visited Nov. 13, 2015).

[10] Fla. Const., article VII, s. 3.

[11] s. 196.183(1), F.S.

[12] s. 196.183(3), F.S.

History of Renewable Energy Property Tax Exemptions

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

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

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

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

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

In December 2000, the last of these exemptions expired.

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

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

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

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

The 2008 constitutional amendment also repealed the constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which

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

the device is installed and operated. This repealed language had provided the constitutional basis for the legislation passed in 1980 and 2008; thereby nullifying the property tax exemption that the Legislature had just passed.

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

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

Effect of Proposed Changes

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

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

The joint resolution also creates section 34 of article XII to provide a schedule of implementation. The amendments and addition to the State Constitution would take effect January 1, 2017.

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See *Fiscal Comments*.

2. Expenditures:

   See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The Revenue Estimating Conference agreed to an estimate of negative indeterminate or zero for HJR 193. If the proposed amendment does not pass, there is no impact; however, if it passes there will be an impact associated with the provisions related to tangible personal property which need no further implementing language. Assuming the legislature also passes HB 195 which includes real property, the combined school and non-school impact beginning in Fiscal Year 2017-18 would be -$17.2 million, growing to -$21.2 million in 2020-21, holding the 2014 statewide average property tax rates constant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

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

   If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state

records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision. Article XI, section 5(e) of the State Constitution, requires 60 percent voter approval for a proposed constitutional amendment to pass.

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

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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

House Joint Resolution

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

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

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

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

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

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

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

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

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

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

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

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

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

property tax shall be exempt from ad valorem taxation.

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

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

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

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

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

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

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

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

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

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

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

(2) No assessment shall exceed just value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) No assessment shall exceed just value.

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

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

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

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

(2) No assessment shall exceed just value.

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

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

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

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

(1) Any change or improvement to residential real property

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

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

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

a. Land used predominantly for commercial fishing purposes.

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

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

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

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

ARTICLE XII

SCHEDULE

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

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

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

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTIONS 3 AND 4

ARTICLE XII, SECTION 34

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

The Revenue Estimating Conference estimates that if HJR 193 should pass, the local government revenue impact of HB 195 beginning in Fiscal Year 2017-18 would be -$17.2 million, growing to -$21.2 million in 2020-21, holding the 2014 statewide average property tax rates constant.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present 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]

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

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

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

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

(3) The location of said property;

(4) The quantity or size of said property;

---

[1] Fla. Const. art. VII, s. 1(a).

[2] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

[3] Fla. Const. art. VII, s. 4.

[4] Fla. Const. art. VII, ss. 3, 4, and 6.

[5] s. 196.031, F.S.

[6] s. 193.011, F.S. *See, also, Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).

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

(6) The condition of said property;

(7) The income from said property; and

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

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

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

History of Renewable Energy Property Tax Exemptions

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

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

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

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

---

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

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

In December 2000, the last of these exemptions expired.

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

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

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

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

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

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

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

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

---

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

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

Effect of Proposed Changes

The bill implements HJR 193, which amends article VII, sections 3 and 4 of the Florida Constitution and creates article XII, section 34 of the Florida Constitution. HJR 193 proposes to exempt the assessed value of a renewable energy source device, or a component thereof, from ad valorem tax on tangible personal property. HJR 193 also proposes to authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component thereof,[18] in determining the assessed value of all real property (not just residential) for the purpose of ad valorem taxation, as of January 1, 2017. The provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

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

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

B. SECTION DIRECTORY:

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

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

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

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

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

---

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

[18] Although this is not defined in the bill or the joint resolution, it may be referring to battery backups for photovoltaic systems.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See *Fiscal Comments.*

2. Expenditures:

   See *Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The Revenue Estimating Conference estimates that if HJR 193 should pass, the local government revenue impact of HB 195 beginning in Fiscal Year 2017-18 would be -$17.2 million, growing to -$21.2 million in 2020-21, holding the 2014 statewide average property tax rates constant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of article VII, section 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing ad valorem tax bases compared to that which would exist under current law. However, an exemption may apply because the fiscal impact may be insignificant.

   Most of the negative revenue impact associated with the passage of HJR 193 and HB 195 is attributable to the requirement in HJR 193 exempting renewable energy source devices, or components thereof, from ad valorem taxation on tangible personal property. This provision, though potentially subject to general law provisions, is required (i.e., not optional on the Legislature's part) and would occur even without passage of HB 195. This contrasts to the provisions regarding the prohibition of adding to real property value based on the installation of a renewable energy source device, or component thereof, which the Legislature is not required to enact. Consequently, HB 195 may implicate the municipal/county mandates provisions of the constitution only to the extent that the non-required provisions of HJR 193 are enacted, thereby greatly reducing the potential negative local revenue impact of the bill.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

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

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

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

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

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

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

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

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

(g) Roof ponds.

(h) Freestanding thermal containers.

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

(j) Windmills and wind turbines.

(k) Wind-driven generators.

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

deposits to generate electricity or mechanical forms of energy.

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

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

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

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

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

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

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

193.155 Homestead assessments.—Homestead property shall be

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

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

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

193.1554 Assessment of nonhomestead residential property.—

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 347 Utility Projects
SPONSOR(S): Sprowls
TIED BILLS: **IDEN./SIM. BILLS:** SB 324

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 or wastewater 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 may not 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 or wastewater utility projects by a municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project. The bill provides an effective date of July 1, 2016.

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 projects.[10] These instruments constitute a lien only against the property and revenue of the utility.

---

[1] s. 153.03(1) and (2), F.S.
[2] s. 153.02(9), F.S.
[3] s. 153.02(10), F.S.
[4] s. 153.02(11), F.S.
[5] FLA. CONST. art. VII, s. 12 (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] s. 153.07, F.S.
[7] s. 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] s. 166.101, F.S., et seq.
[10] ss. 180.06 and 180.08, F.S.

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 s. 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 privileges, benefits, powers, and terms of the statutes relating to counties[21] and municipalities[22] are fully

---

[11] s. 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] s. 218.37, F.S.
[14] s. 218.38, F.S. DBF is authorized only to collect information concerning these bonds; it does not exercise any substantive authority to review or approve these transactions.
[15] s. 163.01(2), F.S.
[16] s. 163.01(5), F.S.
[17] s. 163.01(2), F.S.
[18] s. 163.01(7)(b), F.S.
[19] s. 163.01(7)(d), F.S.
[20] s. 163.01(7)(g), F.S.
[21] s. 125.01, F.S.

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 was created by interlocal agreement for the purpose of acquiring, owning, improving, and operating water and wastewater facilities. FGUA owns and operates over 80 water and wastewater utility systems across 14 counties: Alachua, Citrus, Collier, Hardee, Hillsborough, Lake, Lee, Marion, Orange, Pasco, Polk, Putnam, Seminole, and Volusia counties have systems in 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 to replenish 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 or wastewater 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.
- The intergovernmental utility authority and the local government enter into a servicing agreement under which the local government collects the charge.

