The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Dockery, Vice Chair

MEETING DATE: Tuesday, March 22, 2011
TIME: 1:15 —3:15 p.m.
PLACE: *James E. "Jim" King, Jr., Committee Room,* 401 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Dockery, Vice Chair; Senators Flores, Gaetz, Lynn, Montford, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 952** Richter (Similar CS/H 599)	Uniform Prudent Management of Institutional Funds; Provides requirements for the management of funds held by an institution exclusively for charitable purposes. Provides standards of conduct in managing and investing institutional funds. Provides requirements for appropriation for expenditure or accumulation of an endowment fund by an institution. Authorizes an institution to delegate to an external agent the management and investment of an institutional fund, etc. CM 03/22/2011 HE GO BC	
2	**CS/SB 960** Environmental Preservation and Conservation / Bennett (Similar CS/H 709, Compare CS/CS/S 396)	Liquefied Petroleum Gas; Prohibits the Department of Agriculture and Consumer Services and other state agencies from requiring compliance with certain national standards for liquefied petroleum gas tanks unless the department or agencies require compliance with a specified edition of the national standards. Provides for future expiration of such requirements. Revises the term "propane" for purposes of the Florida Propane Gas Education, Safety, and Research Act, to incorporate changes to certain national standards in a reference thereto. EP 03/10/2011 Fav/CS CM 03/22/2011 BC	
3	**SB 1470** Altman (Similar H 1069)	Capital Investment Tax Credit; Authorizes a qualifying business that has insufficient corporate income tax liability to fully claim a capital investment tax credit to apply the credit against its liability for sales and use taxes to be collected, reported, and remitted to the Department of Revenue. Requires a qualifying business that receives a credit against its sales and use tax liability to make additional capital investments. Limits the annual amount of tax credits that may be approved, etc. CM 03/22/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 466** Braynon (Identical H 141)	Tourist Development Tax; Provides additional bonding authority for a certain additional tourist development tax. Provides a limitation on tax revenues received from such tax and used for certain purposes. Limits the expenditure of ad valorem tax revenue for expansion of facilities by a county imposing a tourist development tax for certain purposes. Provides for nonapplication of a prohibition against levying such tax in certain cities and towns under certain conditions, etc. CM 03/22/2011 CA BC	
5	**SB 1708** Jones (Similar H 1415, S 2050, Compare H 1417, H 1419, Link S 1710, S 1712)	Destination Resorts; Creates the Destination Resort Commission within the Department of Revenue. Exempts the Destination Resort Commission from specified provisions of the Administrative Procedure Act. Creates the Destination Resort Act. Specifies the powers of the commission, including the power to authorize limited gaming at up to five destination resorts, conduct investigations, issue subpoenas, take enforcement actions, and create an invitation to negotiate process to evaluate applications for a resort license, etc. CM 03/22/2011 RI BC	
6	**SB 1710** Jones (Identical H 1417, Compare H 1415, Link S 1708)	Destination Resort Trust Fund/Dept. of Revenue; Creates the Destination Resort Trust Fund within the Department of Revenue. Provides for the purpose of the trust fund. Provides for future review and termination or re-creation of the trust fund. CM 03/22/2011 RI BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1712** Jones (Identical H 1419, Compare H 1415, Link S 1708)	Public Records/Destination Resort Commission; Provides an exemption from public records requirements for confidential and proprietary business information and trade secrets received by the Destination Resort Commission. Provides an exemption from public records requirements for information held that would reveal investigation techniques and procedures used by such commission. Provides an exception to the exemption for other governmental entities having oversight or regulatory or law enforcement authority. Provides penalties for an employee of the commission who violates the provisions of the act, etc. CM 03/22/2011 RI GO	

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LEGISLATIVE ACTION

Senate . House

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The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 617.2104, Florida Statutes, is created to read:

617.2104 Uniform Prudent Management of Institutional Funds Act.—

(1) SHORT TITLE.—This section may be cited as the "Uniform Prudent Management of Institutional Funds Act."

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Charitable purpose" means the relief of poverty, the

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advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(b) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(c) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(d) "Institution" means:

1. A person, other than an individual, organized and operated exclusively for charitable purposes;

2. A government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose; or

3. A trust that had both charitable and noncharitable interests after all noncharitable interests have terminated.

(e) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

1. Program-related assets;

2. A fund held for an institution by a trustee that is not an institution;

3. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund; or

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4. A fund managed or administered by the State Board of Administration pursuant to its constitutional or statutory authority.

(f) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(g) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(3) STANDARD OF CONDUCT IN MANAGING AND INVESTING INSTITUTIONAL FUND.—

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this section, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

1. May incur only costs that are appropriate and reasonable

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in relation to the assets, the purposes of the institution, and the skills available to the institution.

2. Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

1. In managing and investing an institutional fund, the following factors, if relevant, must be considered:

a. General economic conditions.

b. The possible effect of inflation or deflation.

c. The expected tax consequences, if any, of investment decisions or strategies.

d. The role that each investment or course of action plays within the overall investment portfolio of the fund.

e. The expected total return from income and the appreciation of investments.

f. Other resources of the institution.

g. The needs of the institution and the fund to make distributions and to preserve capital.

h. An asset's special relationship or special value, if any, to the charitable purposes of the institution.

2. Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

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3. Except as otherwise provided by law other than this section, an institution may invest in any kind of property or type of investment consistent with this section.

4. An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

5. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this section.

6. A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

(4) APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION.—

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated

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for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith with the care that an ordinarily prudent person in a like position would exercise under similar circumstances and shall consider, if relevant, the following factors:

1. The duration and preservation of the endowment fund.

2. The purposes of the institution and the endowment fund.

3. General economic conditions.

4. The possible effect of inflation or deflation.

5. The expected total return from income and the appreciation of investments.

6. Other resources of the institution.

7. The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under paragraph (a), a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

1. Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund.

2. Do not otherwise limit the authority to appropriate for expenditure or accumulate under paragraph (a).

(5) DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.—

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this section, an institution may

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delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

1. Selecting an agent.

2. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund.

3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with paragraph (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law other than this section.

(6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE.—

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The circuit court for the circuit in which an institution is located, upon application of that institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the circuit court for the circuit in which an institution is located, upon application of that institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application.

(d) If consent of the donor in a record cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, a governing board may modify a

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restriction contained in a gift instrument regarding the management, investment, or use of an institutional fund if the fund has a total value of $100,000 or less and the restriction has become impracticable or wasteful, impairs the management, investment, or use of the fund or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund.

(e) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, after providing written notice to the Attorney General, may release or modify the restriction, in whole or part, if:

1. The institutional fund subject to the restriction has a total value of at least $100,000 and not more than $250,000;

2. More than 20 years have elapsed since the fund was established; and

3. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(7) REVIEWING COMPLIANCE.—Compliance with this section is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

(8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS.—This section applies to institutional funds existing on or established after the effective date of this section. As applied to institutional funds existing on the effective date of this section, this section governs only decisions made or actions taken on or after that date.

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(9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.—This section modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7001(b).

(10) UNIFORMITY OF APPLICATION AND CONSTRUCTION.—In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 2. Section 1010.10, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to uniform prudent management of institutional funds; creating s. 617.2104, F.S.; creating a short title; providing definitions; providing requirements for the management of funds held by an institution exclusively for charitable purposes; providing standards of conduct in managing and investing institutional funds; providing requirements for appropriation for expenditure or accumulation of an endowment fund by an institution; authorizing an institution to delegate to an external


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agent the management and investment of an institutional fund; authorizing the release or modification of a restriction on management, investment, or purpose of an institutional fund; providing for determination of compliance; providing for application to existing or newly established institutional funds; providing relationship to federal law; providing requirements for uniformity of application and construction of the act; repealing s. 1010.10, F.S., relating to the Florida Uniform Management of Institutional Funds Act; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment to Amendment (651460)

Delete line 251
and insert:
described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL:	SB 952
INTRODUCER:	Senators Richter and Gaetz
SUBJECT:	Uniform prudent management of institutional funds
DATE:	March 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	**Pre-meeting**
2.			HE	
3.			GO	
4.			BC	
5.				
6.				

I. Summary:

This bill adopts the 2006 Uniform Prudent Management of Institutional Funds Act (act), and repeals the current Uniform Management of Institutional Funds Act contained in s. 1010.10, F.S., for educational endowments.

The new act applies to all charitable endowment funds. Charitable purpose is defined under the new act as "the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community."

Similar to current law regarding educational endowments, the primary benefit of this act is to allow charitable institutions holding endowment funds the flexibility to make distributions from the endowment fund when the fund has fallen below the original amount placed into it, so long as the fund is prudently managed and the appropriation is not explicitly prohibited.

Currently, there is no clear guidance for the operation of charitable endowments – this act would apply similar guidance currently provided to educational endowments to endowment funds held for a charitable purpose.

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) has been adopted in 47 states.[1]

The bill creates s. 617.2014 of the Florida Statutes.

[1] See: http://uniformlaws.org/LegislativeFactSheet.aspx?title=Prudent Management of Institutional Funds Act.

II. Present Situation:

Currently s.1010.10, F.S., the *Florida Uniform Management of Institutional Funds Act* provides guidance to educational institutions regarding the prudent management of endowment funds under their control. The law regulates the expenditure of endowment funds, establishes standards of conduct of those in charge of the endowment funds, provides guidance for the investment authority, allows for the delegation of investment management functions, sets standards for investment costs, and establishes the criteria for the release of restrictions on use or investment of endowment funds.[2] The current act relates to an incorporated or unincorporated organization organized and operated exclusively for the advancement of educational purposes, or a governmental entity to the extent that it holds funds exclusively for educational purposes.[3] The current act does not apply to charitable organizations other than those holding funds for an educational purpose.

An endowment fund subject to the current act means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.[4]

A governing board means the body responsible for the management of an institution or of an institutional fund. With some limitation, a governing board currently may expend the principle of an endowment fund if they determine such action to be prudent for the uses and purposes for which the endowment fund is established, consistent with the goal of conserving the purchasing power of the endowment fund. In making its determination the governing board must use reasonable care, skill, and caution in considering the following:

- The purposes of the institution;
- The intent of the donors of the endowment fund;
- The terms of the applicable instrument;
- The long-term and short-term needs of the institution in carrying out its purposes;
- The general economic conditions;
- The possible effect of inflation or deflation;
- The other resources of the institution; and
- Perpetuation of the endowment.

Expenditures made under this paragraph will be considered prudent if the amount expended is consistent with the goal of preserving the purchasing power of the endowment fund.[5]

[2] See s.1010.10, F.S.
[3] See s.1010.10(2)(c), F.S.
[4] See s.1010.10((2)(a), F.S.
[5] See s.1010.10(3), F.S.

III. Effect of Proposed Changes:

This bill creates s. 617.2104, F.S., to adopt the 2006 Uniform Prudent Management of Institutional Funds Act (UPMIF), [6] as proposed by the National Conference of Commissioners on Uniform State Laws,[7] and repeals the current Uniform Management of Institutional Funds Act contained in s. 1010.10, F.S., for educational endowments.

Consistent with current law and the model act, the bill:

- Applies standards of conduct in managing and investing institutional funds;
- Provides for the appropriation for expenditure or accumulation of endowment funds and rules of construction;
- Allows for the delegation of management and investment functions;
- Provides for the release or modification of restrictions on management, investment, or purpose; and
- Creates a standard for the reviewing for compliance.

Within each of the above standards, the bill provides specific guidance to institutions as to how they are to be applied.

The bill differs significantly from s.1010.10, F.S., the Florida Uniform Management of Institutional Funds Act, in that it applies to all charitable endowment funds, not just educational funds. Charitable purpose is defined under the new act as

> "the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community."

Similar to current law regarding educational endowments, the primary benefit of this provision is to allow charitable institutions holding endowment funds the flexibility to make distributions from the endowment fund when the fund has fallen below the original amount placed into it, so long as the fund is prudently managed and the appropriation is not explicitly prohibited.

The bill makes other significant changes to current law, in that it:

- Expands the types of assets which can be in a charitable organizations portfolio, to include any kind of property or type of investment consistent with the new statute;
- Specifies that management and investment of institutional funds are to be accomplished with the care an ordinarily prudent person would exercise;
- Requires an institution to make a reasonable effort to verify relevant facts;
- Allows pooling of institutional funds for purposes of managing and investing;

[6] See: http://www.uniformlaws.org/Shared/Docs/UPMIFA/UPMIFA%20Program%20Related%20Assets%20Article.pdf last visited March 19, 2011.

[7] The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical

- Makes reference to an overall investment strategy for the first time;
- Obliges a person with special relevant skills or expertise, to use those skills or that expertise in managing and investing institutional funds;
- Delineates factors to be considered prior to expenditure of funds;
- Sets an effective date for the application of this law to existing institutional funds; and
- Clarifies the application of federal Electronic Signatures in Global and National commerce Act.

The bill provides an effective date July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that charitable institutions holding endowment funds exercise the distribution flexibility authorized by this act, beneficiaries of the charity may continue to receive such distributions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The model act references 15 U.S.C. Section 7003(b) with respect to electronic delivery of notices under the federal Electronic Signature in Global and National Commerce Act while the bill references 15 U.S.C. Section 7001(b).

VII. Related Issues:

The bill does not include the proposed section of the UPMIF on the rebuttable presumption of imprudence set forth in the uniformed act. The omitted section deals with creating a presumption of imprudence for spending above a fixed percentage of the value of the fund. According to the notes from the drafters of the uniform act, some were in favor of this provision arguing that the presumption would curb the temptation that a charity might have to spend endowment assets too rapidly. Others opined that a fixed percentage in the statute might be perceived as a safe harbor that could lead institutions to spend more than prudent.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL:	CS/SB 960
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Bennett
SUBJECT:	Liquefied Petroleum Gas
DATE:	March 18, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	**Fav/CS**
2.	McCarthy	Cooper	CM	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 960 (the bill) requires the Department of Agriculture and Consumer Services (DACS) and other state agencies to enforce standards relating to the separation distance between liquefied petroleum gas (LP) containers and structures, property lines, and sources of ignition contained in the 2011 edition of the National Fire Protection Association (NFPA) 58, also known as the Liquefied Petroleum Gas Code. The bill also amends the definition of "propane" to reflect the national standard

The bill amends sections 527.06 and 527.21 of the Florida Statutes.

