**The Florida Senate**

# *COMMITTEE MEETING EXPANDED AGENDA*

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

**MEETING DATE:** Tuesday, April 5, 2011
**TIME:** 10:15 a.m.—12:15 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 474**<br>Evers<br>(Identical H 4023, Compare CS/H 5005) | Sales Representative Contracts; Repeals a provision relating to sales representative contracts, commissions, requirements, termination of agreements, and civil remedies.<br><br>CM 04/05/2011<br>JU<br>RC | |
| 2 | **SB 942**<br>Bogdanoff<br>(Similar CS/H 671) | Tax Credits For Research and Development; Provides a tax credit for certain research and development expenses. Provides eligibility requirements for research and development tax credits. Provides limitations regarding eligibility. Provides an amount for such credit. Provides a maximum amount of credit that may be taken during a single tax year by a business enterprise. Prohibits the Department of Revenue from unreasonably withholding approval to sell or transfer an unused tax credit amount, etc.<br><br>CM 04/05/2011<br>BC | |
| 3 | **SB 976**<br>Bogdanoff<br>(Similar H 943, Compare S 252) | Capital Formation for Infrastructure Projects; Provides for creation of the Florida Infrastructure Fund Partnership. Provides the partnership's purpose and duties. Provides for management of the partnership by the Florida Opportunity Fund. Authorizes the fund to lend moneys to the partnership. Authorizes the partnership to invest in certain infrastructure projects. Creates the Florida Infrastructure Investment Trust. Provides for the trust's issuance of certificates to investment partners who invest in the partnership, etc.<br><br>CM 04/05/2011<br>BC | |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 4 | **SB 994**<br>Latvala<br>(Compare CS/H 913) | Public Records/Public Airports; Provides definitions. Provides an exemption from public records requirements for proprietary confidential business information submitted to or held by a public airport and for any proposal or counterproposal exchanged between the governing body of a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities. Provides for exceptions to the exemptions. Provides for future legislative review and repeal of the exemptions under the Open Government Sunset Review Act. Provides a finding of public necessity.<br><br>CA 03/14/2011 Fav/1 Amendment<br>CM 04/05/2011<br>GO | |
| 5 | **SB 1548**<br>Lynn<br>(Compare H 455) | Streamlined Sales and Use Tax Agreement; Revises definitions. Specifies certain facilities that are exempt from the transient rentals tax. Eliminates the use of brackets in the calculation of sales and use taxes. Provides that an exception relating to food and drink concessionaire services from the tax on the license or rental fee for the use of real property is limited to the space used exclusively for selling and distributing food and drinks. Provides that the amendment to the exception from the tax on the license or rental fee for the use of real property is retroactive and remedial in nature, etc.<br><br>CM 04/05/2011<br>BC | |
| 6 | **SB 1626**<br>Lynn<br>(Compare CS/H 4013, CS/H 5005) | Television Picture Tubes; Repeals provisions relating to television picture tube labeling requirements.<br><br>CM 04/05/2011 | |
| 7 | **SB 1632**<br>Lynn<br>(Identical H 4033) | Florida Industrial Development Corporation; Repeals provisions relating to the Florida Industrial Development Corporation. Deletes references to conform to changes made by the act.<br><br>CM 04/05/2011<br>BC | |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 8 | **SB 1878**<br>Margolis<br>(Identical H 1337) | Jurisdiction of the Courts; Authorizes a person to serve process on the Secretary of State if other representatives of a corporation cannot be served. Revises the definition of the term "foreign judgment" for purposes of the Florida Enforcement of Foreign Judgments Act. Clarifies that an arbitral tribunal receiving a request for an interim measure to preserve evidence in a dispute governed by the Florida International Commercial Arbitration Act need only consider to the extent appropriate the potential harm that may occur if the measure is not awarded, etc.<br><br>CM 04/05/2011<br>JU<br>BC | |
| 9 | **SB 2050**<br>Braynon<br>(Similar H 1415, S 1708) | 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. Provides that the Destination Resort Commission is a separate budget entity from the Department of Revenue. Provides for the appointment and qualifications of members of the commission. Provides for the selection of the chair and vice chair of the commission. Provides that the chair is the administrative head of the commission, etc.<br><br>CM 04/05/2011<br>GO<br>BC | |
| | Presentation by the Agency for Workforce Innovation | | |

**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 474 |
| INTRODUCER: | Senator Evers |
| SUBJECT: | Sales representative contracts |
| DATE: | April 4, 2011 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | McCarthy | Cooper | CM | **Pre-meeting** |
| 2. | | | JU | |
| 3. | | | RC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

This bill repeals s. 686.201, F.S., relating to sales representatives contracts.

Enacted in 1984, this provision requires a written contract between principal and commissioned sales representatives which specifies the terms of the commission.

In the event that there was no written contract, this provision requires that the sales representative be paid within 30 days of termination of the unwritten contract. Should the principal not comply with this requirement, the sales representative has a cause of action for damages equal to triple the amount of commission found to be due, and reasonable attorney's fees and court costs.

Under current law, licensed real estate brokers, sales associates, and appraisers are exempt from this provision.

This bill repeals s. 686.201, F.S.

## II. Present Situation:

Pursuant to s. 686.201, F.S., when a principal contracts with a sales representative to solicit orders within this state, the contract must be in writing and shall set forth the method by which the commission is to be computed and paid. The principal must provide the sales representative with a signed copy of the contract and shall obtain a signed receipt for the contract from the sales representative.

In the event the contract between the sales representative and the principal is terminated and the contract was not reduced to writing, all commissions due must be paid within 30 days after termination. If the principal fails to comply as required, the sales representative has a cause of action for damages equal to triple the amount of the commission found to be due. The prevailing party in any such action is entitled to an award of reasonable attorney fees and costs.

This provision does not apply to real estate brokers, sales associates or appraisers licensed pursuant to ch. 475, F.S., who are performing within the scope of their license.

A sales representative means a person or business which contracts with a principal to solicit orders and who is compensated, in whole or in part, by commission, but does not include a person or business which places orders for his or her own account for resale, or a person who is an employee of the business.[1]

A principal means a person or business which:

1. Manufactures, produces, imports, or distributes a product or service.
2. Contracts with a sales representative to solicit orders for the product or service.
3. Compensates the sales representative, in whole or in part, by commission.[2]

## III. Effect of Proposed Changes:

**Section 1** would repeal s. 686.201, F.S. It would eliminate the statutory requirement that contracts between sales representatives and principals to solicit orders within this state be in writing and the remedies associated with a failure of the parties to have a written contract upon termination of the relationship while commissions are still owed.

**Section 2** provides that the act will 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.

[1] Section 686.201(1)(c), F.S.
[2] Section 686.201(1)(b), F.S.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the sales representative fails to obtain a written contract for their services, and they have a dispute with the principal over commissions, they will have less leverage in resolving their disputes.

Conversely, the principals will no longer be subject to triple the amount of commission found to be due should they lose in a dispute with a commissioned sales representative.

To the extent that the relationship between sales representatives and principals is outdated, there will be minimal impact on both parties.

C. Government Sector Impact:

None

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

There are currently 33 states with laws that offer sales representatives some form of protection with respect to their commissions.

## 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 942 |
| INTRODUCER: | Senator Bogdanoff |
| SUBJECT: | Tax Credits for Research and Development |
| DATE: | March 30, 2011 REVISED: |

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

## I. Summary:

Congress first enacted a research and development (R&D) tax credit in 1981 to encourage scientific initiatives and innovation among U.S. businesses. Currently, 38 states offer R&D tax credits against corporate or other state tax liability.

SB 942 creates an R&D tax credit against Florida corporate income tax liability. The maximum amount of R&D tax credits that can be approved by the Department of Revenue (DOR) during any calendar year is $15 million. Credits cannot be claimed until the tax year that begins on or after January 1, 2012.