---

[22] s. 166.021, F.S.
[23] s. 163.01(7)(g)7., F.S.
[24] http://fgua.com/about-us/history/ and, http://fgua.com/systems/ (last accessed November 12, 2015).
[25] http://fgua.com/about-us/meet-the-board/ (last accessed November 12, 2015).
[26] *Id.*
[27] s. 366.8260, F.S.
[28] Docket No. 060038-EI, Florida Public Service Commission.

- 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 may not file for 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 or wastewater service from a publicly owned utility.

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

- **"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 type 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, agreement, or other financial agreement entered into in connection with utility cost containment bonds.

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

- Any coverage charges.
- The funding of one or more reserve accounts related to utility cost containment bonds.

- **"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. 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 or wastewater 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 or wastewater 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.

- **"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.

---

[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 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.

  The term does not include any interest in a customer's real or personal property.

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 or wastewater 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.

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:

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

- 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 or wastewater service through the publicly owned utility must pay the utility project charge, regardless of whether the customer has an agreement to receive water or wastewater 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 or wastewater 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 the regulatory structure for the water or wastewater industry changes in a manner that allows a customer to choose to take service from an alternative supplier and the customer chooses an alternative supplier, the customer remains liable for payment of the utility project charge if the customer continues to receive any service from the publicly owned utility for the transmission, distribution, delivery, or metering of the underlying water or wastewater service.

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 or wastewater 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 the 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, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. The bill may reduce local government expenditures by reducing financing costs for water or wastewater 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.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to utility projects; providing a short title; defining terms; authorizing certain local governmental 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, which 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 or wastewater service from a publicly owned utility.

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

(e) "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.

(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, which 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 or wastewater services provided by a publicly owned utility. The term does not include communications services, as defined in s. 202.11, Florida Statutes, Internet access services, or information services.

(j) "Publicly owned utility" means a utility providing retail or wholesale water or wastewater services which 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 made under subsection (5).

(o) "Utility project property" means the property right created pursuant to subsection (6). The term does not include

any interest in a customer's real or personal property but includes 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 are 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 or wastewater utility, directly or through its publicly owned utility, references in this section to the local agency or to its publicly owned utility must 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 constitutes 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 must 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 is 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 or wastewater service through the publicly owned utility to pay the utility project charge regardless of whether the customer has an agreement to receive water or wastewater 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 or wastewater 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 the regulatory structure for the water or wastewater industry changes in a manner that authorizes a customer to choose to take service from an alternative supplier and the customer chooses an alternative supplier, the customer remains liable for paying the utility project charge if the customer continues to receive any service from the publicly owned utility for the transmission, distribution, processing, delivery, or metering of the underlying water or wastewater service.

(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 must 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 which 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 or wastewater 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 contracts for 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 are 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 is 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 is 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, either directly or indirectly, reduce or impair the value of utility project property that includes the utility project charge. The amount of revenues arising with respect to the financing costs for the related utility cost containment bonds or the utility project charge is 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, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 347 (2016)

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 Caldwell offered the following:

Amendment

Remove line 228 and insert:

(d) The savings resulting from the issuance of utility cost containment bonds for a utility project must be used to directly benefit the customers of the publicly owned utility through rate reductions or other programs.

(e) If a local agency that has outstanding utility cost

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 499 Ad Valorem Taxation
SPONSOR(S): Avila
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Dugan RD	Langston
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

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

- 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 clarification of the confidentiality of information in the evidence exchange process.
- Requires the VAB submit the certified assessment roll to the property appraiser by June 1 following the tax year in which the assessments were made, or by December 1 if the petitions in that county increased by more than 10 percent from the prior year.
- Restricts the qualifications of those who can represent a taxpayer before the VAB.
- Changes the composition of the VAB by replacing one member from the county commission with a citizen member.
- Specifies that in the appointment/scheduling of special magistrates no consideration is to be given to assessment reductions recommended by any special magistrate.
- Elaborates on what is required in the VAB's findings of fact.

Interest rates for disputed property taxes at the VAB are changed from 12 percent to the prime rate; also, the bill proposes to allow property owners to accrue interest at the prime rate when the property appraiser and the property owner reach a settlement prior to the VAB hearing.

The bill requires the notice of proposed property tax (TRIM notice) to contain a breakout of millage attributable to each of the county constitutional officers, and notify the property owner that he or she may challenge the assessed value of his or her property.

Extends by one year, to fiscal year 2016-17, a process that allows a school district to estimate its prior period district required local effort millage in the event that the final tax roll is not certified on a timely basis.

The Revenue Estimating Conference estimated that various provisions of the bill will have non-recurring impacts on local government revenues of $37.7 million in FY 2016-17, -$37.7 million in FY 2017-18, and $49.8 million in FY 2019-20. The bill is also estimated to have recurring impacts on local government revenues of $5.6 million in FY 2016-17, $4.4 million in FY 2017-18, and $4 million annually thereafter. See the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

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 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 VAB, or to the 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] The ad valorem process involves several steps that generally follow the progression below:

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]

---

[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 VAB;[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] A petition involving the denial of an exemption, a property classification, or a deferral 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 when the VAB hearings must end. As of August 4, 2015, 64 counties completed their VAB appeals for 2014 and reported that information to the DOR.[19] Broward, Jefferson, and Miami-Dade Counties are in the process of completing their 2014 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 assessment year.[24] Generally, taxes become delinquent if not paid in full as of April 1st of the year after

---

[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] ss. 194.036(2) and 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 November 24, 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.
[24] s. 197.333, F.S.

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, 2014	Property Appraiser	Property value is determined as of this date ("assessment date")
July 1, 2014	Property Appraiser	Submit assessment roll to DOR
July 1, 2014	Property Appraiser	Certify taxable value to Tax Collector
Aug. 4, 2014	Tax Collector	Submit proposed millage rates to Property Appraiser
Aug. 24, 2014	Property Appraiser	Mail TRIM notice to Property Owners
Sept. 23, 2014	Property Owner	File petition to VAB
Oct. 8, 2014	VAB	Begin VAB hearings
Nov. 1, 2014	VAB	Submit adjusted assessment roll to Property Appraiser
Nov. 28, 2014	Tax Collector	Mail tax bill to Property Owners
March 31, 2015	Property Owner	Pay tax bill

School District Funding

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. State support for 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.

Each school district's RLE millage rate is determined by a statutory procedure that is initiated by certification of the most recent estimated property tax values[29] 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.[30] 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 amount for that year as set forth in the General Appropriations Act.[31] For example, the estimated 2013-2014 school taxable value was certified by the DOR to the Commissioner in July 2013.