II. Present Situation:

The National Fire Protection Association (NFPA) 58, Liquefied Petroleum Gas Code

The National Fire Protection Association (NFPA) is an international nonprofit organization that was established in 1896 to reduce the risks and effects of fires by establishing building consensus

codes.[1] The NFPA 58, also known as the Liquefied Petroleum Gas Code, applies to "the storage, handling, transportation, and use of LP-Gas[es]," which is defined by the code to mean "gasses at normal room temperature and atmospheric pressure [that] liquefy under moderate pressure and readily vaporize upon release of the pressure."[2]

The Department of Agriculture and Consumer Service's (department's) Bureau of Liquefied Petroleum Gas Inspection (bureau) is the primary agency charged with the regulation of liquefied petroleum (LP) gas wherever the product is stored, distributed, transported and used in Florida. The bureau also has statutory authority[3] over the licensing, inspection, enforcement, accident investigation and training of LP gas in the state. The department, the Department of Community Affairs' Florida Building Code Commission (FBC) and the Department of Financial Services' Office of the State Fire Marshal (OSFM) each adhere to fire safety codes put forth by the National Fire Prevention Association (NFPA)[4] regarding the regulation of LP gas.

Section 527.06(3), F.S., provides DACS with the authority to adopt rules that are in substantial conformity with NFPA's published safety standards. Subsection (3), specifically provides that:

> Rules in substantial conformity with the published standards of the National Fire Protection Association shall be deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

Recently, the NFPA approved a 2011 version of the NFPA 58 LP gas code, which reduces the setback requirements for propane tanks[5] from 10 feet to 5 feet from a building, adjoining property line, other petroleum tank, or any source of ignition. Current department rules mandate a 10-foot setback for propane tanks. The department has started the rule-making process to implement the new national standards. However, as a result of Executive Order 11-01[6], the FBC cannot commence with the rule making until the proposed rule is reviewed and approved by the Office of Fiscal Accountability and Regulatory Reform. Likewise, the OSFM has not yet initiated rule making.

Many cell phone companies in the state use backup electrical generators at their cell tower sites and switching stations. These generators are usually powered by LP gas with tanks in excess of 125 gallons, thus falling under the purview of the 2011 version of the NFPA 58 LP gas code.

III. Effect of Proposed Changes:

Section 1 amends 527.06, F.S., to require the department, the FBC, and the OSFM to enforce the same LP gas container separation distances as adopted in the 2011 version of the NFPA 58 gas code. By enacting this legislation, the footprint of cell phone towers and switching stations may

[1] National Fire Protection Association Website, *Overview*, available online at http://www.nfpa.org/categoryList.asp?categoryID=495&URL=About%20NFPA/Overview (last visited on March 18, 2011).
[2] National Fire Protection Association Website, *Document Scope of NFPA 58* available online at http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=58 (last visited on March 18, 2011).
[3] Chapter 527, F.S.
[4] NFPA 1, NFPA 54 , and NFPA 58 (http://www.nfpa.org/categoryList.asp?categoryID=124&URL=Codes%20&%20Standards)
[5] The set back only applies to stationary engine containers with a fill valve that has an integral manual shutoff value.
[6] http://www.flgov.com/wp-content/uploads/2011/01/scott.eo_.one_.pdf

be reduced, depending upon the tanks used to store the LP gas for the backup generators. The bill also provides for the statutory language regarding the 2011 version of the NFPA 58 gas code to expire once the department, the FBC, and the OSFM have adopted the 2011 version.

Section 2 amends 527.21, F.S., to specify that the definition for propane is defined by the NFPA 58 Liquefied Petroleum Gas Code.

Section 3 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the new code reduces set back requirements for propane tanks from buildings and sources of ignition, the private sector may save on construction costs.

C. Government Sector Impact:

DACS and other state agencies will be required to enforce the same NFPA 58 LP gas container separation requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Protection and Conservation Committee on March 10, 2011:
The CS provides for repeal under certain circumstances.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (r) of subsection (5) of section 212.08, Florida Statutes, is created to read:

(r) Capital investment tax credit; authorization; eligibility for credits.—The credit against the state sales and use tax granted pursuant to s. 220.191(2)(d) shall be deducted from any sales and use tax remitted by the dealer to the department by electronic funds transfer and may only be deducted on a sales and use tax return initiated through electronic data

interchange. The dealer shall separately state the credit on the electronic return. The net amount of tax due and payable must be remitted by electronic funds transfer. If the credit is larger than the amount owed on the sales and use tax return, the unused portion may be carried forward to a succeeding reporting period within the 12-month period immediately following the first return approved by the department that the dealer may claim. The credit expires at the end of the 12-month period approved by the department and may not be claimed on a sales and use tax return filed with the department after the end of the 12-month period.

Section 2. Section 220.191, Florida Statutes, is amended to read:

220.191 Capital investment tax credit.—

(1) DEFINITIONS.—As used in ~~For purposes of~~ this section, the term:

(a) "Commencement of operations" means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed.

(b) "Cumulative capital investment" means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

(c) "Eligible capital costs" means all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations, including, but not limited to:

1. The costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and obligations to contractors, subcontractors, builders, and materialmen.

2. The costs of acquiring land or rights to land and any cost incidental thereto, including recording fees.

3. The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as the performance of all duties required by or consequent to the acquisition, construction, installation, and equipping of a qualifying project.

4. The costs associated with the installation of fixtures and equipment; surveys, including archaeological and environmental surveys; site tests and inspections; subsurface site work and excavation; removal of structures, roadways, and other surface obstructions; filling, grading, paving, and provisions for drainage, storm water retention, and installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and offsite construction of utility extensions to the boundaries of the property.

<u>The term does</u> ~~eligible capital costs shall~~ not include the cost of any property previously owned or leased by the qualifying business.

(d) "Income generated by or arising out of the qualifying project" means the qualifying project's annual taxable income as

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determined by generally accepted accounting principles and under s. 220.13.

(e) "Jobs" means full-time equivalent positions, as that term is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs involved in the construction of the project facility.

(f) "Office" means the Office of Tourism, Trade, and Economic Development.

(g) "Qualifying business" means a business which establishes a qualifying project in this state and which is certified by the office to receive tax credits pursuant to this section.

(h) "Qualifying project" means:

1. A new or expanding facility in this state which creates at least 100 new jobs in this state and is in one of the high-impact sectors identified by Enterprise Florida, Inc., and certified by the office pursuant to s. 288.108(6), including, but not limited to, aviation, aerospace, automotive, and silicon technology industries;

2. A new or expanded facility in this state which is engaged in a target industry designated pursuant to the procedure specified in s. 288.106(2)(t) and which is induced by this credit to create or retain at least 1,000 jobs in this state, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area as defined in s. 288.106(2), and

make a cumulative capital investment of at least $100 million after July 1, 2005. Jobs may be considered retained only if there is significant evidence that the loss of jobs is imminent. Notwithstanding subsection (2), annual credits against the tax imposed by this chapter may ~~shall~~ not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by or arising out of a project qualifying under this subparagraph. A facility that qualifies under this subparagraph for an annual credit against the tax imposed by this chapter may take the tax credit for a period not to exceed 5 years; or

3. A new or expanded headquarters facility in this state which locates in an enterprise zone and brownfield area and is induced by this credit to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, as published by the Agency for Workforce Innovation or its successor, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least $250 million.

(2)(a) An annual credit against the tax imposed by this chapter shall be granted to any qualifying business in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. Unless assigned as described in this subsection, the tax credit shall be granted against only the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section may ~~shall~~ not exceed 100 percent of the

eligible capital costs of the project. Except as provided in paragraph (d), a ~~In no event may any~~ credit granted under this section may not be carried forward or backward by any qualifying business with respect to a subsequent or prior year. The annual tax credit granted under this section may ~~shall~~ not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

1. One hundred percent for a qualifying project which results in a cumulative capital investment of at least $100 million.

2. Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least $50 million but less than $100 million.

3. Fifty percent for a qualifying project which results in a cumulative capital investment of at least $25 million but less than $50 million.

(b) A qualifying project that ~~which~~ results in a cumulative capital investment of less than $25 million is not eligible for the capital investment tax credit. An insurance company claiming a credit against premium tax liability under this program is ~~shall~~ not ~~be~~ required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Because credits under this section are available to an insurance company, s. 624.5091 does not limit such credit in any manner.

(c) A qualifying business that establishes a qualifying project that includes locating a new solar panel manufacturing facility in this state that generates a minimum of 400 jobs


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within 6 months after commencement of operations with an average salary of at least $50,000 may assign or transfer the annual credit, or any portion thereof, granted under this section to any other business. However, the amount of the tax credit that may be transferred in any year is ~~shall be~~ the lesser of the qualifying business's state corporate income tax liability for that year, as limited by the percentages applicable under paragraph (a) and as calculated before ~~prior to~~ taking any credit pursuant to this section, or the credit amount granted for that year. A business receiving the transferred or assigned credits may use the credits only in the year received, and the credits may not be carried forward or backward. To perfect the transfer, the transferor must ~~shall~~ provide the department with a written transfer statement notifying the department of the transferor's intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The department shall, upon receipt of a transfer statement conforming to the requirements of this paragraph, provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credits.

(d) For taxable years beginning on or after January 1, 2011, if a credit granted under this subsection is not fully used in a taxable year going forward because of insufficient tax liability on the part of the qualifying business, the qualifying business is entitled to a sales and use tax credit against its


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state sales and use tax liability in an amount equal to the corporate income or insurance premium tax credit that could not be used in that tax year because of insufficient tax liability arising out of the project. The sales and use tax credit shall be granted against state sales and use taxes collected, reported, and remitted pursuant to chapter 212 during the 12-month period beginning on the date that the qualifying business files its corporate income tax return for the year in which the credit granted under this subsection is not fully used.

1. The sales and use tax credit granted under this paragraph is subject to the following:

a. A qualifying business that applies its sales and use tax credit against its sales and use tax liability must make capital investments in Florida, in addition to its cumulative capital investment, in an amount equal to or greater than the applied credit within 5 years after the date that the qualifying business first applied the sales and use tax credit to its sales and use tax return.

b. A qualifying business must annually provide to the office, the President of the Senate, and the Speaker of the House of Representatives a report listing the capital investments made in each tax year of the business in which the business claims a sales and use tax credit pursuant to this paragraph and must provide a final summary report of all capital investments made pursuant to requirements of this paragraph.

c. If the qualifying business fails to make the capital investments pursuant to subparagraph (a)1. or if the business fails to report its capital investments pursuant to subparagraph (a)2., the qualifying business shall repay to the department the

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difference between the sales and use tax credits received and the amount of capital investments accounted for, plus interest as provided for delinquent taxes under chapter 212.

d. To be eligible for the sales and use tax credit, a qualifying business must have its headquarters in this state; qualify for the capital investment tax credit pursuant to subparagraph (a)1.; and between January 1, 2006, and December 31, 2008, signed an agreement with the department for the determination of income generated by or arising out of the qualifying project.

e. The qualifying business must notify the department of its intent to apply the credit against its state sales and use taxes and the amount it is entitled to claim prior to claiming the credit as provided in s. 212.08(5)(r). The department will send written instructions to the taxpayer on how to claim the credit on a sales and use tax return initiated through electronic data exchange.

2. The maximum amount of tax credits that any one qualifying business may claim as a state sales and use tax credit under this section on sales and use tax returns due during any state fiscal year is $5 million.

3. The office and the department may adopt rules to administer this paragraph.

(3)(a) Notwithstanding subsection (2), an annual credit against the tax imposed by this chapter shall be granted to a qualifying business which establishes a qualifying project pursuant to subparagraph (1)(h)3., in an amount equal to the lesser of $15 million or 5 percent of the eligible capital costs made in connection with a qualifying project, for a period not

to exceed 20 years beginning with the commencement of operations of the project. The tax credit shall be granted against the corporate income tax liability of the qualifying business and as further provided in paragraph (c). The total tax credit provided pursuant to this subsection shall be equal to no more than 100 percent of the eligible capital costs of the qualifying project.

(b) If the credit granted under this subsection is not fully used in any one year because of insufficient tax liability on the part of the qualifying business, the unused amount may be carried forward for a period not to exceed 20 years after the commencement of operations of the project. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for that year exceeds the credit for which the qualifying business is eligible in that year under this subsection after applying the other credits and unused carryovers in the order provided by s. 220.02(8).

(c) The credit granted under this subsection may be used in whole or in part by the qualifying business or any corporation that is either a member of that qualifying business's affiliated group of corporations, is a related entity taxable as a cooperative under subchapter T of the Internal Revenue Code, or, if the qualifying business is an entity taxable as a cooperative under subchapter T of the Internal Revenue Code, is related to the qualifying business. Any entity related to the qualifying business may continue to file as a member of a Florida-nexus consolidated group pursuant to a prior election made under s. 220.131(1), Florida Statutes (1985), even if the parent of the group changes due to a direct or indirect acquisition of the former common parent of the group. Any credit can be used by any

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of the affiliated companies or related entities referenced in this paragraph to the same extent as it could have been used by the qualifying business. However, any such use shall not operate to increase the amount of the credit or extend the period within which the credit must be used.

(4) Before ~~Prior to~~ receiving tax credits pursuant to this section, a qualifying business must achieve and maintain the minimum employment goals beginning with the commencement of operations at a qualifying project and continuing each year thereafter during which tax credits are available pursuant to this section.

(5) Applications shall be reviewed and certified pursuant to s. 288.061. The office, upon a recommendation by Enterprise Florida, Inc., shall first certify a business as eligible to receive tax credits pursuant to this section prior to the commencement of operations of a qualifying project, and such certification shall be transmitted to the Department ~~of Revenue~~. Upon receipt of the certification, the Department ~~of Revenue~~ shall enter into a written agreement with the qualifying business specifying, at a minimum, the method by which income generated by or arising out of the qualifying project will be determined.

(6) The office, in consultation with Enterprise Florida, Inc., is authorized to develop the necessary guidelines and application materials for the certification process described in subsection (5).

(7) ~~It shall be the responsibility of~~ The qualifying business has the responsibility to affirmatively demonstrate to the satisfaction of the Department ~~of Revenue~~ that such business


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meets the job creation and capital investment requirements of this section.

(8) The Department ~~of Revenue~~ may specify by rule the methods by which a project's pro forma annual taxable income is determined.

Section 3. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the capital investment tax credit; amending s. 212.08, F.S.; specifying procedures to claim a sales and use tax credit; amending s. 220.191, F.S.; authorizing a qualifying business that has insufficient corporate income tax liability to fully claim a capital investment tax credit to apply the credit against its liability for sales and use taxes to be collected, reported, and remitted to the Department of Revenue; requiring a qualifying business that receives a credit against its sales and use tax liability to make additional capital investments; requiring a qualifying business to annually report its capital investments to the Office of Tourism, Trade, and Economic Development, the President of the Senate, and the Speaker of the House of Representatives; requiring a qualifying business that fails to make the required capital investments to repay the amount of the sales and use tax credit claimed with interest; limiting the availability of the sales and use tax


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credit to certain businesses that have their headquarters in this state, that qualify for the capital investment tax credit under certain circumstances, and that entered in an agreement with the Department of Revenue during a certain period; limiting the annual amount of tax credits that may be approved for each eligible qualifying business; authorizing the Office of Tourism, Trade, and Economic Development and the Department of Revenue to adopt rules; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL:	SB 1470
INTRODUCER:	Senator Altman
SUBJECT:	Capital Investment Tax Credit
DATE:	March 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The Capital Investment Tax Credit (CITC) program was created to attract and grow capital-intensive industries in Florida. It provides an annual credit, available for a maximum of 20 years, against a company's corporate or premium income tax liability. The amount of the annual credit is based on the eligible capital costs associated with a qualifying project, and is calculated as a percentage of the capital investments made. Eighteen active CITC projects are certified by the state as eligible for the tax credits.