The bill outlines a formula for computing the tax credit. Basically, the credit is equal to 10 percent of the difference between a business' qualified R&D expenditures in the current taxable year and the average R&D expenditures over the previous 4 tax years. Other key points are:

- An R&D tax credit may not exceed 50 percent of a business enterprise's corporate tax liability in a taxable year, after any other corporate tax credits have been applied.
- To qualify for the tax credit, a business enterprise must be a target industry, as defined in s. 288.106, F.S.
- A business enterprise may carry forward any unused tax credit for up to 5 years.
- A business enterprise may transfer or sell its unused credits within 1 year after they were originally approved to another business enterprise. The purchasing business or assignee must use the tax credits in the same year that the transfer or purchase was made.

DOR is directed to adopt rules to implement and administer the new R&D tax credit.
SB 942 creates s. 220.194, F.S., and amends s. 220.02, F.S.

## II. Present Situation:

Federal tax credit

The "U.S. Research and Experimentation Tax Credit" was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.[1] Originally, the credit was 25 percent of qualified research expenditures in excess over the previous year's expenditures, and the types of expenditures that qualified were limited to scientific or experimental research. Over the years, the tax credit formula has been modified several times and the types of eligible expenses broadened.[2]

Under current federal law, "qualified research expenses" include wages paid to in-house research staff, supplies used in research activities (not including land, improvements to land or certain depreciable property), and up to 65 percent of funds paid to contracted personnel for qualified research.[3] "Qualified research" includes a company's expenditures that are technological in nature and which are intended to be useful in the development of a new or improved business process, product, software, formula, invention or other business component that will be used by the company or which the company intends to sell, license, or lease.[4]

The federal tax credit is an incremental tax credit because a company is only rewarded if it increases its R&D spending over a predetermined base period. The amount of the federal tax credit can be determined by three different methods, depending in part on how long the company has been in business. Under the basic formula, the tax credit is equal to 20 percent of the current tax year's qualified R&D expenses over the base amount, which is calculated using a ratio of qualified R&D expenses and gross receipts during the period of 1984 through 1988.[5] Newer companies can use simpler formulas that still compare current year R&D spending with past years.

Business entities that do not pay federal corporate income tax, such as "S corporations" and partnerships, are allowed to "pass-through" their federal R&D credits to shareholders or partners, based on these individuals' shares in such business entities.[6]

For the 2008 federal tax year, some 12,736 companies claimed $8.3 billion in R&D tax credits, including $167.7 million claimed via "pass-throughs."[7] Manufacturing companies claimed the

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[1] "The U.S. Research and Experimentation Tax Credit in the 1990s" by Francisco Moris. National Science Foundation Report #NSF05-316 published July 2005. Retrieved at http://www.nsf.gov/statistics/infbrief/nsf05316/ and "The Prospects for Economic Recovery," prepared by the Congressional Budget Office. Published February 1982. Pertinent information on pages 87-93. Retrieved at http://www.cbo.gov/ftpdocs/51xx/doc5135/doc03b-Part8.pdf. Sites last visited March 30, 2011.

[2] The U.S. General Accounting Office has prepared two reports over the years that examine changes in the tax credit program and analyze the program's impact. GAO/GGD-89-114 is found at http://archive.gao.gov/d26t7/139607.pdf. GAO/GGD-96-43 is found at http://www.gao.gov/archive/1996/gg96043.pdf.

[3] 26 USC sec. 41(b).

[4] 26 USC sec. 41(d).

[5] 26 USC sec. 41(c).

[6] 26 USC sec. 41 (g).

[7] Internal Revenue Service, Statistics of Income Division. Retrievable at http://www.irs.gov/taxstats/article/0,,id=164402,00.html. Last visited March 30, 2011.

largest percentage of research tax credits, $5.78 billion worth.[8] Wages comprised nearly $55.6 billion of the $67.3 billion in qualified R&D expenditures reported by businesses to the IRS. [9]

Congress reauthorized the R&D tax credit in December through tax year 2011.[10]

Other states' R&D tax credits

Thirty-eight states have enacted an R&D tax credit.[11] The majority of the states appear to use the federal definitions for credit eligibility and follow the federal formula for establishing a base time period. Some states allow the tax credit to be taken only against their state income tax, while others allow it to be taken against a variety of state tax liabilities. Also, some states offer the highest tax credit rate to R&D activities done in conjunction with university partners, while others make no distinction. Five states[12] offer refundable tax credits, meaning those states remit to eligible businesses the excess difference between their taxes owed and the amount of R&D tax credit they earned.

Statistics

Internationally, the United States, in 2007, ranked first in R&D expenditures, at $344 billion, most of it spent on defense research.[13] The nation's R&D expenditures as a measure of the Gross Domestic Product have remained stable over the last several years around 2.6 percent, which ranks 4th internationally, behind Israel, Sweden, and Finland.[14] Many nations offer a version of R&D tax credits, which are considered an important economic-development tool.[15]

According to research[16] compiled by the Alliance for Science & Technology Research in America, in 2007 Florida's business R&D ranked 17th in the nation, totaling less than 2 percent of the U.S., but private- and public-sector R&D affiliated with state universities ranked in the top 10 nationally, based on 2006 statistics.

## III. Effect of Proposed Changes:

SB 942 creates a Florida R&D tax credit program designed to stimulate the development of scientific and technological advances by target industry businesses, which in turn may increase business competitiveness, create high-wage research jobs in Florida, and develop new products

[8] Ibid.
[9] Ibid.
[10] P.L.111 - 312, December 17, 2010.
[11] "Iowa's Research Activities Tax Credit Tax Credits Program Evaluation Study." Iowa Department of Revenue. Published January 2008. Appendix/Chart 6, on pages 37-41 of the report lists details of all 38 states' R&D tax credits. See: http://www.iowa.gov/tax/taxlaw/IDRTaxCreditEvalJan2008.pdf.
[12] Hawaii, Iowa, Louisiana, Nebraska, and New York are the states. Ibid.
[13] "Briefing Note on the United States." Organisation for Economic and Cooperative Development's Science, Technology and Industry Scoreboard 2007. Retrievable at http://www.oecd.org/dataoecd/19/11/39695454.pdf. Last visited March 30, 2011.
[14] Organisation for Economic and Cooperative Development's Fact Book for 2009. Retrievable at: http://oberon.sourceoecd.org/vl=5806526/cl=18/nw=1/rpsv/factbook/07/01/01/index.htm. Last visited March 30, 2011.
[15] "2010 Global Survey of R&D Tax Incentives," prepared by Deloitte and published in January 2011. Available at: http://www.nam.org/~/media/C917926074BE4CE8A4E7AF2C017D67A2/Global_RD_Survey_Final.pdf.
[16] The Alliance for Science & Technology Research in America, 2010 report. Available at http://www.usinnovation.org/state/pdf_cvd/CVD10FloridaR&D.pdf. Last visited March 30,2011.

and services for market. The Florida tax credit is modeled after the federal research tax credit in Title 26 U.S. Code section 41, and incorporates some of its definitions.

Section 1: Creates s. 220.194, F.S., which authorizes an R&D tax credit against state corporate income taxes. It explains the formula that will be used to compute the actual amount of tax credit available to individual eligible businesses.

For established businesses, the tax credit will be equal to 10 percent of the difference between the current tax year's R&D expenditures and the average of R&D expenditures over the previous 4 taxable years. For businesses in existence fewer than 4 years, the credit amount is reduced by 25 percent for each year the business did not exist within the 4-year base period.