If a district fails to collect the full amount of its RLE in a prior year because of changes in property values,[32] the Commissioner is authorized to calculate an additional millage rate necessary to generate the amount of uncollected funds.[33] 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

[25] s. 197.333, F.S.
[26] s. 197.152, F.S.
[27] *See* s. 196.161, F.S.
[28] The chart is provided 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] 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, VAB determinations, or circuit court decisions.
[30] s. 1011.62(4)(a)1.a., F.S.
[31] s. 1011.62(4)(a)1.a., F.S.
[32] s. 1011.62(4)(c), F.S.
[33] s. 1011.62(4)(e), F.S.

assessment. Continuing the above example, the recalculated 2013-2014 school taxable value (after any changes) is typically certified by the DOR to the Commissioner in July 2014.

Changes in property values may occur as a result of litigation or VAB petitions challenging the assessed value or inclusion of certain property on the assessment roll.[34] However, until final adjudication of any litigation or VAB petition, the assessed value of the contested property is excluded from the computation of a school district's RLE.[35] 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 2015, 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.[36] For the 2015-16 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.[37]

Proposed Changes

The bill 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. The June 1 deadline is applicable beginning with the 2018 tax rolls, and is extended to December 1 in any county where the VAB petitions increase by more than 10 percent from the prior year.

Similar to legislation passed in 2015, the bill provides school districts with a temporary funding solution when the local VAB process delays completion of the certification of the final tax roll for longer than one year. For the 2016-17 fiscal year only, such districts can "speed-up" the levy of 2015 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.

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[38] that hears petitions pertaining to property assessments made by the county property appraiser.[39] 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.[40]

The property owner may initiate a review by filing a petition with the clerk of the VAB.[41] A petitioner before the VAB may be represented by an attorney or agent.[42] DOR rules state, "The agent need not be a licensed individual or person with specific qualifications and may be any person, including a family

[34] s. 1011.62(4)(c)1., F.S.
[35] s. 1011.62(4)(c)2., (d), F.S.
[36] Ch. 2015-222, Laws of Fla.
[37] s. 1011.62(4)(e)1.c., F.S.
[38] s. 194.015, F.S.
[39] 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.
[40] 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.
[41] s. 194.011(3)(b), F.S.
[42] s. 194.034(1)(a), F.S.

member, authorized by the taxpayer to represent them before the VAB."[43] 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.[44]

The clerk of the VAB[45] 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 VAB. 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.[46] 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.[47] 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."[48]

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.[49] 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,"[50] but only if the petitioner checks the appropriate box on the form.[51] 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.[52]

Proposed Changes

The bill amends s. 194.011, F.S., to require that a petition to the VAB must be signed by the taxpayer or be accompanied at the time of filing 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 one tax year, and a new written authorization by the taxpayer shall be required for each subsequent tax year.

The bill 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 and the property record cards for any comparable property listed as evidence, except those cards that are available online (with confidential information redacted).

Under the bill, 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 VAB for consideration and admission into the record.

The bill requires the VAB to hear all petitions, complaints, appeals, and disputes and submit the certified assessment roll to the property appraiser by June 1 following the tax year in which the

---

[43] Rule 12D-9.018(3), F.A.C.
[44] s. 194.014(1), F.S.
[45] The county clerk usually serves as the clerk of the VAB, s. 194.015, F.S.
[46] s. 194.032(2)(a), F.S.
[47] s. 194.011(3)(a), F.S.
[48] Rule 12D-9.018(4), F.A.C.
[49] s. 194.011(4)(a), F.S.
[50] s. 194.011(4)(b), F.S.
[51] s. 194.032(2)(a), F.S.
[52] 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).

assessments were made. The June 1 deadline is extended to December 1 in any county where the VAB petitions increase by more than 10 percent from the prior year.

The bill restricts the persons who can represent the taxpayer to:

- a corporate representative of the taxpayer,
- an attorney who is a member of The Florida Bar,
- an uncompensated person with power of attorney,
- a real estate appraiser licensed under chapter 475,
- a real estate broker licensed under chapter 475, or
- a certified public accountant licensed under chapter 473.

Value Adjustment Board Members and Special Magistrates

Current Situation

In 1895, the Legislature provided exclusive responsibility for hearing taxpayer appeals from assessments in the county commissions.[53] In 1969, the Legislature changed the membership to include school board members.[54] In 2008, the Legislature again changed the membership to include two citizen members.[55] Currently, the VAB consists 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.[56]

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.[57] Before conducting hearings, a board must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.[58] 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.
- 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 bill changes the composition of the VAB by replacing one member from the governing body of the county with one citizen member. The membership shall be comprised as follows:

- One member of the governing body of the county as elected from the membership of the board of said governing body.

---

[53] Ch. 4322, Laws of Fla. (1895).
[54] Ch. 69-140, Laws of Fla.
[55] Ch. 2008-197, Laws of Fla.
[56] s. 194.015, F.S.
[57] s. 194.035, F.S.
[58] s. 194.011(5)(a)2., F.S.

- One member of the school board as elected from the membership of the school board.
- One citizen member, appointed by the governing body of the county, who owns homestead property in the county.
- One citizen member, appointed by the school board of the county, who owns commercial property in the school district.
- One citizen member, appointed by the governing body of the county, who is a licensed real estate appraiser and a resident of the county (if no resident real estate appraiser available, the member can be a homestead or commercial property owner who is a resident).

Any three members shall constitute a quorum of the board, except that each quorum must include one member of the county governing board, one member of the school board, and one citizen member. No meeting shall take place unless a quorum is present. One member shall serve as chairman of the board as elected by the five members. The Department of Business and Professional Regulation must provide continuing education credits to appraiser members of VABs. The bill makes per diem payments for members of the board mandatory.

The bill 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.

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.[59] 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.[60] 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 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.[61] 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.[62] Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice.

Similarly, taxpayers who file a petition in circuit court must pay the tax collector an amount 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.[63]

---

[59] s. 194.034(2), F.S.
[60] s. 194.034(2), F.S.; *see also* rules 12D-9.030, 12D-9.032, and 12D-10.003(3), F.A.C.
[61] s. 194.014(2), F.S.
[62] s. 194.014(2), F.S.
[63] s. 194.192, F.S.

Proposed Changes

The bill elaborates on what is required in the VAB's findings of fact. Specifically, findings of fact must be based on admitted evidence or a lack thereof.

The bill changes the amount of interest that accrues on disputed ad valorem 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. Further, the bill allows for interest accrual, at the prime rate, when the property appraiser and the property owner reach a settlement prior to the VAB hearing. Currently, the bank prime rate is published on a website titled "H.15 Selected Interest Rates" and is 3.25 percent.[64] The bill does not change the interest rate for amounts in dispute for court proceedings.

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.[65] 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 the DOR.[66] Although the TRIM notice provides information related to the millage rates and dollar amount of taxes levied,[67] it does not specify how the millage rate and amount of taxes are attributable to the budgets of each constitutional officer.[68]

Proposed Changes

The bill 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.