SB 1470 allows certain CITC-qualified businesses with less corporate or premium tax liability than the amount of tax credits earned during the same tax year to claim the difference between the two against its sales tax liability that also incurred in the same 12-month period.

To be eligible for this credit transfer, a CITC-qualified business would have to meet the following criteria: its headquarters is located in Florida; it committed to making a minimum $100 million capital investment in Florida, and thus is eligible to claim a 100-percent tax credit against its corporate or premium tax liability; and received a signed letter from the state between 2006 and 2008 approving its participation in the CITC program.

The maximum annual credit transfer per business is $5 million.

SB 1470 also requires the CITC-qualified business to reinvest in Florida an amount at least equal to what it received in sales tax credits, within 5 years after applying the sales tax credit to its tax return. If the proper capital reinvestment is not made, the business must repay the Department of Revenue (DOR) all or part of the sales tax claim, plus interest.

SB 1470 substantially amends s. 220.191, F.S.

II. Present Situation:

The CITC is used to attract and grow capital-intensive industries that generally pay high wages. The incentive is an annual credit, provided for up to 20 years, against a company's corporate income tax. The amount of the annual credit is based on the eligible capital costs associated with a qualifying project. Eligible capital costs include all expenses incurred in the acquisition, pre-construction and construction activities, installation, and equipping of a project from the beginning of construction through commencement of operations.

To participate in the program, a new or expanding company must apply to Enterprise Florida, Inc., which reviews the company's information and eligibility for the program, and makes a recommendation to the Governor's Office of Tourism, Trade, and Economic Development (OTTED) for approval or denial. Based upon that recommendation, OTTED may certify a company as eligible to receive a certain amount of tax credits under the program, prior to commencement of the company's qualifying project. OTTED transmits this certification to DOR, which enters into a written agreement with the company specifying, at a minimum, the method by which income generated by, or arising out of, the qualifying project will be determined.

Prior to receiving the credits, the business must achieve and maintain the minimum employment thresholds beginning with the commencement of the qualifying project and continuing each subsequent year in which it may claim the tax credits.

There are three categories of CITC projects:

- A high-impact business, which:
  - Operates within a "high-impact" industry sector, currently defined in statute as, but not limited to, aviation, aerospace, automotive, and silicon technology industries,[1] and
  - Creates at least 100 new jobs.
- A business defined as a "qualified target industry" (QTI) pursuant to s. 288.106, F.S.,[2] and which is induced by this incentive program to:
  - Create or retain at least 1,000 jobs, of which at least 100 of those jobs are new and which pay an average annual wage of at least 130 percent of the average annual private-sector wage in the state or region, and
  - Make a cumulative capital investment of at least $100 million after July 1, 2005.
- A new or expanded headquarters facility, which:
  - Locates in an enterprise zone or a brownfield area;
  - Is induced by this incentive program to create at least 1,500 jobs that pay an average wage that is at least 200 percent of the average annual private-sector wage in the state or region; and
  - Makes a cumulative capital investment of at least $250 million.

[1] EFI's 2010 Incentives Report lists the industries under this CITC category as semiconductor manufacturing, transportation equipment manufacturing, information technology, life sciences, financial services, corporate headquarters, and clean energy. Report available at http://eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf. See page 28.
[2] FN 1, supra. Page 53.

The amount of the annual credit is up to 5 percent of the eligible capital costs[3] associated with a qualifying project, for up to 20 years, except that the QTI businesses in the second category may take the tax credit for a maximum of 5 years.

The annual credit may not exceed a specified percentage of the annual corporate income tax or premium tax liability generated by the project, based on the amount of the company's capital investment. For example, a company that made a minimum capital investment of $100 million would be able to apply the value of its annual tax credit to erase 100 percent of its corporate or premium tax liability that year.[4] A company that makes a cumulative capital investment of at least $50 million but less than $100 million would able to receive a tax credit equal to 75 percent of its corporate or premium tax liability each year. A company that makes a cumulative capital investment of at least $25 million but less than $50 million would be able to receive a tax credit equal to 50 percent of its corporate or premium tax liability each year.

Under no circumstance can the total tax credits awarded exceed the cumulative investment; nor can credits be taken in excess of the tax liability in a given tax year. Also, unused credits may be carried forward for up to 20 years.

According to information provided by DOR,[5] in tax years 2005, 2006, and 2007, about $3.7 million in tax credits issued through the CITC program were claimed each year on tax returns; a little more than $4 million in tax credits were claimed in 2008; and $11.75 million in tax credits were claimed in 2009.

As of December 2010, there are 18 active CITC projects, which have committed to make total cumulative capital investments of $2.45 billion in Florida.[6] Information published by Enterprise Florida, Inc., in its 2010 annual incentives report indicated that the 17 CITC-qualified businesses at the time of its data collection had committed to create 6,520 jobs paying an average annual wage of $55,076.[7]

The CITC incentive is intended to be "revenue-neutral" in that but for the incentive, the capital investment would not have been made, and no corporate income tax would have been collected.

III. Effect of Proposed Changes:

Section 1 amends s. 220.191, F.S., to allow, beginning in the FY 2011-2012 state tax year, a qualifying business with accrued corporate income tax or premium tax credits to use the amount that is the difference between what it has accrued that year and what it has "foregone" because of

[3] "Capital costs" is defined in s. 220.191(1)(c), F.S. Such costs include the acquisition of land for the project; construction, acquisition, installing, equipping, and financing a facility for the project; surveys, architectural designs, engineering services, and site-preparation work; equipment; and other types of expenses. It is likely that some capital costs are part of the qualifying company's required capital investment.
[4] Section 220.191(2)(c), F.S., allows the transfer of tax credits earned under this program by a solar panel manufacturing facility that meets specific job creation and salary requirements. This option has not been utilized.
[5] Email from DOR staff to Senate Commerce and Tourism Committee staff, dated December 30, 2010.
[6] Information provided by OTTED staff to Senate Finance and Tax Committee staff in January 2011.
[7] Supra FN 1.

lack of corporate or premium tax liability against its Sale & Use Tax (SUT) liability instead. *(Please see **Section VI. Technical Deficiencies** below.)*

To be eligible for this credit transfer, a CITC-qualified business would have to meet the following criteria:

- Its headquarters is located in Florida;
- It has committed to making a minimum $100 million capital investment in Florida, and thus is eligible to claim a 100-percent tax credit against its corporate or premium tax liability; and
- Received a signed letter from the state between 2006 and 2008 approving its participation in the CITC program.

To be able to use the transfer option, the qualifying business must commit, over the following 5 years, to make capital investments equal to the amount of the sales and use tax credits claimed in a given year. If this doesn't occur, the business must repay to DOR the difference between the sales and use tax credits received and the amount of capital investment accounted for, plus interest as provided for delinquent taxes under ch. 212, F.S.

The annual amount of CITC that any one business can claim in a fiscal year against its sales and use tax liability is $5 million. There is no maximum cumulative annual cap. Also, applications to use the transfer credit program will be processed on a first-come, first-served basis.

OTTED and DOR are authorized to adopt rules to implement the transfer program.

Section 2: SB 1470 has an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate. One qualifying business has indicated it would be eligible to transfer as much as $5 million annually in unused corporate income tax credits to sales tax credits.

At least 5 qualifying businesses received OTTED approvals between 2006 and 2008, but committee staff cannot determine, because of the confidentiality of taxpayer records, whether these companies have unused corporate or premium tax credits that could be transferred to sales and use tax credits, or whether they meet the other eligibility criteria.

The Revenue Estimating Conference is scheduled to evaluate the fiscal impact of SB 1470 at its March 25, 2011, meeting.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

SB 1470 does not appear to clearly specify that the transfer of accrued, unused corporate or premium tax credits for sales and use tax credits is prospective. The FY 2011-2012 state fiscal year, generally, is not the same as a corporate tax year, which could start January 1, 2011, January 1, 2012, or dates in between, because of corporations' flexibility in filing their state income tax documents.

Also, the bill refers to a "signed letter of approval to participate in the program," but it is unclear whether this means the certification letter from OTTED, the DOR technical assistance advisement letter, or the written agreement between DOR and the qualifying business establishing the method by which the qualifying business' income arising from the project is established.

Finally, the relevance of lines 236-237 is unclear. If there is no maximum aggregate cap on the number of corporate or premium tax credits that can transferred to sales and use tax credits, under the modified CITC program, then requiring the transfer applications to be considered by DOR in a first-come, first-served order does not matter.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 29 - 74

and insert:

a.~~1.~~ Pay the debt service on bonds issued to finance:

(I)~~a.~~ The construction, reconstruction, or renovation of a facility either publicly owned ~~and operated~~, or on land publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a ~~new~~ professional sports facility ~~franchise as defined in s.~~

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~~288.1162~~.

(II)~~b.~~ The acquisition, construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a retained spring training franchise.

(III) The expansion, renovation, or reconstruction of a convention center that is in existence on July 1, 2011.

b.~~2.~~ Promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

2.a. In any county in which the tax authorized by this paragraph is initially imposed on or after January 1, 2012, the tax revenues received from the imposition of such tax and used for the purposes set forth in sub-sub-subparagraph 1.a.(III) and sub-subparagraph 1.b. in the aggregate may not exceed 49.9 percent of the total tax revenues received from the imposition of such tax.

b. If tax revenues authorized by this paragraph are used for the purposes of financing a professional sports facility described in sub-sub-subparagraph 1.a.(I) which is not publicly owned, private contributions to the facility must be made before or simultaneously with the contribution of such tax revenues. Private contributions to the facility must be in an amount equal

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to at least 43 percent of the tax revenues authorized by this paragraph which dedicated to the facility.

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

And the title is amended as follows:

Delete lines 3 - 10

and insert:

amending s. 125.0104, F.S.; expanding the purposes for which the proceeds of the tourist development tax may be used to include the payment of the debt service on bonds to finance the construction, reconstruction, or renovation of a professional sports facility on publically owned land and the expansion, renovation, or reconstruction of a convention center; limiting the percentage of the proceeds from the tourist development tax that may be used for the professional sports facility; requiring private contributions to the professional sports facility as a condition for the use of tourist development taxes for the facility; providing for nonapplication of a

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL:	SB 466
INTRODUCER:	Senator Braynon
SUBJECT:	Tourist Development Tax
DATE:	March 20, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Pre-meeting**
2.			CA	
3.			BC	
4.				
5.				
6.				

I. Summary:

Florida statutes allow county governments to levy tourist development taxes on hotel rooms and other transient rental accommodations for specified purposes. The most a county can levy is a 6-percent tax, and only if all the statutory conditions are met.

One tourist development tax provision – authorized in s. 125.0104(3)(n), F.S. – allows 65 counties to levy up to an additional 1-percent tax to pay debt service on bonds for the construction, reconstruction, or renovation of professional sports facilities that have been in Florida since April 1, 1987, or use the funds to promote tourism.

SB 466 would:

- Allow a county to levy the aforementioned tax to pay debt service on bonds to construct, reconstruct, or renovate any professional sports facility, no matter when it began playing in Florida, that is either publicly owned and operated, or on public land but operated by a private entity in an adjacent county, under certain specific conditions. Only Broward County meets the criteria. The only professional sports facility that appears to benefit is Sun Life Stadium, home of the Miami Dolphins, and located in Miami-Dade County.
- Remove a prohibition against Miami-Dade and Volusia counties levying the tax.
- Allow Miami-Dade County to levy the tax countywide, because also deleted is the prohibition against tourist development taxes being collected in the three Miami-Dade County municipalities that levy the Municipal Resort Tax. Bonds backed by the tax revenues must be issued no later than December 14, 2015.
- Allow a county to use revenues from the tax to pay debt service on the expansion, reconstruction, or renovation of an existing convention center, plus construction of

contiguous and related facilities, and to pay the planning and design costs incurred prior to issuing the bonds.

- Specifies that if this tax is initially levied on or after January 1, 2012, the tax revenues used for existing convention center improvements, or for tourism promotion, may not exceed 49.9 percent of the total tax revenues received from the tax.
- Specifies that the aforementioned changes to paragraph (n) of s. 125.0104(3), F.S., supersede any contrary provision in s. 125.0104(5), F.S., related to how the funds may be used.

SB 466 substantially amends s. 125.0104, F.S.

II. Present Situation:

Tourist Development Taxes in Florida[1]

Section 125.0104, F.S., authorizes five separate tourist development taxes on transient rental[2] transactions and specifies how they may be used.

Depending on a county's eligibility to levy, the maximum tax rate varies from a minimum of 3 percent to a maximum of 6 percent. The levies may be authorized by vote of the county's governing body or by referendum approval, depending on the specific tax. Generally, the revenues may be used for capital construction of tourist-related facilities, tourist promotion, and beach and shoreline maintenance; however, the authorized uses vary according to the particular levy.