The bill defines a number of terms; key among them are:

- Business enterprise means any corporation as defined in s. 220.03, F.S., that is also a target industry business[17] as defined in s. 288.106(1)(o), F.S. *(This is erroneous cross-reference. The correct cross-reference is s. 288.106(2)(t), F.S.)*; and
- Qualified research expenses mean research expenses qualifying for the federal credit under section 41 of the Internal Revenue Code for in-house or contract research expenses within Florida. Not eligible is R&D conducted out of state, research excluded by the federal code, and R&D conducted by a business enterprise that is not within its principal business activity.

The state tax credit taken in any 1 tax year may not exceed 50 percent of the original business enterprise's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled, have been applied.

Any unused credits may either be carried forward by the business that originally earned it for up to 5 years following the year in which the qualified research expenses were incurred, or they may be assigned or sold to another corporate income taxpayer who also is a business enterprise, and thus a target industry. In the latter instance:

- The business that earned R&D tax credits may assign or sell them if it has not claimed the credits within 1 year of DOR having approved them.
- The business that has been assigned the credits or has purchased them must use the credits in the same taxable year in which they were purchased or assigned.
- Assigned or purchased credits must have been exchanged for at least 75 percent of their face value.

The maximum amount of R&D credits that may be approved by DOR during any calendar year is $15 million.

[17] The "target industry list" actually is a list of industry sectors that meet criteria related to high wage, high growth potential, and market independence. It is developed by the Governor's Office of Tourism, Trade, and Economic Development, in consultation with Enterprise Florida, Inc. The 2011 targeted industry list was approved by OTTED in January and includes eight categories: Clean Tech; Life Sciences; Information Technology; Aviation/Aerospace; Homeland Security/Defense; Financial/Professional Services; Emerging Technologies; and Other Manufacturing.

Finally, DOR is directed to adopt rules governing the manner and form of the R&D tax credit application, and may establish guidelines for businesses seeking to affirm their qualification for the credit.

Section 2: Amends s. 220.02, F.S., to establish the order in which a corporate taxpayer may claim the R&D tax credit compared to all other potential corporate income tax credits. The R&D tax credit is last in the list.

Section 3: Specifies that the bill becomes law July 1, 2011, but that the credits cannot be claimed prior to the taxable year beginning on or after January 1, 2012.

## 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:

At its March 4, 2011, meeting, the Revenue Estimating Conference determined by consensus that SB 942 will have a negative fiscal impact of $5 million in cash for FY 2011-2012 and negative $15 million in cash for FYs 2012-2013, 2013-2014, and 2014-2015.

B. Private Sector Impact:

Startups as well as established companies could benefit from a state R&D tax credit program, either directly and through the credit transfer program, as long as they meet the eligibility criteria.

C. Government Sector Impact:

Indeterminate. DOR is likely to incur some personnel and other administrative costs in administering the tax credit program, and in modifying forms and software.

## VI. Technical Deficiencies:

As stated above, the reference to the definition for "target industry" is erroneous and should be corrected to s. 288.106(2)(t), F.S.

## 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

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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 288.9621, Florida Statutes, is amended to read:

288.9621 Short title.—This part ~~Sections 288.9621-288.9625~~ may be cited as the "Florida Capital Formation Act."

Section 2. Subsections (1) and (2) of section 288.9622, Florida Statutes, are amended to read:

288.9622 Findings and intent.—

(1) The Legislature finds and declares that there is a

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need to increase the availability of seed capital and early stage venture equity capital for emerging companies in the state, including, without limitation, enterprises in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense, as well as other strategic technologies and infrastructure funding.

(2) It is the intent of the Legislature that this part ~~ss. 288.9621-288.9625~~ serve to mobilize private investment in a broad variety of venture capital partnerships in diversified industries and geographies; retain private sector investment criteria focused on rate of return; use the services of highly qualified managers in the venture capital industry regardless of location; facilitate the organization of the Florida Opportunity Fund as an investor in seed and early stage businesses, infrastructure projects, venture capital funds, infrastructure funds, and angel funds; and precipitate capital investment and extensions of credit to and in the Florida Opportunity Fund.

Section 3. Section 288.9623, Florida Statutes, is amended to read:

288.9623 Definitions.—As used in this part, the term ~~ss. 288.9621-288.9625~~:

(1) "Board" means the board of directors of the Florida Opportunity Fund.

(2) "Certificate" means a contract between the trust and an investment partner that guarantees the availability of tax credits for use by the partner, or for transfer or sale under s. 288.9628, in order to guarantee the partner's investment capital in the partnership.

(3) "Commitment agreement" means a contract between the partnership and an investment partner under which the partner commits to providing a specified amount of investment capital in exchange for an ownership interest in the partnership.

(4) ~~(2)~~ "Fund" means the Florida Opportunity Fund.

(5) "Infrastructure project" means a capital project in the state for a facility or other infrastructure need in the state with respect to any of the following: water or wastewater system, communication system, power system, transportation system, renewable energy system, ancillary or support system for any of these types of projects, or other strategic infrastructure located within the state.

(6) "Investment capital" means the total capital committed by the investment partner for an equity interest in the partnership pursuant to a commitment agreement.

(7) "Investment partner" or "partner" means a person, other than the partnership, the fund, or the trust, who purchases an ownership interest in the partnership or a transferee of such interest.

(8) "Net capital loss" means an amount equal to the difference between the total investment capital actually advanced by the investment partner to the partnership and the amount of the aggregate actual distributions received by the investment partner.

(9) "Partnership" means the Florida Infrastructure Fund Partnership.

(10) "Tax credits" means credits issued against the taxes specified in s. 288.9628(7)(c).

(11) "Trust" means the Florida Infrastructure Investment

Trust.

Section 4. Section 288.9627, Florida Statutes, is created to read:

288.9627 Florida Infrastructure Fund Partnership; creation; duties.—

(1) The Florida Opportunity Fund shall facilitate the creation of the Florida Infrastructure Fund Partnership, which shall be organized and operated under chapter 620 as a private, for-profit limited partnership or limited liability partnership with the fund as a general partner. The partnership shall manage its business affairs and conduct business consistent with its organizing documents and the purposes described in this section. However, the partnership is not an instrumentality of the state.

(2) The primary purpose of the partnership is to raise investment capital and invest the capital in infrastructure projects in the state that promote economic development.

(3)(a) The fund, as the general partner of the partnership, shall manage the partnership's business affairs, including, but not limited to:

1. Hiring one or more investment managers to assist with management of the partnership through a solicitation for qualified investment managers for the raising and investing of capital by the partnership. Any such investment manager must have maintained an office in the state for at least 2 years before such solicitation with a full-time investment professional. The evaluation of an investment manager candidate must address the investment manager's level of experience, quality of management, investment philosophy and process, demonstrable success in fundraising, and prior investment

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results.

2. Soliciting and negotiating the terms of, contracting for, and receiving investment capital with the assistance of the investment managers or other service providers.

3. Receiving investment returns.

4. Disbursing returns to investment partners.

5. Approving investments.

6. Engaging in other activities necessary to operate the partnership.

(b) The fund may lend up to $750,000 to the partnership to pay the initial expenses of organizing the partnership and soliciting investment partners.

(4)(a) The partnership shall raise funds from investment partners for investment in infrastructure projects in the state by entering into commitment agreements with such partners on terms approved by the fund's board.

(b) The Florida Infrastructure Investment Trust shall, pursuant to s. 288.9628, concurrently with the execution of a commitment agreement with an investment partner, issue a certificate.

(c) The partnership shall provide a copy of each commitment agreement to the trust upon execution of the agreement by all parties.

(d) The partnership may enter into commitment agreements with investment partners beginning July 1, 2011. The total principal investment capital payable to the partnership under all commitment agreements may not exceed the total aggregate amount of $700 million. However, if the partnership does not obtain commitment agreements totaling at least $100 million by

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December 1, 2012, the partnership must cancel any executed agreement and return the investment capital of each investment partner who executed an agreement.