Auditor General Report

In May of 2014, the Florida Auditor General issued a report on county VABs and the DOR's oversight.[69] The report made the following findings (the bill 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 the DOR rule requiring the VABs to discuss general information on Florida's property tax system and how taxpayers can participate,[70] could promote fairness and consistency in the appeal process.

---

[64] FEDERAL RESERVE, H.15 SELECTED INTEREST RATES (March 9, 2015) *available at* http://www.federalreserve.gov/releases/h15/current/ (last visited March 15, 2015).
[65] *See* s. 200.069, F.S.
[66] 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.
[67] This information was added to the required information by Ch. 2009-165, Laws of Fla.
[68] "Constitutional officers" means sheriff, property appraiser, clerk of court and county comptroller, tax collector, and supervisor of elections.
[69] STATE OF FLORIDA AUDITOR GENERAL, COUNTY VALUE ADJUSTMENT BOARDS AND DEPARTMENT OF REVENUE'S OVERSIGHT THEREOF: PERFORMANCE AUDIT (May 2014).
[70] Rule 12D-9.013(1)(i), F.A.C.

- Noncompliance with the 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.[71]
- **Selection of special magistrates may not have been based solely on experience and qualifications,** contrary to law and the 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 the 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 the DOR rules.
- Prescribed procedures for commencing VAB hearings were not always followed by the VABs, contrary to the 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 the DOR rules.
- **VAB written decisions were not always sufficiently detailed contrary to law and the DOR rules.**[72]
- Public notice of VAB organizational meetings and hearings were not always in accordance with the 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 the 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 the DOR rules.**

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 make conforming changes related to taxpayer representation before the VAB;

Section 3 amends s. 193.122(1), F.S., to require VABs to complete all hearings and certify assessment rolls to the property appraiser by June 1 following the tax year in which the assessments were made, or by December 1 if the petitions in that county increased by more than 10 percent from the prior year;

Section 4 provides applicability for changes made to ss. 193.122(1) and 194.032(4), F.S.;

Section 5 amends s. 194.011, F.S., to revise provisions related to VAB petitions and VAB evidence exchange procedures;

Section 6 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 7 amends 194.015, F.S., to revise the composition of the VAB; board members elect the chairman and can get continuing education credits for their service; provides applicability;

---

[71] *See also* 2012-17 Fla. Op. Att'y Gen. (May 17, 2012) (citing FLA. CONST. ART. II, s. 5(a)).

[72] *See* rule 12D-9.030, F.A.C. (relating to recommended decisions) and rule 12D-9.032, F.A.C. (relating to final decisions).

Section 8 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 9 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;

Section 10 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 11 amends s. 1011.62(4)(e), F.S., to provide an alternative computation of school funds for the 2016-2017 fiscal year when the final taxable value of a school district is delayed by VAB hearings; provides applicability;

Section 12 provides a finding of important state interest;

Section 13 provides an effective date of July 1, 2016, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The DOR will update their rules relating to VABs to implement the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference evaluated the impacts of some of the provisions included in the bill:

   - Sections 3, 4 and 8, which require VABs to complete their hearings and certify the assessment roll by June 1, are expected to have a $49.8 million non-recurring impact to local government revenues in Fiscal Year 2019-2020 due to a speed-up in the process.
   - Section 6 reduces the interest rates on ad valorem taxes contested in a VAB proceeding. This section is expected to have a positive impact on local governments of $5.6 million in Fiscal Year 2016-2017, $4.4 million in FY 2017-18 and $4.0 million annually thereafter. Most petitioners in Miami-Dade County, which has the most VAB petitions, pay the full amount of ad valorem taxes and earn interest at 12 percent annually on the overpaid amount if successful in the petition; the result is more interest is paid out to petitioners than the amount of interest brought in to the county from interest paid on tax underpayments.[73]
   - Section 11, which provides a method of computing of school funds for the 2016-2017 fiscal year when the final taxable value of a school district is delayed by VAB hearings is expected to shift school funds, which typically would not become available until the following year, from Fiscal Year 2017-18 to FY 2016-17, resulting in a non-recurring, positive fiscal impact of $37.7 million in Fiscal Year 2016-17 and a non-recurring, negative fiscal impact of $37.7 million the following year.

[73] Discussion from Revenue Estimating Conference, Impact Conference, Value Adjustment Boards: HB 695 (March 13, 2015).

2. Expenditures:

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

- Section 1 requires local governments to break out the budgets of county constitutional officers in the budget summary and the TRIM notice.
- Sections 3, 4, and 8 require VABs to complete hearings and certify the tax roll to the property appraiser prior to June 1 of the year following the assessment, unless the petitions in that county increased by more than 10 percent from the prior year.
- Section 5 requires the property appraiser to provide more information as part of the evidence exchange.
- Section 7 authorizes VAB members to receive per diem expenses without requiring the school board and the board of county commissioners to allow such compensation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers that successfully dispute ad valorem assessments through a VAB hearing are expected to receive less revenue (interest paid on overpayments of disputed tax amounts) because of the interest rate change. Taxpayers may receive more revenue (interest paid on overpayments of disputed tax amounts) because this act allows for interest accrual when the property appraiser and the petitioner reach a settlement prior to the VAB hearing.

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 bill may require local governments to take action that requires the expenditure of money. If the bill 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 bill does contain a statement of important state interest.

2. Other:

None.

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 ad valorem taxation; amending s. 129.03, F.S.; revising the information required to be included on summaries of adopted tentative budgets; authorizing a summary statement to be published more than once in specified locations; 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; providing applicability; amending s. 194.011, F.S.; revising the procedures for filing petitions to the value adjustment board; revising the procedures used during a value adjustment board hearing; revising the documentation required to be on evidence lists during value adjustment board hearings; amending s. 194.014, F.S.; revising the interest rate upon which certain unpaid and overpaid ad valorem taxes accrue; defining the term "bank prime loan rate"; amending s. 194.015, F.S.; revising the selection procedures for appointment to a value adjustment board; requiring continuing education for appraiser members; amending s. 194.032, F.S.; revising requirements for the provision of property record cards to a petitioner; requiring the petitioner or property appraiser to show good cause to reschedule a hearing related to an

assessment; requiring value adjustment boards to address issues concerning assessment rolls by a time certain; providing applicability; amending s. 194.034, F.S.; revising the entities that may represent a taxpayer before the value adjustment board; revising provisions relating to findings of fact; amending s. 194.035, F.S.; prohibiting consideration to be given in the appointment of special magistrates to assessment reductions recommended by a special magistrate; amending s. 1011.62, F.S.; revising the dates for purposes of computing each school district's required local effort; providing a finding of important state interest; providing effective dates.