Subsection (3) of s. 125.0104, F.S., authorizes the following tourist development taxes:

- The basic tourist development tax may be levied at the rate of 1 or 2 percent by all 67 counties.[3] Currently, 60 counties levy this tax at the full 2-percent rate.[4]
- An additional tourist development tax of 1 percent may be levied.[5] Currently, 43 of the 56 eligible counties levy the tax.[6]
- A professional sports franchise facility tax may be levied up to 1 percent on transient rental transactions.[7] Currently, 34 counties levy this additional tax, although all 67 counties are eligible to levy it.[8]
- A high tourism impact county may levy an additional 1 percent on transient rental transactions.[9] Only Broward, Monroe, Orange, Osceola and Walton counties have been

[1] Information regarding tourist development taxes was taken from the 2010 Local Government Financial Information Handbook published in October 2010 by the Office of Economic and Demographic Research. Report available at: http://edr.state.fl.us/Content/local-government/reports/lgfih10.pdf.
[2] Pursuant to s. 212.02(10), F.S, "transient rentals" are rentals or leases of accommodations for 6 months or less. Accommodations include stays in hotels, apartment houses, rooming houses, tourist or trailer camps, mobile home parks, recreational vehicle parks, or real property. See also Rule 12A-1.061(2)(f), F.A.C.
[3] Section 125.0104(3)(c), F.S.
[4] FN 1, supra. See pages 260-261.
[5] Section 125.0104(3)(d), F.S.
[6] See FN 4, supra.
[7] Section 125.0104(3)(l), F.S.
[8] See FN 4, supra.
[9] Section 125.0104(3)(m), F.S.

designated as high tourism impact counties eligible to impose this tax. Of those five, only Monroe, Orange, and Osceola counties impose the tax.[10]

- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.[11] This tax is commonly referred to as the "extra penny" for professional sports facilities, and may be levied by counties that already collect the first penny for professional sports facilities. Out of 65 counties eligible to levy this tax, only Broward and 19 other counties do.[12] Miami-Dade and Volusia counties are not eligible to levy this tax.[13]

Specifically, the "extra penny" levy in s. 125.0104(3)(n), F.S., must be approved by a majority-plus-1 vote of the county governing board. It can only be used for the following purposes:

- Pay the debt service on bonds issued to finance:
  - The construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a new professional sports franchise as defined in s. 288.1162, F.S.,[14] or
  - The acquisition, construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a retained spring training franchise.
- Promote and advertise tourism within Florida, as well as nationally and internationally. If the revenues raised by the "extra penny" are spent for an activity, service, venue, or event, then one of the main purposes of that activity, service, venue, or event must be the "attraction of tourists."[15]

A county that imposes the "extra penny" for a professional sports facility may not expend any ad valorem tax revenues for the acquisition, construction, reconstruction, or renovation of the project.

[10] See FN. 4, supra.
[11] Section 125.0104(3)(n), F.S.
[12] See FN. 4, supra.
[13] Miami-Dade and Volusia counties levy a 3-percent convention development tax, pursuant to s. 212.0305, F.S., and cannot by law levy more than 2 percent in tourist development taxes plus the 1-percent professional sports facility tax. If they were allowed to levy the additional penny for professional sports facilities, their total local-option levies on transient rentals would be 7 percent. Duval County, which levies a 2-percent Consolidated County Convention Center Tax on transient rentals, is specifically allowed in statute to levy the extra penny for pro sports facilities.
[14] Section 288.1162(3)(a), F.S., specifies that "new professional sports franchise" means a professional sports franchise that was not based in this state before April 1, 1987. Seven of the eight professional sports franchises that call Florida home in the regular season began operations in this state after that date. The eighth, the Miami Dolphins, began playing in Florida in 1970.
[15] Section 125.0104(3)(n)2., F.S.

Municipal Resort Tax[16]

Created in 1969 and subsequently amended four times by the Legislature, the Municipal Resort Tax may be levied at a rate of up to 4 percent on transient rental transactions, and up to 2 percent on the sale of food and beverages consumed in restaurants and bars in certain municipalities whose respective county population fell within specified limits based on the 1960 Census and whose municipal charter specifically provided for the levy of this tax prior to January 1, 1968. The levy must be adopted by an ordinance approved by the governing body. Revenues can be used for tourism promotion activities, capital construction and maintenance of convention and cultural facilities, and relief of ad valorem taxes used for those purposes.

Municipalities in counties having a population of not less than 330,000 but not more than 340,000 persons, and in counties having a population of more than 900,000, according to the 1960 decennial census, whose charter specifically provided or whose charter was amended prior to January 1, 1968, to allow the levy of this exact tax, are eligible to impose it by ordinance adopted by the governing body.

Currently, only three municipalities – Bal Harbour, Miami Beach, and Surfside, all in Miami-Dade County – are eligible to impose the tax. According to the Department of Revenue, all three municipalities are imposing the tax at the maximum rates.[17]

Pursuant to s. 125.0104(3)(b), F.S., no municipality levying the Municipal Resort Tax may levy tourist development taxes.

Sun Life Stadium

Sun Life Stadium (previously known as Joe Robbie Stadium, Pro Player Park, Pro Player Stadium, Dolphin Stadium, Dolphins Stadium, and, most recently, Land Shark Stadium) is a multi-purpose stadium in Miami Gardens, a suburb of Miami. Construction began in 1985, and the first professional football game was played in August 1987. It is the home stadium facility of the Miami Dolphins National Football League team, the Florida Marlins Major League Baseball team, and the University of Miami Hurricanes NCAA football team. It also hosts the annual Orange Bowl college football bowl game.

Costing $115 million to build in the mid-1980s, Sun Life Stadium has been upgraded several times. Additional renovations for the Dolphins' stadium are planned after the Marlins leave after the 2011 season for their own stadium in Little Havana, on the site of the original Orange Bowl stadium that was demolished in 2009 to begin construction on the new facility.[18] The proposed renovations for the Dolphins' stadium include the addition of a roof to shield fans from rain and other weather-related elements, and sideline improvements to narrow the field and bring seats closer to the on-field action.[19]

[16] FN 1, supra. Information for this section of the analysis is on pages 243-244 of the report.
[17] FN 1, supra. Page 243.
[18] See http://mlb.mlb.com/fla/ballpark/new_ballpark.jsp.
[19] See http://en.wikipedia.org/wiki/Sun_Life_Stadium.

III. Effect of Proposed Changes:

Under very specific conditions, SB 466 allows a county to spend revenues from the additional professional sports franchise facility tax in s. 125.0104(3)(n), F.S., to build, renovate, or repair a professional sports facility in an adjacent county that is 11 miles from the counties' shared border and meets other requirements. Because of how the language is drafted, only Broward County would be eligible to use revenues from its existing levy for a professional sports facility in adjacent Miami-Dade County. The eligible sports facility is the Sun Life Stadium, where the Miami Dolphins, Florida Marlins, and Miami Hurricanes play.

SB 466 also makes a number of other significant changes to s. 124.0104, F.S., related to usage of the levy's revenues and lifting the prohibition against certain municipalities from levying a tourist development tax.

Section 1: Amends s. 125.0104(3)(n), F.S., to:

- Allow a county to levy the tax to pay debt service on bonds to construct, reconstruct, or renovate any professional sports facility, no matter when it began operations in Florida, that is either publicly owned and operated, or on public land but operated by a private entity, if it meets the following criteria:
    - The county levying the tax and an adjacent county have a combined population exceeding 4 million people.
    - In the adjacent county there is, or will be, a professional sports facility located within 11 miles of the boundary of the county where the tax is or will be levied.
    - The team using the stadium has a training facility in the adjacent county.
    - The adjacent county finds that the sports facility generates economic development within its boundaries.
- Remove a statutory prohibition against Miami-Dade and Volusia counties levying the tax. This would bring the total local-option taxes on transient rentals in those counties to 7 percent, if their county governing boards voted to levy the extra penny. Approval requires a majority vote-plus-1 in the affirmative.
- Allow Miami-Dade County to levy the tax countywide, because also deleted is the prohibition against tourist development taxes being collected in the three Miami-Dade County municipalities that currently levy the Municipal Resort Tax.
    - Bonds backed by these tax revenues must be issued no later than December 14, 2015, but can refunded or refinanced at the issuer's discretion.
    - The tax revenues generated by this extra penny tax can be used to pay debt service on bonds issued pursuant to the s. 125.0104(3), F.S., which includes more than pro sports facilities.
- Allow a county to levy the tax to pay debt service on the expansion, reconstruction, or renovation of an existing convention center, plus construction of contiguous and related facilities, and to pay the planning and design costs incurred prior to issuing the bonds.
- If this tax is initially levied on or after January 1, 2012, the tax revenues used for existing convention center improvements, or for tourism promotion, may not exceed 49.9 percent of the total tax revenues received from the tax.

These changes to paragraph (n) of s. 125.0104 (3), F.S., supersede any contrary provision in s. 125.0104(5), F.S., related to authorized uses of the tax proceeds. One of the superseded

provisions is that revenues from tourist development taxes can be spent on publicly owned and operated convention centers, sports stadiums and arenas, coliseums, and auditoriums.

These proposed changes to s. 125.0104(3)(n), F.S., in lines 30-47, appear to alter that paragraph so significantly and are so specifically tied to a particular sports facility that no other county currently eligible to levy the tax under existing law would be able to do so in the future, in order to build or upgrade a professional sports facility within its borders, unless it could meet all of the new criteria.

Additionally, the criteria are so specific in the amended s. 125.0104(3)(n)1.a.I., F.S., that SB 466 could be construed as a general bill of local application. (A discussion on this issue appears below, in **Section IV. Constitutional Issues**.)

Section 2: Provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As drafted, SB 466 might be construed to raise the question of whether it is a local bill, and not a general law.

The eligibility requirements in the proposed modified s. 125.0104(3)(n), F.S., appear to be specifically crafted so that only Broward County would be eligible to use its existing levy under the amended paragraph, to make improvements to a specific professional sports facility that is 11 miles from its border with an adjacent county, in this case, Miami-Dade.

Research into the populations of counties that currently have pro sports facilities and of their largest adjacent county revealed no other pairing that is close to the bill's population eligibility criterion of a combined population exceeding 4 million persons. Broward (home to the NHL's Florida Panthers) and Palm Beach counties had a combined estimated 2009 population of just over 3 million persons. The counties of Hillsborough (NFL's Tampa Bay Buccaneers and NHL's Tampa Bay Lightning) and Pinellas (home of the MLB's Tampa Bay Rays), for example, had a combined estimated 2009 population of

2.12 million persons. Orange (home of the Orlando Magic) and Brevard counties combined had an estimated 2009 population of 1.6 million.[20]

It could be considered unlikely – at least for many years, now that Florida's growth rate has slowed – that another pairing of counties will meet not only the population threshold, but the bill's other criteria.

Although no specific counties are explicitly named in SB 466, the specific eligibility criteria could be construed to raise the question whether the bill is, in fact, a local bill.

The Florida Constitution imposes special requirements on local laws and prohibits local laws on specified subjects. If a bill is determined to be a local bill, the notice of intention to seek enactment must be published in the manner provided by general law or the bill must be conditioned to become effective only upon approval by vote of the electors of the area affected.

The distinction between a local law and a general law is not always clear, according to the courts:

> "A statute relating to subdivisions of the state or to subjects or to persons or things as a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class, is a general law, while a statute relating to particular subdivisions or portions of the state, or to particular places of classified localities, is a 'local law'...."[21]

A general law operates uniformly, not because it operates on every person in the state, but because every person brought within the circumstances that the law provides for is fairly and equally affected by it.[22] Even though the conditions of the subject on which a statute operates do not exist in all parts of the state, the law may be general and of uniform operation if it operates uniformly on the specified subject and conditions wherever they exist in the state.[23]

Also, SB 466 may be a general bill of local application.[24] Before 1971, to bypass the constitutional requirements for local bills, legislation based on population thresholds, commonly called "general bills of local application," were introduced and enacted. A general act of local application uses a classification framework, such as population or other criterion, so that is application is restricted to a particular locality.

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[20] Florida Estimates of Population 2009, published by the University of Florida in 2010. Information cited is in Table I, on pages 8-21. Report on file with the Senate Commerce and Tourism Committee.
[21] *State ex rel Buford v. Daniel*, 99 So. 804(Fla 1924).
[22] *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc*., 434 So. 2d 879 (Fla. 1983); *State v. Leavins*, 599 So. 2d 1326 (Fla. 1st DCA 1992).
[23] *State ex rel. Landis v. Harris*, 163 So. 237 (Fla. 1934).
[24] The discussion that follows is based on the "Manual for Drafting General Bills," prepared by Legal Research and Drafting Services of the Office of the Secretary of the Senate. Fifth Edition. Published in 1999.

Bills that incorporate a classification framework can be general bills if:

- The classification framework is open so that other localities can potentially fall within the classification; and
- The classification bears a reasonable nexus to the subject matter and to the public purpose to be served; is based upon differences that inhere in or are peculiar to that class of localities; and is not arbitrary.

If the proposed general bill of local application does not satisfy both of these criteria, it is a local bill and is subject to all of the constitutional requirements and proscriptions applicable to local acts.[25]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If SB 466 becomes law, Broward County, and any future eligible counties, could be allowed to use revenues from a tourist development tax levy under s. 125.0104(3)(n), F.S., to issue bonds for a pro sports facility in an adjacent county. The decision would rest with the county's governing board, implemented by a majority-plus-1 vote in the affirmative.

Also, the bill removes a statutory prohibition against Miami-Dade and Volusia counties from levying the additional pro sports facilities tourist development tax. This action would raise the total local-option taxes on transient rentals in those counties to 7 percent, if their county governing boards voted to levy the extra penny. Approval requires a majority vote-plus-1 in the affirmative.

Additionally, Miami-Dade County would be able to levy this tax countywide, because also deleted is the prohibition against tourist development taxes being collected in the three Miami-Dade County cities that currently levy the Municipal Resort Tax.

B. Private Sector Impact:

Indeterminate, depending on the industry sector and the county getting the benefits. The impacts in increased sales of goods and services will depend on a number of highly localized factors, such as proximity of hotels, restaurants, transportation facilities, retail establishments, and other businesses to the renovated pro sports and convention center facilities, and whether the attendees of the events at these facilities live in the area or are out-of-town or out-of-state visitors.

C. Government Sector Impact:

Indeterminate. The adjacent county, where the pro sports facility is located, might be in a position to reap a greater benefit than the county that levies the tax. However, the actual impacts in increased sales tax and other revenue collections will depend on a number of highly localized factors, such as proximity of hotels, restaurants, transportation facilities,

[25] *Lewis v. Mathis*, 345So.2d 1066 (Fla. 1977); *Vance v. Ruppel*, 215 So.2d 309 (Fla. 1968)

and retail establishments to the pro sports facility, and whether the attendees of the events at the pro sports facility live in the area or are out-of-town or out-of-state visitors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The inclusion of a fourth usage of the "extra penny" in s. 125.0104(3)(n), F.S., to expand, reconstruct, or renovate an existing convention center, and pay planning and design costs for such a project, appears to dilute the primary purposes of the levy, which are to provide funding to build or renovate professional sports facilities and spring training facilities, or promote tourism.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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. .

. .

. .

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 262 - 263
and insert:
through 36 of this act.
Section 3. This section and sections 4 through 36 of this

Delete lines 2207 - 2352
and insert:
Section 36. Slot machine licensees.—Notwithstanding any law to the contrary, when a resort licensee receives final authorization to conduct limited gaming activities in Miami-Dade

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or Broward Counties, a pari-mutuel facility licensed to operate slot machine gaming under s. 551.104, Florida Statutes, shall be entitled to conduct all games, including such games identified in the Resort Act as "limited games," during the same hours of operation and limits of wagering authorized for a resort licensee. Such facilities shall be subject to the same tax rate on gross receipts as the resort licensee located within Miami-Dade or Broward Counties.