(5)(a) The partnership may only invest in an infrastructure project:

1. That fulfills an important infrastructure need in the state.

2. That raises funding from other sources so that the total amount invested in the project is at least twice the amount invested by the partnership, inclusive of the partnership's investment.

3. For which legal measures exist, appropriate to the individual project, to ensure that the project is not fraudulently closed to the detriment of the residents of the state.

(b) The partnership may not invest more than 20 percent of its total available investment capital in any single infrastructure project.

(c) The partnership may not invest in any infrastructure project that involves any phase of a project authorized under the Florida Rail Enterprise Act, ss. 341.8201-341.842.

(6) The partnership may only invest in an infrastructure project based on an evaluation of the following:

(a) A written business plan for the project, including all expected revenue sources.

(b) The likelihood of the project's attracting operating capital from investment partners, grants, or other lenders.

(c) The management team for the proposed project.

(d) The project's potential for job creation in the state.

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(e) The financial resources of the entity proposing the project.

(f) The partnership's assessment that the project reasonably provides a continuing benefit for residents of the state.

(g) Other factors not inconsistent with this section that are deemed by the partnership as relevant to the likelihood of the project's success.

(7) By December 1 of each year beginning in 2011, the partnership shall submit an annual report of its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report must include, at a minimum:

(a) An accounting of the amounts of investment capital raised and disbursed by the partnership and the progress of the partnership, including the progress of each infrastructure project in which the partnership has invested.

(b) A description of the costs and benefits to the state that result from the partnership's investments, including a list of infrastructure projects; the costs and benefits of those projects to the state and, if applicable, the county or municipality; the number of businesses and associated industries affected; the number, types, and average annual wages of the jobs created or retained; and the impact on the state's economy.

(c) Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for the operational costs of the partnership.

(8) The partnership may not pledge the credit or taxing

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power of the state or any political subdivision thereof and may not make its debts payable from any moneys or resources except those of the partnership. An obligation of the partnership is not an obligation of the state or any political subdivision thereof but is an obligation of the partnership, payable exclusively from the partnership's resources.

(9) The partnership may not invest in an infrastructure project with, or accept investment capital from, a company described in s. 215.472 or a scrutinized company as defined in s. 215.473, and the entity owning an infrastructure project in which the partnership has invested must provide reasonable assurances to the partnership that the entity will not provide such a company or scrutinized company with an ownership interest in the infrastructure project.

Section 5. Section 288.9628, Florida Statutes, is created to read:

288.9628 Florida Infrastructure Investment Trust; creation; duties; issuance of certificates; applications for tax credits.—

(1)(a) There is created the Florida Infrastructure Investment Trust, which shall be organized as a state beneficiary public trust to be administered by a board of trustees. The powers and duties of the board of trustees under this section are deemed to be performed for essential public purposes.

(b) The board of trustees shall consist of the Chief Financial Officer, the director of the Office of Tourism, Trade, and Economic Development, and the vice chair of Enterprise Florida, Inc., or their designees. The board of trustees shall appoint an administrative officer who may act on behalf of the

trust under the direction of the board of trustees.

(c) Members of the board of trustees and the board's administrative officer shall serve without compensation but are entitled to reimbursement of their expenses. Each member of the board of trustees has a duty of care to the trust in his or her capacity as a trustee. Neither a member nor the administrative officer may have a financial interest in any investment partner.

(2) The trust may hire consultants, retain professional services, issue certificates, sell tax credits in accordance with paragraph (5)(b), expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to administer this section.

(3)(a) The trust shall, pursuant to s. 288.9627 and this section, issue certificates to investment partners in the Florida Infrastructure Fund Partnership, or their assignees, guaranteeing the availability of tax credits of a maximum amount equal to the investment capital committed by such investment partners to the partnership.

(b) The trust and the fund may each seek reimbursement of their respective reasonable costs and expenses from the partnership by charging a fee for the issuance of certificates to investment partners of up to 0.25 percent of the aggregate investment capital committed to the partnership by the investment partners who are issued certificates.

(c) The total aggregate amount of all tax credits made available under the terms of certificates issued by the trust may not exceed $700 million, and each certificate must include the maximum amount of the tax credits that may be issued under such certificate, which shall be the total amount of investment

capital committed to the partnership by the investment partner.

(d) A certificate shall be issued concurrently with a commitment agreement between the investment partner and the partnership. A certificate issued by the trust must include a specific calendar year maturity date designated by the trust of at least 12 years after issuance. Contingent tax credits may not be claimed or redeemed except by an investment partner or purchaser in accordance with this section and the terms of a certificate issued by the trust.

(e) Once investment capital is committed to the partnership by an investment partner pursuant to his or her commitment agreement, the certificate is binding, and the partnership, the trust, and the Department of Revenue may not modify, terminate, or rescind the certificate, except for administrative items, including the assignment or sale of tax credits guaranteed to be available under the terms of a certificate.

(4)(a) The partnership shall provide written notice to each investment partner if, on the maturity date of his or her certificate, the partner has a net capital loss. The notice must include, at a minimum:

1. A good faith estimate of the fair market value of the partnership's assets as of the date of the notice.

2. The total investment capital of all investment partners as of the date of the notice.

3. The total amount of distributions received by the investment partners.

4. The amount of the tax credits the investment partner is entitled to be issued by the Department of Revenue.

(b) The partnership shall concurrently provide a copy of

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each investment partner's notice to the trust.

(c) Upon receipt of the notice from the partnership, each affected investment partner may make a one-time election to:

1. Have tax credits issued to the investment partner;

2. Have the trust sell, on the partner's behalf, the tax credits guaranteed to be available under the terms of the partner's certificate with the proceeds of the sale to be paid to the partner by the trust; or

3. Maintain the investment partner's investment in the partnership.

(d) Except as provided in paragraph (6)(c), the election made by an investment partner under paragraph (c) is final and may not be revoked or modified.

(e) An investment partner must provide written notice to the partnership and the trust of his or her election within 30 days after his or her receipt of the notice from the partnership. If an investment partner fails to provide notice within 30 days, the investment partner is deemed to have elected to maintain his or her investment in the partnership under subparagraph (c)3.

(5)(a) If an investment partner makes the election under subparagraph (4)(c)1. to have tax credits issued to him or her, the trust shall apply to the Department of Revenue on the partner's behalf for issuance of the tax credits in his or her name in an amount equal to such partner's net capital loss. In order to receive the tax credits, the investment partner must agree in writing to transfer his or her ownership interest in the partnership to the fund.

(b) If an investment partner makes the election under

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subparagraph (4)(c)2., the trust shall exercise its best efforts to sell the tax credits. In order to receive the proceeds from the trust's sale of the tax credits, the investment partner must agree in writing to transfer his or her ownership interest in the partnership to the fund. A purchaser's payment for tax credits must be made to the trust on behalf of the investment partner or, upon the partner's request, directly to the investment partner. The trust may sell tax credits in an amount not to exceed the lesser of:

1. The maximum amount of the tax credits available under the terms of certificate issued to the investment partner; or

2. The amount of tax credits necessary to yield net proceeds to the investment partner equal to his or her net capital loss as of the date of the partnership's notice.

(6)(a) Within 30 days after receipt of an investment partner's election to be issued tax credits under paragraph (5)(a), or within 30 days after the sale of tax credits under paragraph (5)(b), the trust shall apply to the Department of Revenue for issuance of the tax credits on behalf of the partner or on behalf of the purchaser of the tax credits, as applicable. However, the trust's failure to timely submit an application to the Department of Revenue does not affect the investment partner's or purchaser's eligibility for the tax credits.

(b) The trust's application for tax credits must include the partnership's certification of the amount of tax credits to be issued, the identity of the taxpayer to whom the tax credits are to be issued, and the tax against which the credits shall be applied. The Department of Revenue shall issue the tax credits within 30 days after receipt of a timely and complete



application.