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

Section 1. Effective October 1, 2016, 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, the 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. The board may advertise the summary statement in a newspaper or other publication more than once and may post the statement on its website.

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 <u>a person specified in s. 194.034(1)(a)</u> ~~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 an 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. The June 1 requirement shall be extended until December 1 in each year in which the number of petitions filed increased by more than 10 percent over the previous year.

Section 4. The amendments made by this act to ss. 193.122 and 194.032(4), Florida Statutes, first apply beginning with the 2018 tax roll.

Section 5. Subsections (3) and (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 at the time of filing 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 is required for each subsequent tax year. A petition shall also describe the property by parcel number and shall be filed as follows:

(a) The clerk of the value adjustment board and 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) An owner of multiple tangible personal property accounts may file with the value adjustment board a single joint petition if the property appraiser determines that the tangible

personal property accounts are substantially similar in nature.

(h) 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)(a) At least 15 days before the hearing the petitioner shall provide to the property appraiser 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.

(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 appraiser's property record card for the property that is the subject of the petition as well as the property record cards for any comparable properties listed as evidence, unless the property record cards are available online from the property appraiser. If the petitioner's property record card or the comparable property record cards listed as evidence are available online from the property appraiser, the

property appraiser must notify the petitioner of the cards that are available online but is not required to provide such card or cards. The property appraiser must redact any confidential information contained on any property record card before it is submitted to the petitioner. ~~Failure of the property appraiser to timely comply with the requirements of this paragraph shall result in a rescheduling of the hearing.~~

(c) Notwithstanding a prior request by a property appraiser for information pursuant to s. 193.011, provisions related to evidence exchange contained in this section 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 this section.

(d) Evidence that is confidential under law remains confidential until it is submitted to the value adjustment board for consideration and admission into the record.

Section 6. Subsection (2) of section 194.014, Florida Statutes, is amended to read:

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

(2) If the value adjustment board or the property appraiser 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 if July 1 is a

Saturday, Sunday, or legal holiday, 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 or the property appraiser 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 if July 1 is a Saturday, Sunday, or legal holiday, 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 term "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 7. Effective July 1, 2017, section 194.015, Florida Statutes, is amended to read:

194.015 Value adjustment board.—Each county shall have ~~There is hereby created~~ a value adjustment board consisting ~~for each county, which shall consist~~ of one member ~~two members~~ of the governing body of the county as elected from the membership of the board of that ~~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 three ~~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 shall ~~must~~ be appointed by the school board and must own a business occupying commercial space located within the school district, and one of whom shall be appointed by the governing body of the county and must be a licensed real estate appraiser who is a resident of the county. If a licensed real estate appraiser is not available, another owner of homestead or commercial property who is a resident of the county may be appointed by the governing body of the county. The board shall elect one of its members to serve as chair. The Department of Business and Professional Regulation must provide continuing education credits to appraiser members of value adjustment boards. 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 the ~~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 property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. A ~~No~~ meeting of the board shall not 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.

Section 8. 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,~~ The property appraiser must provide a ~~the~~ copy of the property record card containing information relevant to the computation of the current assessment, with 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 or the property appraiser may reschedule the hearing a single time for good cause ~~by submitting to the clerk a written request to reschedule, at least 5 calendar days before the day of the originally scheduled hearing~~. As used in this paragraph, the term "good cause" means circumstances beyond the control of the person seeking to reschedule the hearing that reasonably prevent the party from having adequate representation at the hearing. Good cause includes, but is not limited to, the failure by the property appraiser's office to comply with statutory evidence exchange deadlines. If the hearing is rescheduled by the petitioner or the property appraiser, the clerk shall notify the petitioner of the rescheduled time of his

or her appearance at least 15 calendar days before the day of the rescheduled appearance.

(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. The June 1 requirement shall be extended until December 1 in each year in which the number of petitions filed increased by more than 10 percent over the previous year.

Section 9. 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 who is a member of The Florida Bar, an individual with power of attorney to act on behalf of the taxpayer pursuant to part II of chapter 709 who receives no compensation, a real estate appraiser licensed under chapter 475, a real estate broker licensed under chapter 475, or a certified public accountant licensed under chapter 473, retained by the taxpayer. Such person may ~~or agent and~~ 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 chair ~~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. 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 10. 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 magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment board pursuant to this section. The department shall establish a reasonable range for payments per case to special magistrates based on such payments in other counties. Requests for reimbursement of payments outside this range shall be justified by the county. If the total of all requests for reimbursement in any year exceeds the amount

available pursuant to this section, payments to all counties shall be prorated accordingly. If a county having a population less than 75,000 does not appoint a special magistrate to hear each petition, the person or persons designated to hear petitions before the value adjustment board or the attorney appointed to advise the value adjustment board shall attend the training provided pursuant to subsection (3), regardless of whether the person would otherwise be required to attend, but shall not be required to pay the tuition fee specified in subsection (3). A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than 5 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 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. When appointing special magistrates or scheduling special magistrates for specific hearings, the board, board attorney, and board clerk may not consider the dollar amount or percentage of any assessment reductions recommended by any special magistrate in the current year or in any previous year.

Section 11. Effective June 30, 2016, paragraph (e) of subsection (4) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(4) COMPUTATION OF DISTRICT REQUIRED LOCAL EFFORT.—The

Legislature shall prescribe the aggregate required local effort for all school districts collectively as an item in the General Appropriations Act for each fiscal year. The amount that each district shall provide annually toward the cost of the Florida Education Finance Program for kindergarten through grade 12 programs shall be calculated as follows:

(e) Prior period funding adjustment millage.—

1. There shall be an additional millage to be known as the Prior Period Funding Adjustment Millage levied by a school district if the prior period unrealized required local effort funds are greater than zero. The Commissioner of Education shall calculate the amount of the prior period unrealized required local effort funds as specified in subparagraph 2. and the millage required to generate that amount as specified in this subparagraph. The Prior Period Funding Adjustment Millage shall be the quotient of the prior period unrealized required local effort funds divided by the current year taxable value certified to the Commissioner of Education pursuant to sub-subparagraph (a)1.a. This levy shall be in addition to the required local effort millage certified pursuant to this subsection. Such millage shall not affect the calculation of the current year's required local effort, and the funds generated by such levy shall not be included in the district's Florida Education Finance Program allocation for that fiscal year. For purposes of the millage to be included on the Notice of Proposed Taxes, the Commissioner of Education shall adjust the required local effort

millage computed pursuant to paragraph (a) as adjusted by paragraph (b) for the current year for any district that levies a Prior Period Funding Adjustment Millage to include all Prior Period Funding Adjustment Millage. For the purpose of this paragraph, there shall be a Prior Period Funding Adjustment Millage levied for each year certified by the Department of Revenue pursuant to sub-subparagraph (a)2.a. since the previous year certification and for which the calculation in sub-subparagraph 2.b. is greater than zero.