Section 37. Section 849.15, Florida Statutes, is amended to read:

849.15 Manufacture, sale, possession, etc., of coin-operated devices prohibited.—

(1) It is unlawful:

(a) To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control, any slot machine or device or any part thereof; or

(b) To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or

thing of value.

(2) Pursuant to section 2 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," approved January 2, 1951, being ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. ss. 1171-1177, the State of Florida, acting by and through the duly elected and qualified members of its Legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such chapter of Congress, declare and proclaim that any county of the State of Florida within which slot machine gaming is authorized pursuant to the Destination Resort Act, sections 3 through 36 of this act, or chapter 551 is exempt from the provisions of section 2 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," designated as 15 U.S.C. ss. 1171-1177, approved January 2, 1951. All shipments of gaming devices, including slot machines, into any county of this state within which slot machine gaming is authorized pursuant to the Destination Resort Act, sections 3 through 36 of this act, or chapter 551 and the registering, recording, and labeling of which have been duly performed by the manufacturer or distributor thereof in accordance with sections 3 and 4 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," approved January 2, 1951, being ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. ss. 1171-1177, shall be deemed legal shipments thereof into this state provided the destination of such shipments is an eligible facility as

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defined in s. 551.102, ~~or~~ the facility of a slot machine manufacturer or slot machine distributor as provided in s. 551.109(2)(a), or the facility of a resort licensee or supplier licensee under the Destination Resort Act, sections 3 through 36 of this act.

Section 38. Section 849.231, Florida Statutes, is amended to read:

849.231 Gambling devices; manufacture, sale, purchase or possession unlawful.—

(1) Except in instances when the following described implements or apparatus are being held or transported by authorized persons for the purpose of destruction, as hereinafter provided, and except in instances when the following described instruments or apparatus are being held, sold, transported, or manufactured by persons who have registered with the United States Government pursuant to the provisions of Title 15 of the United States Code, ss. 1171 et seq., as amended, so long as the described implements or apparatus are not displayed to the general public, sold for use in Florida, or held or manufactured in contravention of the requirements of 15 U.S.C. ss. 1171 et seq., it shall be unlawful for any person to manufacture, sell, transport, offer for sale, purchase, own, or have in his or her possession any roulette wheel or table, faro layout, crap table or layout, chemin de fer table or layout, chuck-a-luck wheel, bird cage such as used for gambling, bolita balls, chips with house markings, or any other device, implement, apparatus, or paraphernalia ordinarily or commonly used or designed to be used in the operation of gambling houses or establishments, excepting ordinary dice and playing cards.

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(2) In addition to any other penalties provided for the violation of this section, any occupational license held by a person found guilty of violating this section shall be suspended for a period not to exceed 5 years.

(3) This section and s. 849.05 do not apply to a vessel of foreign registry or a vessel operated under the authority of a country except the United States, while docked in this state or transiting in the territorial waters of this state.

(4) This section does not apply to limited gaming as authorized by the Destination Resort Act, sections 3 through 36 of this act.

Section 39. Section 849.25, Florida Statutes, is amended to read:

849.25 "Bookmaking" defined; penalties; exceptions.—

(1)(a) The term "bookmaking" means the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever.

(b) The following factors shall be considered in making a determination that a person has engaged in the offense of bookmaking:

1. Taking advantage of betting odds created to produce a profit for the bookmaker or charging a percentage on accepted wagers.

2. Placing all or part of accepted wagers with other bookmakers to reduce the chance of financial loss.

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3. Taking or receiving more than five wagers in any single day.

4. Taking or receiving wagers totaling more than $500 in any single day, or more than $1,500 in any single week.

5. Engaging in a common scheme with two or more persons to take or receive wagers.

6. Taking or receiving wagers on both sides on a contest at the identical point spread.

7. Any other factor relevant to establishing that the operating procedures of such person are commercial in nature.

(c) The existence of any two factors listed in paragraph (b) may constitute prima facie evidence of a commercial bookmaking operation.

(2) Any person who engages in bookmaking commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(3) Any person who has been convicted of bookmaking and thereafter violates the provisions of this section commits ~~shall be guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(4) Notwithstanding the provisions of s. 777.04, any person who is guilty of conspiracy to commit bookmaking is ~~shall be~~ subject to the penalties imposed by subsections (2) and (3).

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(5) This section does ~~shall~~ not apply to pari-mutuel wagering in Florida as authorized under chapter 550.

(6) This section does ~~shall~~ not apply to any prosecutions filed and pending at the time of the passage hereof, but all such cases shall be disposed of under existing laws at the time of the institution of such prosecutions.

(7) This section does not apply to limited gaming as authorized in the Destination Resort Act, sections 3 through 36 of this act.

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

And the title is amended as follows:

Delete line 230

and insert:

circumstances; authorizing a slot machine licensee to conduct the same limited gaming activities as a resort licensee under certain circumstances; subjecting a slot machine licensee to the same tax on gross receipts as a resort licensee in Miami-Dade or Broward Counties; amending s. 849.15, F.S.; authorizing

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL:	SB 1708
INTRODUCER:	Senators Jones and Sachs
SUBJECT:	Destination Resorts
DATE:	March 19, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh/Oxamendi	Cooper	CM	**Pre-meeting**
2.			RI	
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 1740 creates the seven-member Destination Resort Commission (commission) in the Department of Revenue. The principal responsibility of the commission is to license no more than five destination resorts that would offer limited gaming. Limited gaming is defined to include baccarat, twenty-one, poker, craps, slot machines, video gaming of chance, roulette wheels, Klondike tables, punch-board, faro layout, numbers ticket, push car, jar ticket, pull tab, or their common variants, or any other game of chance or wagering device that is authorized by the commission.

The bill divides the state into five geographic districts and authorizes the commission to issue only one license for a destination resort with limited gaming per district. Each district must be represented by at least one commissioner.

Licenses would be awarded through an invitation-to-negotiate process. The commission is not required to issue invitations for all five of the locations that the commission is authorized to license. The commission may stagger its issuance of the invitations. A referendum is required for the county in which the resort would be located.

The bill establishes a $50 million initial license fee, a $1 million fee for a background check, and a $5 million annual license fee. The bill provides a graduated gross receipts tax rate that would be based upon the infrastructure investment in the resort. The tax rate ranges from 10 percent for investments of $2 billion or more, 15 percent for investments of between $1 billion to $2 billion, and 20 percent for investments under $1 billion.

SB 1708 also establishes minimum requirements for the destination resorts. It requires that they contain a minimum of 500,000 square feet of meeting and convention space, and a minimum of 1,000 hotel rooms. It also limits the gaming area to no more than 10 percent of the resort.

The bill requires that the commission consider only applicants that submit a plan to train and hire Florida residents. Applicants must also use the E-verify system to verify employment eligibility, and they must offer veterans preference in employment.

Finally, SB 1708 specifies allocations of tax revenue for Visit Florida, school readiness, and transportation for the disadvantaged.

This bill substantially amends ss. 20.21, 120.80, 849.231, and 849.25, F.S.; and creates several unnumbered sections of law.

II. Present Situation:

Executive Branch Structure

Chapter 20, F.S., provides the structural components of state agencies. A "department" is the structure through which authority is exercised and to which money and positions are appropriated. Its principal subcomponent is a "division." Units below that level may be created by departments; above that level they are created by statute.

Article IV of the Florida Constitution limits executive departments to 25 in number, excluding those authorized or created in that document. There are five constitutionally created or authorized departmental entities: State Board of Administration, Department of Veterans' Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and the Parole Commission.

There are 21 departments authorized by statute: Department of State; Department of Legal Affairs; Department of Financial Services; Department of Agriculture and Consumer Services; Department of Education; Department of Business and Professional Regulation, Department of Community Affairs; Department of Children & Family Services; Florida Department of Law Enforcement; Department of Revenue; Department of Management Services; Department of Transportation; Department of Highway Safety and Motor Vehicles; Department of Environmental Protection; Department of Military Affairs; Department of Citrus; Department of Corrections; Department of Juvenile Justice; Department of the Lottery; Agency for Health Care Administration; and the Department of Health.

The Executive Office of the Governor may be considered to be functional equivalent to a department.

There appears to be 22 state entities that are subject to the constitutional limitation.

Apparently unaffected by the constitutional limitation are a number of entities with powers independent of the nominal department head. Examples of these are the Division of Emergency Management (Department of Community Affairs); the Division of Administrative Hearings (Department of Management Services), and the Financial Services Commission (Department of

Financial Services). These entities are established in an existing department, but are not subject to its control, supervision, or direction in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.

The Public Service Commission is excluded from the limitation since it is, by statute and Supreme Court decisions, a legislative branch agency.

Tourism and Convention Space

According to preliminary estimates[1] by Visit Florida, an estimated 82.6 million visitors came to Florida in 2010, an increase of 2.1 percent over 2009 figures.[2] For the second half of 2010, direct travel-related employment in Florida increased by 1.8 percent, with more than 15,000 additional jobs in the fourth quarter alone. Domestic visitation to Florida increased by 0.5 percent in 2010, when compared to 2009. During the same period, Canadian travel to Florida increased by 16.2 percent and the overseas market to Florida increased by 13.6-percent. Primary data collected at Florida's 14 major airports in 2010 reflects a 3.5-percent increase in total enplanements from 2009.[3]

Preliminary estimates of visitors to Florida for the fourth quarter of 2010 show an estimated 20.8 million people visited the Sunshine State. This reflects an increase of 5.1 percent from the same period in 2009. Visit Florida also reported that an estimated 18.0 million domestic visitors came to Florida during the fourth quarter of 2010, a 4.1 percent increase over 2009. During the same period, Canadian travel to Florida increased by 5.7 percent and the overseas market to Florida increased by 13.5 percent. Primary data collected at Florida's 14 major airports shows a 7.8 percent increase in total enplanements to Florida for the fourth quarter of 2010 over the same period in 2009.[4]

The following information regarding convention space was obtained from select areas around the state:

- In Orlando, the Gaylord Orlando Hotel has 400,000 square feet of meeting and convention space and 1,406 hotel rooms and suites;[5] the Peabody Orlando has 300,000 square feet of meeting and convention space; the Orlando World Marriott has 450,000 square feet of meeting and convention space and 2,000 hotel rooms and suites;[6] and the Walt Disney World Resort has more than 600,000 square feet of space.
- The Orange County Convention Center in Orlando has 2.1 million square feet of exhibit space.
- The Tampa Convention Center has 200,000 square feet of exhibit space and 42,000 square feet of meeting space.
- Jacksonville Convention Center has 78,500 square feet of exhibit space and 48,750 square feet of meeting space.

[1] Preliminary estimates are issued 45 days after the end of each calendar quarter. Final estimates are released when final data are received for all estimates in the report.
[2] *See* http://media.visitflorida.org/news/news.php?id=169, (last visited March 19, 2011).
[3] *Id.*
[4] *Id.*
[5] See http://www.gaylordhotels.com/palms-home.html?intcmp=gp-pl=topnav-ref=home.
[6] See http://www.marriottworldcenter.com/

- The Miami Convention Center has 28,000 square feet of exhibit space, an additional 34 meeting rooms, a 444- seat and a 5,000-seat auditorium, and a 117-seat lecture hall.

Economic Impact of Casino-Oriented Destination Resorts

Thirteen states now have commercial casino operations, excluding those managed by Indian Tribes or at racetracks, and Massachusetts, Texas, New York, and Rhode Island are considering legislation this year to legalize casino gambling.[7] Data on how many casinos are stand-alone operations and how many are "destination resorts"[8] is not readily available.

In the most recent numbers available, the American Gaming Association reported in 2008[9] that the commercial casino industry employed more than 375,000 people earning more than $13 billion in total wages. The report also described casinos as significant contributors to the nation's economy, with gross gaming revenues totaling more than $32.5 billion in 2008.

Casinos have direct economic impacts on the local and state level. For example, a 2008 economic development impact study on the Chumash Casino Resort in Santa Barbara, Calif.,[10] indicated that the casino:

- Created 1,587 direct jobs and an additional 703 indirect jobs in the county;
- Generated more than $350 million in sales in the county, and specifically that every $10 in sales at the casino generated $4 in additional sales in the community; and
- Tourism received a major boost when the casino opened in 2004.

The American Gaming Association maintains a database of pertinent economic data[11] on the 13 states that have commercial casinos and the 12 states, including Florida, with racetrack casinos (nicknamed "racinos"). The two states with commercial casinos closest to Florida – Mississippi and Louisiana – in 2009 reported significant revenues from gaming operations:

- Mississippi reported at its 30 commercial casinos:
  - Number of casino employees totaled 25,739;
  - Casino employee wages were $855.25 million (including tips and benefits);
  - Gross casino gaming revenue was $2.465 billion; and
  - The state's gaming tax revenue was $296.34 million.
- Louisiana reported at its 14 commercial casinos:
  - Number of casino employees totaled 17,610;
  - Casino employee wages were $602.51 million;
  - Gross casino gaming revenue was $2.456 billion; and
  - The state's gaming tax revenue was $598.14 million.

[7] Interim Report 2011-133: Review of Expansion of Casino Gaming in Other States. Prepared by Senate Committee on Regulated Industries. Published in October 2010. Available at http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-133ri.pdf.

[8] "Destination resorts" or "destination resort casinos" are generally defined as mega-centers that feature shopping, conference facilities, restaurants, and live entertainment in addition to casino gaming. Most new casinos are being built in this format.

[9] http://www.americangaming.org/Industry/factsheets/general_info_detail.cfv?id=39.

[10] Economic Impact of the Chumash Casino Resort on the County of Santa Barbara, prepared by The California Economic Forecast for the Santa Barbara County taxpayers Association. Published February 2008. Available at: http://www.sbcta.org/Final_Report__Chumash.pdf . Last visited March 19, 2011.

[11] The American Gaming Association has a complete list of what types of gaming operations are in each state, economic development data, and how each state uses its share of the revenues generated. The latest data is from 2009. See: http://www.americangaming.org/Industry/state/statistics.cfm.

The database does not calculate indirect and induced economic benefits from casino operations.

Destination resorts are also popular internationally among tourists.[12] What is purported to be the largest destination resort east of Las Vegas is under construction in the Bahamas.[13] The new Baha Mar resort is expected to contribute an additional 10 percent growth in the Bahamian GDP by creating 12,000 jobs paying in the aggregate more than $305 million in annual wages. According to projections, Baha Mar will help raise the average annual income for a Bahamian family from $29,000 to $33,500, and in its first year of operations will contribute almost $1 billion to the local economy.

Overview of Florida Gaming Laws and Regulations

In general, gambling is illegal in Florida.[14] Chapter 849, F.S., governs the conduct of gambling in Florida. Section 849.15, F.S., prohibits the manufacture, sale, lease, play, or possession of slot machines[15] in Florida. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S. Florida's gambling prohibition includes prohibitions against keeping a gambling house,[16] and running a lottery.[17] Section 7, Art. X, of the Florida Constitution, prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.[18]

Gaming is permitted at licensed pari-mutuel wagering tracks and frontons,[19] by the state operated lottery,[20] which must operate "so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens,"[21] and by the Seminole Indian tribe.