(c) The trust shall provide the investment partner with written notice if, within 90 days after the partner's election, the trust is unable to sell enough tax credits to yield net proceeds to the investment partner equal to his or her net capital loss as of the date of the partnership's notice and tax credits available under the terms of the partner's certificate remain unsold. Within 30 days after receipt of such notice, the investment partner may:

1. Revoke his or her prior election and make a new election under paragraph (4)(c); or

2. Modify the election and:

a. Have unsold tax credits issued to him or her, to the extent that unsold tax credits are available, in an amount equal to the partner's net capital loss, less the proceeds of any sold credits; or

b. Have the trust continue to sell tax credits until the partner's net capital loss is satisfied or the maximum amount of tax credits available under the partner's certificate is reached, whichever occurs first.

Within 30 days after such modified election, the trust shall apply to the Department of Revenue in accordance with paragraph (a) for issuance of tax credits on behalf of the investment partner and on behalf of the purchasers in the amount of their purchased credits.

(7)(a) The Department of Revenue may not issue more than $700 million in tax credits. The trust may not approve tax credits in excess of the total capital committed through



commitment agreements.

(b) The amount of tax credits that may be claimed by the owner of the credits, or applied against state taxes, in any one state fiscal year may not exceed an amount equal to $150 million multiplied by a fraction the numerator of which is the amount of credits that the Department of Revenue issued to such owner and the denominator of which is the amount of all credits that the Department of Revenue issued to all tax credit owners.

(c) Tax credits issued by the Department of Revenue under this section may be used by the owner of the credits as an offset against any state taxes owed to the state under chapter 212, chapter 220, or ss. 624.509 and 624.5091. The offset may be applied by the owner on any return for an eligible tax due on or after the date that the credits are issued by the Department of Revenue but within 7 years after the credits are issued. The owner of the tax credits may elect to have the amount authorized in the credits, or any portion thereof, claimed as a refund of taxes paid rather than applied as an offset against eligible taxes if such election is made within 7 years after the credits are issued.

(d) To the extent that tax credits issued under this section are used by their owner either as credits against taxes due or to obtain payment from the state, the amount of such credits becomes an obligation to the state by the partnership, secured exclusively by the ownership interest transferred to the fund by the investment partner whose investment generated the tax credits. In such case, the state’s recovery is limited to such forfeited ownership interest. The Department of Revenue shall account for tax credits used under this section and make



such information available to the partnership. The fund, as general partner, is not liable to the state for repayment of the used tax credits.

(e) Any certificate and related tax credits issued under this section are transferable in whole or in part by their owner. An owner of a certificate or tax credits must notify the trust and the Department of Revenue of any such transfer.

(8) The Department of Revenue, upon the request of the trust, shall provide the trust with a written assurance that the certificates issued by the trust will be honored by the Department of Revenue as provided in this section.

(9) Chapter 517 does not apply to the certificates and tax credits transferred or sold under this section.

Section 6. Paragraph (dd) is added to subsection (8) of section 213.053, Florida Statutes, as amended by chapter 2010-280, Laws of Florida, to read:

213.053 Confidentiality and information sharing.—

(8) Notwithstanding any other provision of this section, the department may provide:

(dd) Information relative to tax credits under ss. 288.9627 and 288.9628 to the Florida Infrastructure Fund Partnership and the Florida Infrastructure Investment Trust.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s.

775.082 or s. 775.083.

Section 7. 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 capital formation for infrastructure projects; amending ss. 288.9621, 288.9622, and 288.9623, F.S.; conforming a short title, revising legislative findings and intent, and providing definitions for the Florida Capital Formation Act; conforming cross-references; creating s. 288.9627, F.S.; providing for creation of the Florida Infrastructure Fund Partnership; providing the partnership's purpose and duties; providing for management of the partnership by the Florida Opportunity Fund; authorizing the fund to lend moneys to the partnership; requiring the partnership to raise funds from investment partners; providing for commitment agreements with and issuance of certificates to investment partners; authorizing the partnership to invest in certain infrastructure projects; requiring the partnership to submit an annual report to the Governor and Legislature; prohibiting the partnership from pledging the credit or taxing power of the state or its political subdivisions; prohibiting the partnership from investing in projects with or accepting investments from certain companies; creating s. 288.9628, F.S.; creating the Florida Infrastructure Investment Trust; providing for powers

and duties, a board of trustees, and an administrative officer of the trust; providing for the trust's issuance of certificates to investment partners; specifying that the certificates guarantee the availability of tax credits under certain conditions; authorizing the trust and the fund to charge fees; limiting the amount of tax credits that may be claimed or applied against state taxes in any year; providing for the redemption of certificates or sale of tax credits; providing for the issuance of the tax credits by the Department of Revenue; specifying the taxes against which the credits may be applied; limiting the period within which tax credits may be used; providing for the state's obligation for use of the tax credits; limiting the liability of the fund; providing for the transferability of certificates and tax credits; requiring the department to provide a certain written assurance to the trust under certain circumstances; specifying that certain provisions regulating securities transactions do not apply to certificates and tax credits transferred or sold under the act; amending s. 213.053, F.S.; authorizing the department to disclose certain information to the partnership and the trust relative to certain tax credits; 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 976 |
| INTRODUCER: | Senator Bogdanoff |
| SUBJECT: | Capital Formation for Infrastructure Projects |
| DATE: | April 4, 2011 REVISED: |

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

## I. Summary:


In 2007 the Legislature created the Florida Opportunity Fund (FOF) as a $29.5 million, state-supported foray into venture capital investments to assist young Florida companies representing certain industry sectors. The FOF's mission has broadened since then, and as of June 30, 2010, the fund had invested just over $3 million – matched on a $2-to-$1 basis by private investment partners – into six investment fund accounts. The fund's private investment partners benefit only if the investment funds make money. Meanwhile, other states encourage private investors to participate in their venture-capital programs by awarding them contingent tax credits, claimable if their investments in individual companies fail to produce earnings to recoup the original principal investments.

SB 976 creates a new venture capital investment program, the Florida Infrastructure Fund Partnership (partnership). The partnership takes a different approach than the FOF and other states' venture capital programs: it will award up to $700 million in certificates for contingent state tax credits for an equal amount in private investments in strategic infrastructure projects. The credits are only redeemable to private investors to recoup all or a portion of their equity investments – if the projects do not achieve according to expectations. The earliest the credits can be claimed is 2023.

The FOF will serve as the general partner for the partnership. A new entity, the Florida Infrastructure Investment Trust (trust), is created to administer the certificates and contingent tax credits associated with the new investment program.

SB 976 creates ss. 288.9627 and 288.9628, F.S., and amends ss. 288.9621, 288.9622, and 288.9623, F.S.

## II. Present Situation:

The Venture Capital Industry[1]

"Venture capital" is money provided by investment professionals who invest alongside management in young, rapidly growing companies that have the potential to develop into significant economic contributors. Venture capital is an important source of equity for startup companies.

Venture capital supports entrepreneurial talent and appetite by providing funds to develop ideas and basic science into products and services. Venture capital funds build companies from the simplest form – perhaps just the entrepreneur and an idea expressed as a business plan – to freestanding, mature organizations. Venture capitalists generally:

- Finance new and rapidly growing companies;
- Purchase equity securities;
- Assist in the development of new products or services;
- Add value to the company through active participation;
- Take higher risks with the expectation of higher rewards; and
- Have a long-term orientation.

Venture capitalists actively work with the company's management by contributing their experience and business savvy gained from helping other companies with similar growth challenges. A venture capitalist may invest before there is a real product or company organized, known as "seed investing," or may provide capital to a company in its first or second stages of development known as "early stage investing." Venture capitalists mitigate their risks by developing a portfolio of young companies into a single venture fund.