2.a. As used in this subparagraph, the term:

(I) "Prior year" means a year certified under sub-subparagraph (a)2.a.

(II) "Preliminary taxable value" means:

(A) If the prior year is the 2009-2010 fiscal year or later, the taxable value certified to the Commissioner of Education pursuant to sub-subparagraph (a)1.a.

(B) If the prior year is the 2008-2009 fiscal year or earlier, the taxable value certified pursuant to the final calculation as specified in former paragraph (b) as that paragraph existed in the prior year.

(III) "Final taxable value" means the district's taxable value as certified by the property appraiser pursuant to s. 193.122(2) or (3), if applicable. This is the certification that reflects all final administrative actions of the value adjustment board.

b. For purposes of this subsection and with respect to

each year certified pursuant to sub-subparagraph (a)2.a., if the district's prior year preliminary taxable value is greater than the district's prior year final taxable value, the prior period unrealized required local effort funds are the difference between the district's prior year preliminary taxable value and the district's prior year final taxable value, multiplied by the prior year district required local effort millage. If the district's prior year preliminary taxable value is less than the district's prior year final taxable value, the prior period unrealized required local effort funds are zero.

c. For the 2016-2017 ~~2015-2016~~ fiscal year only, if a district's prior period unrealized required local effort funds and prior period district required local effort millage cannot be determined because such district's final taxable value has not yet been certified pursuant to s. 193.122(2) or (3), for the 2016 ~~2015~~ tax levy, the Prior Period Funding Adjustment Millage for such fiscal year shall be levied, if not previously levied, in 2016 ~~2015~~ in an amount equal to 75 percent of such district's most recent unrealized required local effort for which a Prior Period Funding Adjustment Millage was determined as provided in this section. Upon certification of the final taxable value for the ~~2012, 2013, or~~ 2014 and 2015 tax rolls in accordance with s. 193.122(2) or (3), the Prior Period Funding Adjustment Millage levied in ~~2015 and~~ 2016 and 2017 shall be adjusted to include any shortfall or surplus in the prior period unrealized required local effort funds that would have been levied in ~~2014 or~~ 2015

or 2016, had the district's final taxable value been certified pursuant to s. 193.122(2) or (3) for the ~~2014 or~~ 2015 or 2016 tax levy. If this adjustment is made for a surplus, the reduction in prior period millage may not exceed the prior period funding adjustment millage calculated pursuant to subparagraph 1. and sub-subparagraphs a. and b. and any additional reduction shall be carried forward to the subsequent fiscal year.

Section 12. The Legislature finds that this act fulfills an important state interest.

Section 13. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2016.

Brownfields Voluntary Cleanup Tax Credit Program

Florida House of Representatives Committee on Finance & Tax

Michael Sznapstajler
Cobb Cole
Mszna@CobbCole.com
386-323-9222

COBB COLE
Attorneys at Law
Since 1925

Overview

- What Are Brownfields?
  - Definitions
  - Properties that can be Brownfields
- Voluntary Cleanup Tax Credit Program
  - Use and Recent Changes
- Economic Development Figures
- Legislative Priorities for 2016

Brownfields Generally

- Brownfield Site - real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination. § *376.79(3), Fla. Stat.*

- Brownfield Area – a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. § *376.79(4), Fla. Stat*.

What Properties Can Be Brownfields

- Examples of properties that have been designated as a Brownfield Area include, but are not limited to:
  - Gas Stations
  - Automotive Uses
  - Industrial Properties
  - Golf Courses
  - Abandoned Properties
  - Former Agriculture Areas
  - Downtown Properties
  - Landfills (permitted and unpermitted)

Brownfields Redevelopment Program

- Starts with Local Government action
- Local Governments designate a brownfield area by adopting a resolution – either on their own initiative or at the request of a potential redeveloper
- Following the designation, a party can enter into a voluntary cleanup agreement with the Florida Department of Environmental Protection

Voluntary Cleanup Agreement

- After Area is designated
  - Enter into a Brownfield Site Rehabilitation Agreement ("BSRA")
  - BSRA is voluntary and negotiable contract
  - Provides for terms, responsibilities, and schedule for site rehabilitation
  - Requires cleanup to occur according to Chapter 62-780, Florida Administrative Code

Brownfields Voluntary Cleanup Tax Credit Program

- Corporate Income Tax Credits are awarded by FDEP for work integral to the cleanup of a Brownfield Site
  - Transferred once, which allows entities without tax liability to participate
  - During the 2011 legislative session, the annual cap was increased from $2 million to $5 million
  - During the 2015 legislative session, a one time allocation of $16.6 million was made to clear out a tax credit backlog

Tax Credit	Application Frequency	Maximum Credit
Site Rehabilitation	Annually	50% ($500,000)
SRCO	Once	25% ($500,000)
Affordable Housing	Once	25% ($500,000)
Health Care Provider	Once	25% ($500,000)
Solid Waste	Once	50% ($500,000)

Economic Development & Success Stories

- $28+ million in projected Capital Investment in 2014 and 2015
- $2.7 billion in projected Capital Investment since 1997
- Over 10,400+ projected New Direct and Indirect Jobs in 2014 and 2015
- 75,000 confirmed and projected Direct and Indirect Jobs since 1997

Source: FDEP 's 2015 Brownfields Program Annual Report

Questions/Additional Information

- Michael Sznapstajler

  Co-Chair, Florida Brownfields Association Legislative Committee

  Cobb Cole

  Mszna@cobbcole.com

  386-323-9222

- Florida Brownfields Association

  www.floridabrownfields.org

Brownfields Redevelopment Success Stories

House Committee on Finance & Tax
Selected Member District Projects

Since the inception of Florida's Brownfields program in 1997, approximately $2.7 billion in capital investment has occurred in designated Brownfield areas and more than 75,000 confirmed and projected direct and indirect jobs have been created.

Florida Brownfields Redevelopment Program
Voluntary Cleanup Tax Credit

- Brownfields are properties that have trouble being redeveloped due to actual or perceived environmental contamination issues. In 1997, the Florida Legislature created the Florida Brownfields Redevelopment Program to reduce public health and environmental hazards and encourage the reuse of impacted property for economic development, housing, recreation and open space. As a result of the enactment of the Program, Brownfields are now considered an important tool for economic and community development in Florida.

- The Voluntary Cleanup Tax Credit Program is the primary financial incentive to encourage parties to voluntarily agree to cleanup and redevelop Brownfields. Under the program, the Florida Department of Environmental Protection ("FDEP") issues transferrable corporate income tax credits for eligible environmental work in an amount not to exceed $5 million per year. When FDEP approves expenses that exceed $5 million, the tax credits carry over to the next year's funding allocation.