Pari-mutuel wagering and Cardrooms

The pari-mutuel industry in Florida is made up of greyhound racing, different types of horseracing, and jai alai.[22] The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (department). Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

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[12] An example of websites advertising international casinos and destination resorts is http://www.worldcasinodirectory.com. Last visited March 19, 2011.
[13] Information posted at http://starglobaltribune.com/2011/destination-resorts-a-new-generation-of-tourists-destinations-opened-5954. Last visited March 8, 2011.
[14] Section 849.08, F.S.
[15] Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S.
[16] Section 849.01, F.S.
[17] Section 849.09, F.S.
[18] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[19] *See* ch. 550, F.S., for the regulation of pari-mutuel activities.
[20] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., provides the legislative purpose and intent in regard to the lottery.
[21] *See* s. 24.104, F.S.
[22] "Jai alai" or "pelota" means a ball game of Spanish origin played on a court with three walls. *See* s. 550.002(18), F.S.

Pari-mutuel facilities within the state are allowed to operate poker card rooms under s. 849.086, F.S. No-limit poker games are permitted.[23] The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. The games are played in a non-banking matter, i.e., the house [24] has no stake in the outcome of the game. Such activity is regulated by the department and must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.[25]

Slot Machine Gaming

Slot machine[26] gaming at licensed pari-mutuels is governed by ch. 551, F.S. Pari-mutuel facilities that operate slot machine gaming or engage in other casino-style gaming are generally known as "racinos." During the 2004 General Election, the electors approved Amendment 4 to the state constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward counties upon an affirmative vote of the electors in those counties. Currently, there are five pari-mutuels in those counties conducting slot machine gaming.

Slot machine licensees are required to pay a license fee of $2.5 million for fiscal year 2010-2011. The annual slot machine license fee is reduced in fiscal year 2011-2012 to $2 million.[27] In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.[28]

Seminole Indian Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a tribal-state compact under the Indian Gaming Regulatory Act of 1988[29] that authorizes the Tribe to conduct Class III gaming[30] at seven tribal facilities throughout the state. The compact was subsequently ratified by the Legislature.[31]

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[23] Section 849.086(8)(b), F.S. Prior to the effective date of ch. 2010-29, L.O.F., the maximum bet was $5.

[24] Section 849.086(2)(j), F.S., defines "house" as "the cardroom operator and all employees of the cardroom operator.

[25] Section 849.086(13)(a), F.S.

[26] Section 551.102(8), F.S., defines "slot machine" as the term is used in ch. 551, F.S., for the regulation of slot machine gaming at the qualifying Miami-Dade and Broward county pari-mutuels.

[27] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was $3 million.

[28] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

[29] The Indian Gaming Regulatory Act of 1988 or "IGRA", Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 et seq.

[30] The Indian Gaming Regulatory Act of 1988 divides gaming into three classes:

- "Class I gaming" means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations.
- "Class II gaming" includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo. Class II gaming may also include certain non-banked card games if permitted by state law or not explicitly prohibited by the laws of the state but the card games must be played in conformity with the laws of the state. A tribe may conduct Class II gaming if:
  - the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity; and
  - the governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission.
- "Class III gaming" includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

[31] Chapter 2010-29, L.O.F.

The compact has a 20-year term. It permits the Tribe to offer slot machines, raffles and drawings, and any other new game authorized for any person for any purpose, at all seven of its tribal casinos.[32]

The compact permits the Tribe to conduct banked card games, including blackjack, chemin de fer, and baccarat, but the play of the banked card games is not allowed at the casinos at the Brighton or Big Cypress facilities. If these banked games are authorized for any other person for any other purpose, except if banked card games are authorized by a compact with the Miccosukee Indians, the Tribe would be authorized to offer banked cards at all seven of its facilities. The authority for banked card games terminates at the end of 5 years unless affirmatively extended by the Legislature or the Legislature authorizes any other person to offer banked card games.

In exchange for the Tribe's exclusive right to conduct slot machine gaming outside of Miami-Dade and Broward counties and the exclusive right to offer banked card games at the specified facilities (these grants of authority are known as the "exclusivity provision"), the compact provides for revenue sharing payments by the Tribe to the state as follows:

- During the initial period (first 24 months), the Tribe is required to pay $12.5 million per month ($150 million per year);
- After the initial period, the Tribe's guaranteed minimum revenue sharing payment is $233 million for year 3, $233 million for year 4, and $234 million for year 5;
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win[33] that range from 12 percent of net win up to $2 billion, to 25 percent of the amount of any net win greater than $4.5 billion;
- After the first 5 years, the Tribe will continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment; and
- If the Legislature does not extend the authorization for banked card games after the first 5 years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

The compact provides for the expansion of gaming in Miami-Dade and Broward counties under the following limited circumstances:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuels located in Miami-Dade and Broward counties and if the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.

[32] *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida,* approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. (hereinafter *Gaming Compact*) The Tribe has three gaming facilities located in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa).

[33] The compact defines "net win" as "the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe."

- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.
- If new games are authorized to any location in Miami-Dade and Broward counties within the first 5 years of the Compact, the guaranteed minimum payment would no longer apply to the Tribe's revenue sharing payments and the $1 billion guarantee would not be in effect. The Tribes payments would be based on the applicable percentage of net win.

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

III. Effect of Proposed Changes:

SB 1708 creates undesignated sections of law and amends four sections of existing law to establish the Destination Resort Act (act).

Definitions

SB 1708 provides several definitions used in the act.

The bill defines the terms "destination resort" or "resort" to mean:

> "a freestanding, land-based structure in which limited gaming may be conducted. A destination resort is a mixed-use development consisting of a combination of various tourism amenities and facilities, including, but not limited to, hotels, villas, restaurants, limited gaming facilities, convention facilities, attractions, entertainment facilities, service centers, and shopping centers."

The bill divides the state into five districts for the purpose of awarding destination resorts. It defines the following five districts as:

- District One: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Jackson, Washington, Bay, Calhoun, Gulf, Franklin, Liberty, Gadsden, Leon, Wakulla, Jefferson, Madison, Hamilton, Taylor, Lafayette, Suwannee, Columbia, Baker, Union, Bradford, Alachua, Gilchrist, Dixie, and Levy counties.
- District Two: Nassau, Duval, Clay, Putnam, St. Johns, Flagler, Marion, Volusia, Lake, Seminole, Orange, Hernando, Polk, and Osceola counties.
- District Three: Citrus, Sumter, Pasco, Pinellas, Hillsborough, Manatee, Hardee, DeSoto, Sarasota, Charlotte, Lee, Collier, Monroe, Highlands, Okeechobee, Glades, and Hendry counties.
- District Four: Brevard, Indian River, St. Lucie, Martin, and Palm Beach counties.
- District Five: Broward and Miami-Dade counties.

The bill defines the terms "limited gaming," "game," or "gaming" to mean:

> "the games authorized pursuant to the Resort Act in a limited gaming facility, including, but not limited to, those commonly known as baccarat, twenty-one, poker, craps, slot machines, video gaming of chance, roulette wheels, Klondike tables, punch-board, faro layout, numbers ticket, push car, jar ticket, pull tab, or their common variants, or any other game of chance or wagering device that is authorized by the commission."

The bill defines a "qualifier." It provides that a qualifier means:

> "an affiliate, affiliated company, officer, director, or managerial employee of an applicant for a resort license, or a person who holds a direct or indirect equity interest in the applicant. The term may include an institutional investor. As used in this subsection, the terms "affiliate," "affiliated company," and "a person who holds a direct or indirect equity interest in the applicant" do not include a partnership, a joint venture relationship, a shareholder of a corporation, a member of a limited liability company, or a partner in a limited liability partnership that has a direct or indirect equity interest in the applicant for a resort license of 5 percent or less and is not involved in the gaming operations as defined by the rules of the commission."

Destination Resort Commission

SB 1708 amends s. 20.21, F.S., to create the Destination Resort Commission (commission) within DOR.[34] The commission is created in DOR for administrative purposes only, and it is a separate budget entity not subject to control, supervision, or direction by DOR in any manner.

The commission would consist of seven members appointed by the Governor and confirmed by the Senate. The bill specifies experience requirements for the commission members, including experience in corporate finance, tourism, convention and resort management, gaming, investigation or law enforcement, business law, or related legal experience. The members would serve 4-year, staggered terms.

One member of the commission must be a Florida-licensed certified public accountant with at least 5 years of experience in general accounting. One member must have experience in the fields of investigation or law enforcement.

The bill divides the state into five destination resort districts, and requires that each district must be represented by at least one member of the commission who must reside in that district.

The bill prohibits the appointment to the commission of elected officials and persons with a direct or indirect financial interest in applicants for a resort license or resort licensees. Members may also not be related to any person within the second degree of consanguinity or affinity to any person licensed by the commission. Members also may not possess the specified criminal history, including any felony or any misdemeanor involving gambling, within the 10 years preceding their appointment.

[34] Section 20.21(1), F.S., provides that the agency head of the Department of Revenue is the Governor and the Cabinet.

One member of the commission shall be appointed by the Governor to serve as the chair of the commission. The chair shall be the administrative head of the commission and would be responsible for setting the agenda for commission meetings and approving all notices, vouchers, subpoenas, and reports required by the act. The bill also provides for a vice chair to be elected by the members of the commission during its first meeting.

The commission would be headquartered in Tallahassee. However, the commission is authorized to establish field offices as it deems necessary.

The initial meeting of the commission must be held by October 1, 2011. The commission must meet at least monthly.

The commission is required to appoint an executive director of the commission. The executive director must be appointed within 10 days of the commission's initial meeting. The executive director may hire assistants and other employees as necessary to conduct the business of the commission.

The bill provides for a comprehensive code of ethics which must be adopted by the commission. Generally, the code of ethics would prohibit members of the commission, the executive director, and employees of the commission from having a direct or indirect financial interest in the entities that it would regulate. It would also prohibit engaging in political activity, including using the person's official authority to influence the result of an election. Employees or agents of the commission would be prohibited from engaging in outside employment related to the activities or persons regulated by the commission.

The commissioners, the executive director, and each managerial employee must file annual financial disclosures. It also specifies the circumstances in which these persons must immediately file disclosures, including matters related to criminal arrests, negotiations for an interest in a licensee or applicant, and negotiations for employment with a licensee or applicant. These persons are also prohibited from engaging in activities that may constitute a conflict of interest.

The bill prohibits commissioners, licensees, applicants, or any affiliate or representative of an applicant or licensee from engaging directly or indirectly in an *ex parte* communication with a member of the commission concerning a pending application, license, or enforcement action or concerning a matter that likely will be pending before the commission. Any *ex parte* communication must immediately be reported in writing to the chair and placed on the record. Persons who make the *ex parte* communication must submit to the commission a written description of the communication which identifies the commissioner who received the communication. A commissioner who fails to disclose an *ex parte* communication with 10 days of the communication is subject to removal from office and a civil penalty not to exceed $5,000. Such a violation would be investigated by the Commission on Ethics.

A violation of the act by a commissioner may result in disqualification or constitute cause for removal by the Governor. The governor may impose other disciplinary action as determined by the commissioner. Violations by employees may result in termination of employment. If the violation involves an unintentional financial interest in a licensee or applicant, the person would

not have violated the act if they divested their financial interest with 30 days after the interest was acquired.

Powers and Duties of the Commission

The principal responsibility of the commission is to exercise jurisdiction over, and to supervise, all destination resort limited gaming activity in the state. The commission may authorize five destination resorts through an invitation to negotiate process in which respondents submit accompanying applications to demonstrate their qualifications.

The commission would investigate the qualifications of the persons who respond to the invitation to negotiate and select the applicant that best serves the interest of the residents of Florida based on the:

- Potential for economic development presented by the applicant's proposed investment in infrastructure, such as hotels and other nongaming entertainment facilities; and the
- Applicant's ability to maximize revenue for the state.

The commission will have the authority to suspend or revoke the license of any person found to no longer be qualified. The commission also can deny, revoke, suspend, or place conditions on a licensee who violates any provision of the act, a rule adopted by the commission, or an order of the commission. The commission can levy fines that may not exceed $250,000 per violation arising out of a single transaction.

In terms of enforcement authority, the commission can issue subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of records. It can apply to the courts for injunctive relief to enforce the act and any rules adopted by the commission.

The bill gives the Florida Department of Law Enforcement and local law enforcement agencies the authority to investigate criminal violations of the act and other criminal violations that occur at the resorts in conjunction with limited gaming. Section 8 of the bill authorizes the commission to employ sworn law enforcement officers.

The bill amends s. 120.80, F.S., which sets forth exceptions to the Florida Administrative Procedures Act. The bill exempts the commission from having to comply with the hearing and notice requirements in ss. 120.569 and 120.57(1)(a), F.S, the license application provisions in s. 120.60, F.S., and the waiver and variance provisions in s. 120.542, F.S.

The commission is authorized to adopt all rules necessary to implement, administer, and regulate limited gaming. The bill provides a listing of specific areas in which the commission is authorized to adopt rules, these include the types of games, the time and place for the gaming, and the structures where limited gaming is authorized. The commission also can establish procedures to scientifically test slot machines and other authorized gaming equipment. The commission can adopt any rule necessary to accomplish the purposes of the act.

The bill preempts the regulation of limited gaming activity at destination resorts to the state through the commission.

Awarding Licenses for Limited Gaming at Destination Resorts

SB 1708 authorizes limited gaming at destination resorts. A destination resort may not be awarded a resort license unless a majority of the electors in a countywide referendum have approved the conduct of limited gaming in the respective county.

Licenses would be awarded through an invitation to negotiate (invitations) process in which applicants reply on forms provided by the commission in response to the invitation to bid. The commission is not required to issue invitations for all five of the locations that the commission is authorized to permit. The commission may stagger its issuance of the invitations.

The invitation may specify the district in which the facility would be located. The commission is required, if practical, to hold a public hearing in the county or counties for which the invitation would be issued.

After reviewing the replies to the invitation, the commission may select one or more replies and commence negotiations after determining which replies are in the best interest of the state based on the selection criteria.

Criteria for the Award of a Destination Resort License
Only one destination resort license may be awarded per district. The applicant for a resort license must demonstrate the resort will:

- Increase tourism, generate jobs, provide revenue to the local economy, and provide revenue to the General Revenue Fund;
- Provide a minimum of 1,000 hotel rooms;
- Contain convention and meeting floor space of at least 500,000 square feet; and
- Limit the area where limited gaming is authorized to no more than 10 percent of the resort development's total square footage.