Over the past decade, a number of states have adopted programs targeting the formal venture capital industry. Programs fall into three approaches:[2]

- Direct investment by state agencies to individual businesses through state-controlled institutions;
- Investment by state agencies or pension funds into privately managed funds or a portfolio of privately managed funds, to expand local venture capital; and
- Private investment spurred by state's offering tax credits or other incentives for qualifying investments.

Venture Capital in Florida

Florida ranked 15th in the United States in calendar year 2010 in terms of venture capital investment, with Florida companies receiving about $190 million, down about 35 percent from the previous year.[3]

[1] The primary source for information in this section is the National Venture Capital Association website, including the 2011 NVCA Annual Yearbook, available at http://www.nvca.org/def.html . Last visited March 30, 2011.

[2] Economic Development Finance. Karl F. Seidman. Published in 2005 by Sage Publications. On file with the Senate Commerce and Tourism Committee. Information on page 253.

[3] Information reported in Feb. 6, 2011, Orlando Sentinel article, on file with the Senate Commerce and Tourism Committee, and based on the national Moneytree survey by PriceWatera http://www.floridaventureforum.org/newsletter.asp.

An earlier study indicated that the revenue of venture-backed companies headquartered in Florida in 2008 was $75.5 million – ranked 9th in the nation – and these companies' employment totaled 242,074 – ranked 11th nationally.[4]

The Florida Opportunity Fund (FOF)

Created by the Legislature in 2007,[5] the FOF was intended to attract venture capital investment into targeted Florida industries by providing a state match. The FOF is organized as a private, not-for-profit corporation under ch. 617, F.S., with a 5-member board of directors selected by an EFI appointments committee. The FOF's administrative staff is provided by EFI, and has a separate investment manager, Florida First Partners, comprised of Florida-based MILCOM Venture Partners[6] and the Credit Suisse Customized Fund Investment Group.[7]

The Legislature appropriated $29.5 million for investments from the FOF in FY 2007-2008.

*Initial charge*

The FOF was established as a fund-of-funds program, meaning that it could only invest in investment funds, not directly in individual businesses; additionally, the investment funds had to match the state $2 for every $1 it invested. The emphasis was on "seed" and early-stage investments, because proponents of creating the FOF concluded that these types of companies were least likely to have access to venture funding and traditional financing. Targeted industries for the FOF investments included, but were not limited to, life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense.

To be eligible for state participation, an investment fund had to have an experienced and successful investment manager or team, and must focus on investment opportunities in Florida.

The FOF invested in its first fund in FY 08-09: $594,000 in Element Partners II, according to FOF's financial statements. As of June 30, 2010, the FOF had six investment fund partners and had invested just over $3 million.

*Expansion of investment authority*

In 2009, the Florida Legislature amended s. 288.9624, F.S., to allow the FOF to make direct investments, including loans, in individual businesses and infrastructure projects; to form or operate other entities; and to accept funds from other public and private sources for use as investments.[8] These direct investments must be made in Florida infrastructure projects, or in businesses that are Florida-based or have significant business activities in Florida and operate in technology sectors that are strategic to Florida, including the original list of industry types. The FOF may not use its original appropriation of $29.5 million to make direct investments or for any purposes not specified in the original legislation.

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[4] Venture Impact: The Economic Importance of Venture Capital-Backed Companies to the U.S. Economy. Prepared by Global Insight. Information on Page 14. Available at: http://www.nvca.org/index.php?option=com_content&view=article&id=255&Itemid=103. Last visited March 30, 2011.

[5] HB 83 (ch. 2007-189, L.O.F.)

[6] More information available at http://www.milcomvp.com/.

[7] More information available at https://www.credit-suisse.com/us/en/.

[8] HB 7031 (ch. 2009-251, L.O.F.)

In May 2010, the FOF launched a direct investment program with the Florida Energy and Climate Commission, a 9-member board housed administratively in the Governor's Office that is the lead entity for state energy and climate-change programs and policies. This new FOF fund is expected to increase the availability of investment capital in Florida for businesses engaged in developing or producing energy-efficient or renewable energy (EE/RE) products or services. The FOF has access to $36 million initially in federal funds to make investments in qualifying businesses. Fund investments are restricted by statute to be used for facility and equipment improvement with EE/RE products; acquisition or demonstration of renewable energy products; and improvement of existing production, manufacturing, assembly, or distribution processes to reduce consumption or increase the efficient use of energy in such processes.

*Reporting Requirements*
The FOF is required by statute to submit an annual report by December 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes, at a minimum:

- An accounting of the amount of investments disbursed by the FOF fund;
- The progress of the FOF in accomplishing its responsibilities;
- A description of the benefits to the state resulting from the FOF, including the number of businesses and jobs created, the number of associated industries started, and the growth of related research projects; and
- Independently audited financial statements for the FOF that show receipts and expenditures during the preceding fiscal year for personnel, administration, and operating costs.

**Infrastructure Funding in Florida**
For nearly 6 decades, Florida has been one of the fastest-growing states in the nation, with population expanding from 3 million in 1950 to nearly 19 million in 2010.[9] Demand for energy, transportation, and communication systems expanded rapidly over the past several decades. Current projections suggest Florida may add an additional 5 million new residents by the year 2030.[10] Employment, tourism, gross state product, and income will expand as well, contributing to growth in demand for strategic infrastructure.

In order to meet future capacity over the next 20-25 years, it is estimated that Florida will need:

- $47.0 billion for highway and rail infrastructure; [11]
- $29.9 billion for water and wastewater facilities and infrastructure;[12]
- $3.5 billion for aviation facilities and infrastructure;[13]
- $2.8 billion for seaport facilities and infrastructure;[14] and

[9] 2010 Census, Apportionment Population and Number of Representatives by State. United States Census Bureau. Interactive map at http://2010.census.gov/2010census/data/. Site last visited March 31, 2011.
[10] Florida Census Day Population: 1970-2030, Office of Economic and Demographic Research, August 2010. http://edr.state.fl.us/Content/population-demographics/data/index.cfm. Last visited March 31, 2011.
[11] Strategic Intermodal System Unfunded Needs Plan, Florida Department of Transportation, May 2006. http://www.dot.state.fl.us/planning/systems/mspi/sisnplan.shtm. Site last visited March 31, 2011.
[12] Clean Watersheds Needs Survey 2008 Report to Congress, United States Environmental Protection Agency. http://water.epa.gov/scitech/datait/databases/cwns/2008reportdata.cfm. Site last visited March 31, 2011.
[13] Strategic Intermodal System Unfunded Needs Plan, May 2006.
[14] Strategic Intermodal System Unfunded Needs Plan, May 2006.

- $2.5 billion for storm water management.[15]

**Contingent Tax Credit Programs**
Contingent tax credits help raise money for state-affiliated venture capital initiatives without immediately affecting state revenues. Contingent tax credit programs are statutory state guarantees established to incentivize venture capital investment into state target industries. Eight states – Arkansas, Iowa, Michigan, Ohio, Oklahoma, Oregon, South Carolina and Utah – have initiated programs authorizing the issuance of contingent tax credits to investors in state-sponsored fund of funds, providing investments in companies.[16] It does not appear that any state has created an infrastructure funding program backed by contingent state tax credits that is similar to the one proposed in SB 976.

## III. Effect of Proposed Changes:

SB 976 broadens the Capital Formation Act in Part X of ch. 288, F.S., to create the Florida Infrastructure Fund Partnership and the Florida Infrastructure Investment Trust as a means to attract as much as $700 million in private capital to finance large-scale infrastructure improvements in this state. The bill makes available $700 million in contingent tax credits, which are assigned to investors dollar-for-dollar of their principal equity investments. The tax credits may be used by investors only to recoup losses of such principal. The credits cannot be claimed prior to 12 years from the date of the investment, so the earliest, based on the bill's effective date, would be on or after July 1, 2023.