- During the 2015 legislative session, the Florida Legislature approved a one-time $16.6 million non-recurring allocation to the program to clear an approximate $21.6 million tax credit backlog. This has resulted in significant, continued use of the program during the remainder of 2015. FDEP estimates that there will be $9.3 million in tax credit applications for environmental work performed in 2015. If approved, this would create a backlog of $4.3 million meaning that some parties that performed environmental cleanup work in 2015 would have to wait until 2017 to receive the tax credits.

- The potential backlog applicants represent a diverse grouping of redevelopers, including local governments (e.g., City of St. Petersburg, City of Tallahassee and Escambia County), large-scale redevelopers (e.g., Resorts World Miami LLC and Banc of America Community Development Corporation), small businesses and some of the state's largest private employers (e.g., Publix Super Markets and Wal-Mart). The amount of capital investment and return to the state and local governments (in terms of increased sales and property taxes) from these projects alone is in the hundreds of millions of dollars.

- According to FDEP's 2015 Florida Brownfields Redevelopment Program Annual Report, since the inception of Florida's Brownfields program in 1997, approximately $2.7 billion in capital investment has occurred in designated Brownfield areas and more than 75,000 confirmed and projected direct and indirect jobs have been created.

The effectiveness of the Florida Brownfields Redevelopment Program is demonstrated through the cleanup and reuse of previously underused properties. The following list is just a minor sampling of hundreds of projects that have benefitted from the Program.

Private Sector Success Stories

Tallahassee Marriott Residence Inn

Location: Tallahassee
Historical Use: Bulk Petroleum Facility
Contaminants: Petroleum, Dioxin
Reuse: Hotel

Tallahassee's Gaines Street Corridor is a historically industrial area located near the heart of downtown. Gaines Street's prime location, between Florida State University and Florida Agriculture and Mechanical University and immediately south of the State Capitol complex, stimulated a plan for revitalization of the area. The first major project in the corridor was the completion of the Marriott Residence Inn in the fall of 2006. The property was known to be contaminated and had been the site of a bulk petroleum storage facility in addition to other industrial uses. DEP approved conditional closure in the spring of 2007, indicating that no further cleanup of the property was necessary as long as the registered engineering and land use controls were maintained. Total construction cost for the Marriott Residence Inn was $10 million. The hotel now employs 32 full-time and nine part-time staff. Prior to redevelopment, the property was valued at $588,166. The property is now valued at more than $10 million.

AR&J SOBE – Shops at Fifth & Alton

Location: Miami Beach
Historical Use: Car Dealership, Auto Repair, Gas Station

Contaminants: Petroleum Contaminants, Metals
Reuse: Multi-level Retail Shopping Center

A SRCO with Conditions was issued on March 14, 2012, for the AR&J SOBE site located at 1101-1141 5th Street in Miami Beach. The BSRA was executed on December 29, 2000, for redevelopment of a city block between Alton Road-Lenox Avenue and 5th-6th Streets in Miami Beach. The site formerly housed a car dealership, various automobile repair facilities and a gas station. The contamination consisted of petroleum and metal compounds. Construction of the Shops at Fifth & Alton was completed in August 2009 and the building serves as the engineering control. The $80 million dollar project contains 180,000 square feet of retail space spread over three levels. There are also six levels of parking with 1,080 spaces. The project was awarded the Urban Land Institute's Vision Award for 2010 Project of the Year.

Widewaters, LLC – Bradenton Hampton Inn

Location: Bradenton
Historical Use: Abandoned Hotel
Contaminants: Petroleum Hydrocarbons
Reuse: Retail

This Italian Renaissance-style building originally opened as a hotel in 1925. In more recent years the building was used for retirement housing and assisted living before it went through foreclosure in 2009. Widewaters Bradenton, LLC, acquired the property in 2010 and began the cleanup and redevelopment process. The Program provided key incentives to help ensure preservation and productive reuse of this historic structure. The environmental cleanup addressed petroleum contamination associated with underground storage tanks located on the property. After a $21 million renovation, the property has been reopened as the Bradenton Hampton Inn and Suites. The hotel is expected to provide a $2.5 million economic impact in the first year of operation. Tourism and sales taxes will account for an additional $500,000, and property values are expected to rise.

Tampa International Center - IKEA

Location: Tampa
Historical Use: Cannery, Auto Parts Recycling, Newspaper Production
Contaminants: Petroleum Constituents, Arsenic, Aluminum, Iron
Reuse: Destination Retail Store

Originally developed and operated as a cannery from 1936 until 1981, the Tampa International Center property was characterized by local media as a "gritty industrial site between the Port of Tampa and Ybor City." Environmental testing at the site revealed elevated levels of polycyclic aromatic hydrocarbons, total petroleum hydrocarbons and arsenic in the soil, as well as aluminum and iron in the groundwater. The environmental issues associated with the property were managed by removal of tanks, railroad tracks and contaminated soil and the use of engineering and institutional controls. Institutional controls were recorded to ensure that the soil cap is maintained and to limit future land use to commercial/industrial. IKEA opened its third Florida store on the property in May 2009. The redeveloped 29-acre site now contains a 353,000-square-foot store, a 350-seat restaurant and approximately 1,700 parking spaces. The IKEA project created 500 construction jobs and 400 new, in-store jobs.

Mills Park - Orlando

Location: Orlando
Historical Use: Lumber Yard
Contaminants: Polycyclic Aromatic Hydrocarbons, Arsenic
Reuse: Mixed Use Including Retail, Residential, Medical, Office and Restaurant Space

Located approximately one mile northeast of downtown Orlando, the Mills Park development is taking shape on a 12-acre former lumber yard. A railroad spur that ran down the middle of the property was the source of polycyclic aromatic hydrocarbon and arsenic contaminated soils. Site cleanup began in the spring of 2012 and resulted in the removal of more than 11,000 tons of contaminated soil. While cleanup was underway, a BSRA was negotiated and signed. DEP issued an unconditional SRCO in December 2012. When complete, the mixed-use redevelopment will include more than 348,000 square feet of retail, restaurant, medical, general office and residential space; including a Fresh Market store that opened in July 2013.

Harbour Cove - Hallandale

Location: Hallandale
Historical Use: Landfill/Lakefill and Former Auto Repair
Contaminants: Petroleum, Ammonia, Arsenic
Reuse: Affordable, Multi-Family Housing

This project was managed by Broward County Environmental Protection and Growth Management Department (EPGMD) through that delegation agreement. The majority of the 7.06-acre property that is now occupied by Harbour Cove Apartments was originally an old lakefill site. Lakefills are generally non-natural surface water bodies (i.e., a quarry) that are permitted to receive inert solid waste such as construction debris. An old auto repair shop was also located on the property and was the likely source of the petroleum contamination. The EPGMD issued a conditional closure in May 2009 indicating that no further remediation of the property was necessary as long as the registered engineering and land use controls were maintained. The property has been redeveloped into a four-story, 212-unit affordable housing complex. Approximately 75 construction jobs were created during development and the operation of the complex resulted in 10 permanent jobs. The taxable value of the property, prior to cleanup, was $290,950. The taxable value of the improved property is now $6.6 million.