In addition the applicant must demonstrate:

- A history of, or a bona fide plan for, community involvement or investment in the community where the resort having a limited gaming facility will be located.
- The financial ability to purchase and maintain an adequate surety bond.
- That it has adequate capitalization to develop, construct, maintain, and operate the proposed resort and convention center in accordance with the act; and
- The ability to implement a program to train and employ residents of this state for jobs that will be available at the destination resort, including its ability to implement a program for the training of low-income persons.

The commission may assess the quality of the proposed development's aesthetic appearance in the context of its potential to provide substantial economic benefits, including the potential to provide substantial employment opportunities.

SB 1708 specifies the information that must be included in the application. The application must be sworn. The required information includes identifying information about the applicant and all qualifiers, which are defined in the bill to mean the affiliate, affiliated company, officer, director, or managerial employee of an applicant, or a person who holds a direct or indirect equity interest

in the applicant. Persons with interest of less than 5 percent do not have to be disclosed as a qualifier.

An incomplete application is grounds for denial of an application. However, if the commission determines that an application is incomplete, the applicant may request an informal conference with the executive director or his designee. The executive director may grant a 30 day extension to complete an application.

The bill provides for institutional investors of an applicant and provides that they do not have to be included in the application. Institutional investors include persons that hold less than 5 percent of the equity securities or 5 percent of the debt securities of an applicant or affiliate of the applicant, and are a publicly traded corporation. Institutional investors must also file a certified statement that they do not intend to influence or affect the affairs of the applicant or its affiliate, and that the securities of the applicant or affiliate that it holds were purchased for investment purposes only. The commission may require that an institutional investor must qualify if it finds that the investor is in a position to exercise a substantial impact upon the controlling interests of a licensee. The bill also exempts lenders and underwriters as qualifiers.

Application Fees
The application must be submitted with a nonrefundable application fee of $1 million dollars to defray the costs of investigating and reviewing the application. The applicant must pay any investigative and review costs that exceed the $1 million fee.

Also, the application must include a one-time licensing fee of $50 million, which the commission must refund within 30 days of denying an application. If an applicant withdraws its application after the application deadline, the commission must refund 80 percent of the licensing fee within 30 days after the application is withdrawn.

Resort License Conditions
SB 1708 outlines the conditions for initial licensure and continuing licensure for resort licensees. The conditions require that the licensee:

- Comply with the Resort Act and rules of the commission;
- Allow the commission and the Florida Department of Law Enforcement unlimited access to and the right of inspection for the areas of the resort where limited gaming activities occur;
- Complete the resort in accordance with the timeframe and plans submitted to the commission in the proposal, unless a waiver has been granted;
- Ensure that the facilities-based computer system is operational and that all accounting functions are structured to facilitate regulatory oversight, which shall require the systems to provide for real-time information to the commission and Department of Law Enforcement;
- Ensure that each game, machine, or device is protected from tampering or manipulation;
- Submit and comply at all times with a detailed security plan;
- Keep and maintain daily records of the resort for at least 5 years; and
- Create and file with the commission a written policy for:

- Creating opportunities to purchase from vendors from this state, including minority vendors;
- Creating opportunities for employment of residents of this state, including minority residents;
- Ensuring opportunities for hiring construction services from minority contractors;
- Ensuring opportunities for employment are on an equal, nondiscriminatory basis;
- Training employees on responsible gaming and work with a compulsive or addictive gambling prevention program;
- Implementing a drug testing program;
- Using the Internet-based job-listing system of the Agency for Workforce Innovation in advertising employment opportunities; and
- Ensuring that each slot machine pays out at least 85 percent.

In addition, the bill provides that the resort licensee shall give employment preference to veterans and use the E-Verify program to verify the employment eligibility of all prospective employees.

The bill provides that the resort licensee should be renewed if the licensee demonstrates an effort to increase tourism, generate jobs, and provide revenue to the state and local economy.

Bond
Each resort licensee must, at its own cost and expense, give a bond in the penal sum[35] to be determined by the commission and payable to the Governor. The commission shall set the bond at the total amount of the estimated license fees and taxes estimated to become due for the resort. In lieu of a bond, a licensee may instead pay a like amount of funds to the commission.

Limited Gaming
Limited gaming may be conducted at a resort licensee, but only within the facility of the resort as approved by the commission. Limited gaming activities may not begin until the resort is completed in accordance with the plans submitted to the commission. The resort licensee may only accept wagers from persons at least 21 years of age who are present in the facility. The facility may not accept wagers using money, except for slot machine gaming. Section 24 of the bill further provides that the facility may be open 24 hours per day, 365 days per year.

License Fees
Each resort licensee is required to pay $5 million annually to the commission as a license fee. In addition, each resort licensee is required to pay a gross receipts tax on the gross receipts for limited gaming activities at the resort. Once the resort is complete, the licensee must submit all information, as required by the commission, to determine the infrastructure investment and to set the tax rate for the resort.

If the total infrastructure investment is $2 billion or more, the gross receipts tax rate is 10 percent. If the total infrastructure investment is at least $1 billion but less than $2 billion, the gross receipts tax is 15 percent. If the total infrastructure investment is less than $1 billion, the gross receipts tax is 20 percent.

[35] "Penal sum" is the stated limit of the bond which, in turn, is the limit of the insurer's liability under the bond.

Uses of the Gross Receipts Tax Revenues
Pursuant to section 25 of the bill, the revenues from the gross receipts tax are deposited into the Destination Resort Trust Fund. These revenues must be used for the following purposes:

- Ninety-five percent of the money in the fund is deposited to the General Revenue Fund;
- Two and one-half percent is deposited in the Tourism Promotional Trust Fund for use by the Florida Commission on Tourism;
- One and one-fourth percent is deposited into the Employment Security Administration Trust Fund for use by the school readiness program; and
- One and one-fourth percent is deposited into the Transportation Disadvantaged Trust Fund for use by the Transportation Disadvantaged Commission, which oversees locally run programs to provide transportation services to the disabled, elderly, and underprivileged.

Fingerprint Requirements
SB 1708 provides fingerprint requirements for all applicants and licensees of the commission. The cost for fingerprinting is paid by the applicant.

Compulsive or Addictive Gambling Prevention Program
Each resort licensee is required to train employees on responsible gaming and to work with a program on responsible gambling to recognize problem gambling. The commission is required to contract for services related to the prevention of compulsive and addictive gambling. The contract for the services must require advertising of responsible gambling and the publication of a gambling telephone help line. Each resort licensee is required to fund the program with a $250,000 annual fee.

Suppliers' and Occupational Licenses
Suppliers' licenses are required in order to furnish, on a regular or continuing basis, gaming equipment, supplies, devices, or goods or services relating to the realty, construction, or business of a resort licensee. This requirement includes, but is not limited to, manufacturers, distributers, food purveyors, construction companies, and junket enterprises. Each applicant and licensee must pay an annual license fee of $5,000. A person is not eligible for a suppliers' license if the person has committed a felony, knowingly submitted false information to the commission, the applicant is a member of the committee, the applicant is not a natural person, or the applicant has a resort license or pari-mutuel license in either this state or any other jurisdiction.

Any person who wishes to become a gaming employee must apply to the commission for an occupational license; no person may be employed by a resort licensee until that person has an occupational license. The application fee must be set by the commission, but an employee occupational license fee may not exceed $50. Occupational licensees must be at least 21 years old to perform gaming related functions and at least 18 to perform non-gaming related functions. A person who has committed a felony or crime involving dishonesty or moral turpitude in any jurisdiction is not eligible for an occupational license.

All applicants for suppliers' and occupational licenses must submit to background investigations and comply with the fingerprint requirements in the act. The bill authorized the commission to revoke a license for a violation of the act and commission rules. It provides the duties of each

licensee. In addition, the bill outlines when the executive director can issue a temporary suppliers' or occupational license.

Quarterly Reports
The commission is required to submit quarterly reports to the Governor, President of the Senate, and Speaker of the House of Representatives. The reports must include a statement of receipts and disbursements related to limited gaming, a summary of disciplinary actions taken by the commission, and any additional information or recommendations that the commission believes may improve the regulation of limited gaming or increase the economic benefits of limited gaming to this state.

Hearings by the Commission
The chair of the commission may assign hearings to two or more members of the commission. Only the commissioners assigned to a hearing can participate in the final decision for the commission on that matter. If only two commissioners are assigned a matter and they cannot decide, the chair may cast the deciding vote. Any party to a proceeding before the commission may request for the matter to be heard before the full commission; the full commission must convene within 15 days to hear the matter.

Resolutions of Disputes between Licensees and Patrons
If a dispute that involves alleged wins, losses, payments of cash, prizes, benefits, tickets, or other items or a dispute that involves the manner in which a game, tournament, contest, drawing, promotion, race or similar activity was conducted, cannot be resolved between the licensee and the patron, the licensee must immediately notify the commission if the dispute involves $500 or more. If the dispute involves less than $500, the licensee must notify the patron of the patron's right to file a complaint with the commission. The commission may investigate the matter and may require the licensee to pay restitution to the patron. Failure to notify the commission of a dispute or notifying a patron of their right to file a complaint constitutes grounds for disciplinary action against the resort licensee.

Enforcement of Credit Instruments
SB 1708 permits the use of credit instruments. Resort licensees may accept incomplete credit instruments if they are signed by the patron and the amount is completed in numbers; the resort licensee may complete the incomplete instrument. The resort licensee may accept a credit instrument payable to an affiliate of the licensee. In addition, the resort licensee may accept the credit instrument before, during, or after the patron has incurred the debt with the resort.

Voluntary Self Exclusion
SB 1708 provides that a person may request to be excluded for all limited gaming facilities by completing a self-exclusion form and submitting it to the commission. The form requires the patron to include his or her name, date of birth, and other identifying information. The form also requires the individual to indicate how long he or she wishes to be excluded from the limited gaming facilities.

Conforming Provisions
SB 1708 amends the gambling devices prohibition in s. 849.231, F.S., and the bookmaking prohibition in s. 849.25, F.S., to incorporate the limited gaming authorization provided in the bill.

Effective Date
The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A tied public records bill, SB 1712, has been filed to accompany this bill.

C. Trust Funds Restrictions:

A tied trust fund bill, SB 1710, has been filed to accompany this bill.

D. Other Constitutional Issues:

The Florida Constitution is silent on the subject of casino gaming. However, the Florida Constitution does not prohibit the Legislature from creating laws to authorize, regulate, or tax gaming in the state. With regard to gaming, the Florida Constitution only addresses the subjects of lotteries and slot machine gaming. The Florida Constitution prohibits lotteries, except pari-mutuel pools permitted by state law,[36] but specifically allow for state operated lotteries.[37]

Even though the Florida Constitution does not specifically prohibit any form of gaming other than lotteries that are not state operated, the provision that expanded the pari-mutuel locations that can offer slot machine gaming is being challenged as violating s. 23, Art. X, Florida Constitution. These lawsuits challenge the Legislature's authority to authorize slot machine gaming outside the pari-mutuel facilities enumerated in s. 23, Art. X, of the Florida Constitution, which references pari-mutuel facilities that were existing and had conducted live racing or games in that county during each of the last 2 calendar years before the effective date of the amendment (2004). The trial court upheld the

[36] Section 7, Art. X, Florida Constitution.
[37] Section 15, Art. X, Florida Constitution.

constitutionality in Leon County.[38] That decision is on appeal to the First District Court of Appeals.[39]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Applicants for a destination resort license would pay an application fee of $1 million dollars to defray the costs of investigating and reviewing the application, plus any investigative and review costs that exceed $1 million.

The application also must include a one-time licensing fee of $50 million, which the commission must refund within 30 days of denying an application. If an applicant withdraws its application after the application deadline, the commission must refund 80 percent of the licensing fee within 30 days after the application is withdrawn.

Each resort licensee would be required to pay $5 million annually to the commission as a license fee. In addition, each resort licensee would pay a gross receipts tax. The tax rate would be dependent on the licensee's investment in infrastructure. Once the resort is complete, the licensee must submit all information, as required by the commission, to determine the infrastructure investment and to set the tax rate for the resort. If the total infrastructure investment is $2 billion or more, the gross receipts tax rate is 10 percent. If the total infrastructure investment is at least $1 billion but less than $2 billion, the gross receipts tax is 15 percent. If the total infrastructure investment is less than $1 billion, the gross receipts tax is 20 percent.

Suppliers' licensees would be required to pay an annual license fee of $5,000, while the fee for an occupational licensee may not exceed $50.

The state's Revenue Estimating Conference has not met to estimate the revenue impact of SB 1708. However, the casino industry estimates that implementation of SB 1708 may:

- Generate total non-gaming revenue for the first year of $85.4 million;
- Induce by the third year $64.5 million in convention and local bed tax collections; and
- Increase collections of corporate income taxes and sales taxes by nearly $52 million.

[38] *See* Order on Plaintiff's Motion for Summary Judgment, consolidated cases, *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2257 and *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2132 (Fla. 2d Cir. Ct. December 14, 2010).

[39] *See Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D11-130 (Fla. 1st DCA) and *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D10-6780 (Fla. 1st DCA).

B. Private Sector Impact:

The industry estimates that the five resorts, if authorized, would create 140,000 construction jobs and would generate $10 million in construction costs.

The industry estimates that the five resorts, if built, would attract 5.26 million out-of-market visitors, including more than 313,000 convention visitors.

C. Government Sector Impact:

Indeterminate. However, the bill authorizes fees projected to be sufficient to pay the costs of administering the act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

State revenue-sharing with the Seminole Indian Compact relies on continued exclusivity of casino-style and Class III gaming. The authorization for full commercial casinos would constitute a casino style and Class III gaming expansion and would affect the revenue-sharing payments that the Tribe is required to make to the state under the compact. Any cessation or reduction of revenue sharing payments upon the expansion of casino gaming would depend on the location of the new casinos. It is important to stress that any cessation or reduction of revenue sharing payments would only occur when the first Class III or other casino-style game is played. The mere authorization of Class III gaming or other casino-style gaming would not affect the payments.

It is also important to note that the state's expansion of Class-III gaming or casino-style gaming would not mean that the state had violated its compact with the Tribe. The compact specifies the consequences, particularly the financial ramifications, if the state elects to expand gaming in this state, and does not expressly prohibit any such expansion.

If the Destination Resort Commission approves a destination resort with limited gaming in any location outside of Miami-Dade and Broward Counties, all of the Tribe's revenue-sharing payments would stop once the first game is played.[40] If the Destination Resort Commission approves a destination resort with limited gaming inside of Miami-Dade and Broward Counties, but the location is not at a pari-mutuel facility, the Tribe would continue to make revenue-share payments, but the Tribe would exclude the net win from their Broward facilities. According to the division, the net win from the Tribe's Broward facilities equals approximately 47 percent of the Tribe's total net win. Therefore, if casino-style gaming were expanded and limited to Miami-Dade and Broward Counties, the Tribe's payments would be reduced by approximately 47 percent.