**Section 1:** Amends s. 288.9621, F.S., to modify the short title, Florida Capital Formation Act, in Part X of ch. 288, F.S.

**Section 2:** Amends s. 288.9621, F.S., to broaden legislative intent on the need for more seed capital and early-stage venture capital to include infrastructure projects.

**Section 3:** Amends s. 288.9623, F.S., to add several definitions relevant to the proposed Florida Infrastructure Fund Partnership. Key definitions are:

- Certificate means a contract between the trust and an investment partner to guarantee the partner's investment in the partnership under which the investment partner, under certain conditions, may redeem such certificate for a tax credit.
- Commitment agreement means a contract between the partnership and an investment partner under which the partner commits to providing a specified amount of investment capital in exchange for an ownership interest in the partnership.
- Infrastructure project means a capital project in the state for a facility or other infrastructure need in the state, a county, or a municipality with respect to any of the

[15] Clean Watersheds Needs Survey 2008 Report to Congress.
[16] Various reports are available about one or all of these states' programs. As a sample, see "Building a Regional Venture Capital Industry with Contingent Tax Credits," at http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/d726ee6624cfb02c86257577007238da/$FILE/nasvftaxcredits.pdf.; "Government Based Private Equity Programs," at http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/93e41838bbf61b5b8825781f005a8545/$FILE/Neilson.CDFA%20Presentation_Jan%202011.pdf.; Utah's Fund of Funds program, at http://www.utahfundoffunds.com/; and Invest Iowa, at http://www.investiowa.com/icic/web.nsf/pages/fundoffunds.html. Last visited March 24, 2011.

following: water or wastewater system, communication system, power system, transportation system, renewable energy system, ancillary or support system for any of these types of projects, or other strategic infrastructure of the state, the county, or the municipality.
- Investment partner or partner means a person, other than the partnership, the fund, or the trust, who purchases an ownership interest in the partnership or a transferee of such interests.
- Tax credit means a credit issued against the taxes specified in s. 288.9628(7)(c), F.S.

**Section 4:** Creates s. 288.9627, F.S., the Florida Infrastructure Fund Partnership. This section details how the partnership is created, its purposes, and how it operates.

*Governance*
The partnership is organized and operated under ch. 620, F.S., as a private, for-profit, limited partnership or limited liability partnership. The partnership is not an instrumentality of the state.

The FOF is identified as the general partner for the partnership, and is authorized to loan up to $750,000 to the partnership for use in paying initial organizational expenses and to solicit investment partners. The FOF also is responsible for managing the partnership's business affairs, including, but not limited to:
- Hiring one or more investment managers to assist with the management of the partnership;[17]
- Soliciting and negotiating the terms, contracting, and receipt of the investment capital;
- Receiving investment returns, paying investment partners and approving investments; and
- Engaging in other activities necessary to operate the partnership.

*Infrastructure Investments*
The partnership is authorized to make direct investments in Florida-based infrastructure projects that foster economic development and meet an important infrastructure need of the state. Eligible infrastructure projects include: water or wastewater systems, communication system, power system, transportation system, renewable energy system, ancillary or support system for any of these types of projects, or other strategic infrastructure located within the state.

Capital for these investments must be raised by the partnership through "commitment agreements" with investment partners approved by the FOF's board. The bill provides for the issuance of certificates by Florida Infrastructure Investment Trust *(described in Section 4 below)* for future contingent tax credits that guarantee the return of investment capital from the partnership to its investment partners.

These contingent tax credits will guarantee the principal investment to the partners, but not potential earnings.

SB 976 requires that the total principal investment payable to the partnership and the total amount of contingent tax credits to be issued by the Department of Revenue (DOR) may not

[17] The Fund may only solicit investment managers that have maintained an office in Florida for at least 2 years.

exceed $700 million. However, if the partnership fails to obtain investment commitments totaling at least $100 million by December 1, 2012, then the partnership must cancel all agreements and return investment amounts back to the investment partners.

*Investment decision-making*
The partnership must evaluate infrastructure projects interested in receiving investments based on the following factors:

- The written business plan for the project, including all expected revenue sources;
- The likelihood of the project attracting operating capital through grants or from investors or other lenders;
- The management team for the proposed project;
- The project's job creation potential in Florida;
- The financial resources of the entity proposing the project;
- The presence of reasonable safeguards to ensure the project provides a continuing benefit for residents of the state; and
- Other factors deemed by the partnership to be relevant to the likelihood of the success of the project.

Additionally, the partnership may only invest in infrastructure projects, which:

- Fulfill an infrastructure need in the state;
- Raise twice as much equity or debt capital from other sources as is invested by the partnership; and
- Have appropriate legal controls in place to ensure that no infrastructure project will be fraudulently closed.

The partnership may not invest more than 20 percent of its total funds available for investment in any single infrastructure project. The partnership is prohibited from investing in any infrastructure project authorized under the Florida Rail Enterprise Act, related to high-speed rail projects;[18] with any financial institution or company identified in s. 215.472, F.S., that engages in commerce with Cuba; or with any "scrutinized company," as that term is defined in s. 215.473, F.S., relating to companies that engage in commerce with Iran and Sudan.

*Provisions related to the Credit of the State*
SB 976 prohibits the partnership and the FOF from pledging the credit or taxing power of the state or any political subdivision of the state, nor are their obligations also debt to the state or other political subdivisions. Finally, the partnership and the FOF must pay their debts only from their own resources.

*Reporting Requirements*
The partnership must submit an annual report December 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report, at a minimum, must include:

- An accounting of the amount of investment capital raised and disbursed by the partnership.

[18] Sections 341.8201 – 341.842. F.S.

- The progress of the partnership's activities, including the progress of infrastructure projects that have been provided direct investment under the program.
- A description of the costs and benefits to the state resulting from the partnership's investments, including:
  - A list of infrastructure projects;
  - The costs and benefits of each project to the state;
  - The number of businesses and associated industries affected;
  - The number, types, and average annual wage of jobs created or retained; and
  - The impact of the program on the state's economy.
- Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for the partnership's operating costs.

**Section 5:** Creates s. 288.9628, F.S., the Florida Infrastructure Investment Trust (trust), a state beneficiary public trust, to be governed by an independent board of trustees (board).

*Governance*
The board is comprised of the Chief Financial Officer; the Executive Director of the Office of Trade, Tourism, and Economic Development; and the Vice Chair of Enterprise Florida, Inc., or their respective designees. The bill allows an administrative officer to act on behalf of the Trust under the direction of the board. The board members and the administrative officer are prohibited from receiving compensation from, and having a financial interest in, any investment partner. They serve without compensation, but are entitled to reimbursement of their expenses.[19]

*Powers and duties of the trust*
SB 976 authorizes the trust to:

- Engage consultants and retain professional services;
- Issue tax certificates to the investment partners, redeemable for contingent tax credits;
- Sell the contingent tax credits;
- Expend funds and invest funds; and
- Enter into contracts, and bond or insure against loss.

As mentioned above, the trust may issue certificates, redeemable against the contingent state tax credits, to partners that make equity investments in the partnership. A certificate issued to a partner guarantees the availability of tax credits equal to the principal investment specified in the partner's commitment agreement with the partnership. Certificates issued by the trust may not exceed a total aggregate of $700 million of tax credits. Further, a certificate issued by the trust must have a specific calendar year maturity date designated by the trust of no earlier than 12 years after the date of issuance. A partner's certificate and related tax credits can be transferred to a new owner in whole or in part.

SB 976 specifies that the provisions of ch. 517, F.S., dealing with regulation of securities, do not apply to the certificates and contingent tax credits transferred or sold under this program.

[19] The trust and the FOF may seek reimbursements for expenses by charging a fee for the issuance of certificates to investment partners. The fee may be no more than .25 percent of the aggregate investment capital committed to the partnership.