Civic and Local Government Success Stories

Former Sandefur Site - Midway Elementary School

Location: Sanford
Historical Use: Agricultural
Contaminants: Arsenic
Reuse: Elementary School

Seminole County selected the Sandefur property for construction of the Midway Elementary School of the Arts. Sampling of the property prior to development revealed arsenic contamination in the soils. Contaminated soils were excavated and the site was closed without conditions in April 2009. The school was opened in January 2010.

Dr. Phillips Orlando Performing Arts Center

Location: Orlando
Historical Use: Multiple Parcels – Drycleaner, Bank, Church
Contaminants: Polycyclic Aromatic Hydrocarbons
Reuse: Performing Arts Center

The location for the future Dr. Phillips Performing Arts Center is approximately 3.1 acres in size and is comprised of several parcels. Diesel storage tanks were located on another of the properties. Polycyclic aromatic hydrocarbon contamination was discovered on the site in 2008. The City of Orlando entered into a BSRA with DEP in December 2009. The total quantity of polycyclic aromatic hydrocarbon-contaminated soil removed from the site was 7,197 tons. No groundwater contamination was present. An unconditional closure was approved in January 2011. The Dr. Phillips Performing Arts Center will include two grand performance theaters, a community theater, outdoor plaza and performance space, rehearsal rooms, administrative offices and educational programming space at a cost of $274 million.

Assembly & Distribution Center for Defense Department Contractor

Location: Cocoa
Historical Use: Fertilizer Storage Warehouse; Auto Sales, Repair and Painting Operations
Contaminants: Arsenic
Reuse: Assembly and Distribution Center for Defense Department Contractor

Since 1948, the ½-acre MarcT brownfield site has been occupied by a variety of commercial businesses including a fertilizer storage warehouse and auto sales, repair and painting operations. The City of Cocoa used its EPA Brownfields Grant to fund a Phase 2 Environmental Site Assessment of the property. No groundwater contamination was found at the site but soils were contaminated with arsenic and total recoverable petroleum hydrocarbons. The new owner entered into a BSRA in December 2012 and completed soil removal in the same month. Approximately 275 tons of contaminated material were removed. The site is now being developed for a company that assembles and distributes backpacks for the U.S. Department of Defense. The new facility is planned to be operational by the second quarter of 2014.

Fort Myers Coal Gasification Plant - Imaginarium

Location: Fort Myers
Historical Use: Coal Gasification Plant
Contaminants: Petroleum Constituents
Reuse: Children's Museum and Aquarium

During construction of the Imaginarium Hands-On Museum and Aquarium, contaminated soils associated with the operation of a former coal gasification plant were found. Using the Program, the City of Fort Myers was able to transform a liability into a community asset. Additional assessment of the soils and groundwater was conducted and remedial action was completed. Most of the contaminated soils were removed from the property and groundwater treatment was conducted. A soil cap and groundwater use restrictions were implemented and legally recorded on the property deed in January 2011. As the result of an imaginative application of adaptive reuse principles, the site now includes a state-of-the-art, hands-on museum; a 100-seat theater installed in the original sludge tank; an outdoor pavilion built at the base of the operational water tower; and an 180,000-gallon lagoon system installed in the original water collection areas. In addition, renovation of the brick building behind the Imaginarium is underway and, upon completion, will house the City's Emergency Operations Center and key personnel. The success of this project has led to the revitalization and remediation of other properties along Martin Luther King, Jr. Boulevard, as well as the expansion of the roadway.

Other Selected Projects of Interest

Embry-Riddle Aeronautical University

Location: Daytona Beach
Historical Use: Agricultural
Contaminants: Arsenic
Reuse: Proposed Research and Technology Park

Embry-Riddle Aeronautical University owns 77.6 acres of property located south of its Daytona Beach campus. An assessment of the property revealed low-level concentrations of arsenic in groundwater. The University entered into a BSRA with DEP to address the contamination and the site was closed without conditions in March 2010. As part of a public- private partnership with the City of Daytona Beach, the University intends to develop an aeronautical and aerospace research and technology park on the property. The approved development plan for the proposed technology park includes 595,000 square feet of office and building space and will feature an amphitheater, plaza and walking trails. The technology park will promote research, development, technological, aeronautical and aerospace education activities; provide an economic engine to attract new businesses to the area; and create employment opportunities for local residents and recent university graduates.

Wagner Square

Location: Miami
Historical Use: Dump Site
Contaminants: Incinerator Ash
Reuse: Affordable/Workforce Housing

In 1998, a due-diligence investigation of the three-acre Wagner Square property site was conducted for an impending property sale. The vacant parcel was owned by the City of Miami and was known as the Civic Center Property. The Phase I environmental assessment documented that the property was first developed with residences in the 1930s. A nursery was located on the northern portion of the site from approximately 1949 to the mid-1980s. The nursery and all residential structures were cleared from the subject site by 1986. Investigation of the site revealed debris from illicit dumping. In addition, test pits showed a layer of incinerator ash across the eastern portion of the property. Soils contained elevated concentrations of arsenic, barium, lead and dioxins/furans. No groundwater contamination was documented. The City and Wagner Square were awarded a Brownfields Economic Development Initiative grant from the U.S. Department of Housing and Urban Development to address the contamination and redevelop the site. The property was sold to Wagner Square, LLC, in 2004. Wagner Square, LLC, entered into a BSRA with the Miami-Dade Department of Environmental Resources Management in June 2004. All contaminated soil and ash (15,863 tons) were removed from the site. The first phase of the proposed development is construction of 56 units of affordable/workforce housing. The second phase consists of the development of a 330,000-

square-foot medical office building with a 1,300-car parking garage. The third phase is another 48-unit affordable/workforce condominium.

Dade City Business Center Area

Location: Dade City
Historical Use: Orange Processing Plant
Contaminants: Petroleum Hydrocarbons
Reuse: Business Development

The 326 Acre property was occupied for years by a Citrus and Orange processing plant resulting in multiple years of petroleum and diesel contamination. The Dade City Business Center now provides a secure & gated site, has 24 hour manned security, is located on 6 lane US Highway 301, and is strategically positioned near a majority of easily accessible regional mainlines and arterial roads that intersect to an abundance of Florida's Major Highways, Regional/International Airports, Rail main lines and Deep Water Ports. The current tenant base proves extremely diverse, and includes corporations & industries specializing in a vast array of multi-faceted technologies such as Specialty Recyclers, Fuel Production, Beverage Production & Distribution, Heavy Equipment Repair Facilities, Accounting Professionals, Financial Consultants, Freight Brokerage, Logistical Companies, Marketing Firm's & many others that find this business park vital to their daily success.