[40] *See* Part XII. A., *Gaming Compact, supra n. 29*.

In addition, if the destination resort with limited gaming is authorized for any location in Miami-Dade or Broward counties within the first 5 years of the compact, the guaranteed minimum payment and the $1 billion guarantee for the first 5 years of the compact would no longer apply. The Tribe's payments would be based on the applicable percentage of net win.

Once the new gaming begins at licensed destination resorts, the Tribe may continue to offer the covered games authorized in the compact plus any additional games that are authorized for the destination resorts.[41] The Tribe will have to renegotiate a new Compact for Class III games when the Compact expires at the end of its 20-year term,[42] but it is not clear what reason the Tribe would have to renegotiate the revenue-sharing terms if casino-style gaming is authorized at destination resorts in the state. However, the Tribe would have to negotiate a new compact at the end of the current compact's term before it could continue to offer the covered games.[43]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[41] *See* the definition of covered games at Part III.F.4., *Gaming compact, supra* at n. 29.
[42] *See* Part XVI.B., *Gaming Compact, supra* at n. 29.
[43] IGRA at 18 U.S.C. s. 2710(d)(1)(C).

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL:	SB 1710
INTRODUCER:	Senators Jones and Sachs
SUBJECT:	Trust Funds/Destination Resort Trust Fund
DATE:	March 18, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Pre-meeting**
2.			RI	
3.			BC	
4.				
5.				
6.				

I. Summary:

A trust fund consists of moneys received by the state, which under law or under trust agreement, are segregated for a purpose authorized by law.[1]

SB 1710 creates the Destination Resort Trust Fund within the Department of Revenue (DOR) to hold the deposits of licensing fees and the proceeds of gross receipts taxes imposed on destination resorts, to be created in the linked bill, SB 1708.

The deposited funds may be expended only pursuant to legislation appropriation or an approved amendment to the Destination Resort Commission's operating budget, pursuant to ch. 216, F.S.

In accordance with the state constitution, the trust fund will be terminated on July 1, 2015, unless terminated sooner by the Legislature. The trust fund must be reviewed prior to its scheduled termination according to statutory requirements.

Passage of SB 1710 requires a three-fifths vote of each chamber, pursuant to s. 19(f)(1), Art. III of the Florida Constitution.

SB 1710 creates an unnumbered section of law in the Florida Statutes.

[1] Section 215.32(2)(b)1., F.S.

II. Present Situation:

Constitutional and statutory requirements for trust funds

A trust fund consists of moneys received by the state, which under law or under trust agreement, are segregated for a purpose authorized by law. Section 19(f), Art. III, of the Florida Constitution governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the membership of each house of the Legislature. This provision further specifies that a trust fund must be created in a separate bill for that purpose only.

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.[2]

The Chief Financial Officer is directed to invest all trust funds and all agency funds of each state agency.[3] Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for re-appropriation by the Legislature.[4] Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act.[5]

State trust funds terminate no more than 4 years after the effective date of the act that created them, unless they are re-created by the Legislature with a three-fifths vote of the Senate and the House of Representatives.

2011 legislation related to destination resorts

SB 1708, the linked companion bill to SB 1710, creates five so-called "destination resorts" throughout the state and establishes a "Destination Resort Commission" to license and otherwise regulate these facilities.

A destination resort is defined in the companion bill as a multi-use, free-standing, land-based structure in which limited gaming may be conducted, and may include a combination of tourism amenities, such as hotels, restaurants, attractions, shopping centers, and convention centers. The types of gaming that may be offered at destination resorts include baccarat, roulette, poker and other card games, craps, slot machines, and video gaming.

[2] Section 215.3207, F.S.
[3] Section 17.61, F.S.
[4] Section 216.301(1)(b), F.S.
[5] Section 216.301(1)(d), F.S.

The seven-member Destination Resort Commission (commission) will be housed within the state Department of Revenue for administrative purposes only, and otherwise operate as specified in law. Among its powers and duties, the commission will have the authority to accept and review applications for destination resorts; license a total of five destination resorts; inspect the resorts' premises and gaming machines; and conduct investigations and issue subpoenas, as necessary, to gather information essential to licensing and regulating the destination resorts.

The initial application fee is $50 million, and licensed destination resorts must pay an annual $5 million renewal fee.

Licensed destination resorts must pay the state gross receipts taxes on a tiered percentage of their gross receipts, based on their total infrastructure investment. For example, a destination resort that invests $2 billion or more in infrastructure must pay the state a 10-percent tax on its gross receipts. For a destination resort that invested less than $1 billion in its infrastructure, the tax rate is 20 percent of gross receipts.

III. Effect of Proposed Changes:

Section 1 creates in an undesignated section of Florida Statutes the Destination Resort Trust Fund. Deposited in the trust fund will be the license fees for the resorts and gross receipts taxes collected from the licensed resorts.

The deposited funds may be expended only pursuant to legislation appropriation or an approved amendment to the Destination Resort Commission's operating budget, pursuant to ch. 216, F.S.

In accordance with the state constitution, the trust fund will be terminated on July 1, 2015, unless terminated sooner by the Legislature. The trust fund must be reviewed prior to its scheduled termination according to statutory requirements in s. 215.3206(1) and (2), F.S.

Section 2 provides a contingent effective date of July 1, 2011, if SB ___, or similar legislation creating the Destination Resort Commission and a process for licensing, regulating, and taxing destination resorts in Florida, is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

In accordance with s. 19(f)(2), Art. III of the Florida Constitution, the Destination Resort Trust Fund shall be terminated on July 1, 2015. Before its scheduled termination, the fund shall be reviewed in accordance with s. 215.3206(1) and (2), F.S.

In addition, s. 19(f)(1), Art. III of the Florida Constitution provides that "[n]o trust fund of the State of Florida or other public body may be created or re-created by law without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only."

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL:	SB 1712
INTRODUCER:	Senators Jones and Sachs
SUBJECT:	Public Records/Destination Resorts
DATE:	March 18, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Pre-meeting**
2.			RI	
3.			GO	
4.				
5.				
6.				

I. Summary:

The Florida Constitution and the Florida Statutes ensures public access to documents received and maintained by government agencies as part of their official duties. However, the Legislature may exempt agency documents from public access. An exemption must be created by a general law specifically stating the public necessity justifying the exemption. Further, an exemption must be no broader than necessary to accomplish the stated purpose of the law.

SB 1712 creates a public-records exemption for the Florida Destination Resort Commission (commission), to be created in a linked companion bill. Proprietary confidential business information and trade secrets that might be part of the applications submitted to the commission by prospective destination resorts, or other documents submitted by licensed destination resorts in the future, would be confidential and exempt per constitutional and statutory provisions.

Additionally, the investigative techniques and procedures to be used by the commission when evaluating the applications, reviewing a destination resort's regulatory compliance, or collecting data, records, and testimony for the purpose of documenting violations at a destination resort would be confidential and exempt.

The bill also specifies there is a public necessity for the exemptions in order to ensure that the best qualified applicants for a destination resort are not deterred from applying because of confidentiality concerns, and to aid the commission in conducting investigations.

SB 1712 requires a two-thirds vote of the membership of each house of the Legislature for passage. The bill creates an undesignated section of law in the Florida Statutes.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides:

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

In addition to the Florida Constitution, the Public Records Law,[1] which predates the constitutional provisions, specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1) (a), F.S., states:

> "Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record."

Unless specifically exempted, all agency[2] records are available for public inspection. The term "public records" is defined in s. 119.011(11), F.S., to include:

> ". . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of the official business by any agency."

This definition of "public records" has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business

[1]Chapter 119, F.S.

[2]The term "agency" is defined in s. 119.011(2), F.S., to mean "…any state, county district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

which are used to perpetuate, communicate, or formalize knowledge.[3] Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.[4]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[5] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[6]

Only the Legislature is authorized to create exemptions to open government requirements.[7] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[8] A bill enacting an exemption[9] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[10]

Trade Secrets

At least two subsections in different chapters of the Florida Statutes define the term "trade secret." The first definition is part of the Uniform Trade Secrets Act[11] and is found in s. 688.002(4), F.S. That section defines "trade secret" to mean:

> ". . . information, including a formula, pattern, compilation, program, device, method, technique, or process that:
>
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

The second definition for "trade secrets" is found in s. 812.081(1)(c), F.S., which is part of a chapter of law that deals with theft, robbery and related crimes. Section 812.081(1)(c), F.S., defines "trade secret" to mean:

> ". . . the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business

[3] *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[4] *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).
[5] Attorney General Opinion 85-62.
[6] *Williams v. City of Minneola,* 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[7] Article 1, s. 24(c), State Constitution.
[8] *Memorial Hospital-West Volusia v. News-Journal Corporation, 729 So. 2d 373, 380 (Fla. 1999); Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[9] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[10] Art. I, s. 24(c), State Constitution.
[11] Section 688.001, F.S.

> an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
>
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes."

Business entities often provide agencies with information meeting the definition of "trade secrets" under one of the foregoing sections. For example, a corporation which is negotiating with an economic development agency to relocate to Florida may provide that agency with trade secret information as part of the negotiation process.[12] Another example is the receipt of trade secret information by the State Board of Administration during its consideration of an alternative investment under s. 215.44, F.S. In both of these examples, trade secret information is protected by exemptions that are either specific to the agency or to a program.

Open Government Sunset Review Act

The Open Government Sunset Review Act (act), in s. 119.15, F.S., provides a process for the review, and repeal or reenactment of, public records exemptions.[13] Under Florida law, a new exemption or substantial amendment to an existing exemption shall be repealed on October 2nd of the 5th year after enactment, unless the Legislature acts to reenact the exemption.[14] By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives, the language and statutory citation of each exemption scheduled for repeal the following year.[15]

Resort Destination Commission

SB 1708, the linked companion to SB 1712, creates five so-called "destination resorts" throughout the state and establishes a "Destination Resort Commission" to license and otherwise regulate those facilities.

A destination resort is defined in the companion bill as a multi-use, free-standing, land-based structure in which limited gaming may be conducted, and may include a combination of tourism amenities, such as hotels, restaurants, attractions, shopping centers, and convention centers. The

[12] Section 288.075, F.S.
[13] This act applies to exemptions from s. 24, Art. I, of the State Constitution and s. 119.07(1), F.S., or s. 286.011, F.S.
[14] Section 119.15(3), F.S.
[15] Section 119.15(5)(a), F.S.

types of gaming that may be offered at destination resorts include baccarat, roulette, poker and other card games, craps, slot machines, and video gaming.

The seven-member commission will be housed within the state Department of Revenue for administrative purposes only, and otherwise operate as specified in law. Among its powers and duties, the commission will have the authority to accept and review applications for destination resorts; license a total of five destination resorts; inspect the resorts' premises and gaming machines; and conduct investigations and issue subpoenas, as necessary, to gather information essential to licensing and regulating the destination resorts.

The initial application fee is $50 million, and licensed destination resorts must pay an annual $5 million renewal fee.

Licensed destination resorts must pay the state gross receipts taxes on a tiered percentage of their gross receipts, based on their total infrastructure investment. For example, a destination resort that invests $2 billion or more in infrastructure must pay the state a 10-percent tax on its gross receipts. For a destination resort that invested less than $1 billion in its infrastructure, the tax rate is 20 percent of gross receipts.

III. Effect of Proposed Changes:

SB 1712 creates in an unnumbered statute a public records exemption for certain information received, and investigative techniques and procedures used, by the Destination Resort Commission. The proposed statute is modeled after exemption language in s. 288.075, F.S., for economic development agencies.

Section 1 creates an undesignated section of Florida Statutes to create a public records exemption for the commission for specific categories of information, defining terms, creating penalties, and establishing its review date per statutory requirement.

Defined are the following terms:

- "Proprietary confidential business information" means:
    - Information that is owned or controlled by an applicant for a license or licensee under the Destination Resort Act who requests confidentiality under this section;
    - That is intended to be and is treated by the applicant or licensee as private in that the disclosure of the information would cause harm to the business operations of the applicant or licensee;
    - That has not been disclosed unless disclosed pursuant to a statute or rule, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and
    - That is information concerning:
        - Business plans;
        - Internal auditing controls and reports of internal auditors; or
        - Reports of external auditors for privately held companies.
- "Trade secrets" as defined in s. 688.002, F.S.; and
- "Investigation techniques and procedures" means the methods, processes, and guidelines used to evaluate regulatory compliance and to collect and analyze data, records, and

testimony for the purpose of documenting violations of the Destination Resort Act and any promulgated rules to implement it.

SB 1712 specifies that proprietary confidential business information, trade secrets, and the commission's investigative techniques and procedures, as defined in the bill, are confidential and exempt, as are information shared by other regulatory agencies, the federal employer identification number, unemployment compensation account number, or Florida sales tax registration number held by the commission in the course of receiving and reviewing applications, or conducting investigations.

Any employee of the commission who violates the public records exemptions created in the bill has committed a misdemeanor of the second degree, punishable by a maximum 60 days in jail[16] and a $500 fine.[17]

These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 expresses the required Statement of Public Necessity for the public records exemptions sought for the proposed Resort Destination Commission.

A number of findings are expressed in this section about the public necessity of keeping certain information, investigative techniques, and procedures confidential and exempt. Briefly, the Legislature finds that the exemptions are necessary to:

- Ensure that the best-qualified applicants are not deterred from applying for destination resort licenses by the prospect of the disclosure of proprietary confidential business information and trade secrets.
- Protect the competitive process the commission will use to select the licensees. Selection of the best-qualified applicants for licenses is critical to ensure that the state receives the most economic benefits and greatest amount of tax revenues in granting these licenses.
- Ensure the commission's ability to effectively and efficiently enforce compliance with the Destination Resort Act, which would be significantly impaired without the exemption.
- Prevent the commission's investigations from being compromised by the release of sensitive information relating to investigations from other regulators.

Section 3 provides for a contingent effective date of July 1, 2011, if SB ___, or similar legislation creating the Destination Resort Commission and a process for licensing, regulating, and taxing destination resorts in Florida, is adopted in the same legislative session or an extension thereof and becomes law.

[16] Section 775.082(4)(b), F.S.
[17] Section 775.083(1)(e), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement
Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each chamber of the Legislature for passage of a newly created or expanded public-records or public-meetings exemption. Since SB 106 creates a new public-records exemption, it will require a two-thirds vote of each chamber of the Legislature for passage.

Statement of Public Necessity
Section 24(c), Art. I, of the State Constitution requires a statement of public necessity for a newly-created or expanded public-records or public-meetings exemption. Section 3 of this bill provides a statement of public necessity for the new public record exemptions proposed therein.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.