*Notification and Election of Tax Credits*
If, on the maturity date of a certificate, a partner's principal investment has suffered a "net capital loss," the partnership must provide written notification of this circumstance to the partner. "Net capital loss" is defined to mean an amount equal to the difference between the total investment capital made by the investment partner to the partnership and the amount of the aggregate actual distributions received by the investment partner. The notification must include:

- An estimate of the fair-market value of the partnership's assets;
- The total capital investment of all partners;
- The total amount of distributions received by the partners; and
- The amount of the tax credit for which the partner is entitled to be issued.

Upon receipt of notice from the partnership, each partner can elect to:

- Have the tax credits issued in its name;
- Authorize the trust to sell the tax credits on its behalf, with the proceeds of the sale paid to the partner; or
- Maintain its investment in the partnership.

An affected partner has 30 days, after receiving notification, to provide written notification to the partnership and the trust which option it has chosen. Failing to provide a timely notice will result in the investment partner being deemed to have elected to maintain investment in the partnership.

*Issuance and Sale off Tax Credits*
In the event that a partner becomes eligible and elects to claim tax credits under the program, the bill provides that the trust will, on behalf of the partner, apply to DOR for the issuance of tax credits. The tax credits certified by DOR may not exceed the partner's net capital loss. The partner must agree in writing to transfer its interest in the partnership to the fund before receiving tax credits.

Alternatively, the trust may sell tax credits on behalf of a partner, in an amount no more than the lesser of the maximum amount of tax credits available under the terms of the certificate issued to the partner or the amount necessary to repay a partner's net capital loss. Before receiving the proceeds from the trust's sale of tax credits, the partner must agree in writing to transfer its interest in the partnership to the fund.

Within 30 days following receipt of a partner's election or the trust's sale of the tax credits, the trust must notify the partnership and then apply to DOR for issuance of the contingent tax credits in the name of the partner or purchaser. The application must include the following information: the partnership's certification of the amount of credits to be issued, identification of the applicable taxpayer, and the tax against which the credits can be applied. Within 30 days of the receipt of an application, DOR must issue tax credits to the partner or purchaser in the amount designated by the trust in the application. If the trust is unable to sell the partner's tax credits within 90 days, the bill provides the partner with the option to modify its election choice.

As specified earlier, the amount of tax credits that may be claimed or applied against state taxes may not exceed $150 million in a state fiscal year. The tax credits issued by DOR can be used to

offset state sales, corporate, or premium insurance tax liability, or as refund of taxes paid; such credits must be applied or taken as a refund within 7 years after the credits are issued.

The bill provides that ch. 517, F.S., dealing with regulation of securities, does not apply to the certificates and credits transferred or sold pursuant to the provisions of the bill.

Section 6: Specifies 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:

At its March 10, 2011 meeting, the Revenue Estimating Conference (REC) determined by consensus that SB 976 will have a recurring negative, but indeterminate, impact on both state and local government revenues, as annualized in the next four fiscal years.

The REC noted in its written estimate report that, "It is not possible to determine what net operating capital losses could be 12 years out, therefore the Cap ($150 million annually) is assumed to be the maximum recurring amount." Further, the REC noted that, "This bill exposes the state to contingent future tax credits ranging from $0 to $700 million, beginning in 2023 at the earliest."

B. Private Sector Impact:

Indeterminate, but likely positive for both businesses and residents of the areas where the infrastructure projects are constructed.

C. Government Sector Impact:

Indeterminate. DOR may incur some costs associated with administratively handling the issuance and transference, where applicable, of the contingent tax credits.

## 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.

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LEGISLATIVE ACTION

Senate . House

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

**Senate Substitute for Amendment (138788) (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 332.16, Florida Statutes, is created to read:

332.16 Public-record exemptions.—

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

(a) "Airport facilities" means airports, buildings, structures, terminal buildings, parking garages and lots,

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hangars, land, warehouses, shops, hotels, other aviation facilities of any kind or nature, or any other facility of any kind or nature related to or connected with a public airport and other aviation facility that a public airport is authorized by law to construct, acquire, own, lease, or operate, together with all fixtures, equipment, and property, real or personal, tangible or intangible, necessary, appurtenant, or incidental thereto.

(b) "Governing body" means the board or body in which the general legislative powers of a public airport is vested.

(c) "Proprietor" means a self-employed individual, proprietorship, corporation, partnership, limited partnership, firm, enterprise, franchise, association, trust, or business entity, whether fictitiously named or not, authorized to do or doing business in this state, including its respective authorized officer, employee, agent, or successor in interest, which controls or owns the proprietary confidential business information provided to a public airport.

(d) "Proprietary confidential business information" means information that is owned or controlled by the proprietor requesting confidentiality under this section; that is intended to be and is treated by the proprietor as private in that the disclosure of the information would cause harm to the business operations of the proprietor; that has not been disclosed unless disclosed pursuant to a statutory provision, 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:

1. Business plans.


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2. Internal auditing controls and reports of internal auditors.

3. Reports of external auditors for privately held companies.

4. Client and customer lists.

5. Potentially patentable material.

6. Business transactions; however, business transactions do not include those transactions between a proprietor and a public airport.

7. Financial information of the proprietor.

(e) "Public airport" has the same meaning as provided in s. 330.27 and includes areas defined in s. 332.01(3).

(f) "Trade secrets" has the same meaning as in s. 688.002.

(2) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—Proprietary confidential business information held by a public airport is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.

(3) TRADE SECRETS.—Trade secrets held by a public airport are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) SALE, USE, DEVELOPMENT, OR LEASE OF AIRPORT FACILITIES.—Any proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport facilities is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, any such proposal or counterproposal shall cease to be exempt upon approval by the governing body of



a public airport. If no proposal or counterproposal is submitted to the governing body for approval, such proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

(5) LEGISLATIVE REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that trade secrets and proprietary confidential business information, including business plans, internal auditing controls and reports of internal auditors, reports of external auditors for privately held companies, client and customer lists, potentially patentable material, certain business transactions, and financial information of the proprietor be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Trade secrets and proprietary confidential business information derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by, other persons who could obtain economic value from its disclosure or use. An airport, in performing its lawful duties and responsibilities, may need to obtain from a proprietor trade secrets or proprietary confidential business information. Without an exemption from public-records requirements, trade secrets and proprietary confidential business information held by an airport become a public record and must be divulged upon request. Divulging the

trade secret or proprietary confidential business information would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor, but also to the airport and to the state and local governments due to a loss of tax revenue and employment opportunities for residents. Release of that information would give business competitors an unfair advantage and would injure the affected entity in the marketplace. Thus, the Legislature finds that it is a public necessity that trade secrets and proprietary confidential business information held by a public airport be made confidential and exempt from public-records requirements.

(2) The Legislature also finds that it is a public necessity that any proposal or counterproposal exchanged between a nongovernmental entity and any public airport listed in s. 330.27, Florida Statutes, which includes areas defined in s. 332.01(3), Florida Statutes, relating to the sale, use, or lease of land or airport facilities, be made exempt from public-records requirements until approved by the governing body of the airport. Proposals and counterproposals submitted to an airport contain sensitive and confidential business and financial information. Competing entities can gain access to such proposals, and, in some instances, the affected nongovernmental entity has abandoned its contractual efforts with the airport, to the airport’s financial detriment. Confidential business and financial records submitted to an airport for purposes of the sale, use, or lease of land or of airport facilities contain sensitive information, the release of which would give competitors an unfair economic advantage. Finally, such exemption is necessary in order for Florida airports to more

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effectively and efficiently negotiate contracts for the sale, use, or lease of airport facilities.

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 public records; creating s. 332.16, F.S.; providing definitions; providing an exemption from public-records requirements for proprietary confidential business information and trade secrets held by a public airport and for any proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport facilities; providing for expiration of the exemptions; providing for future legislative review and repeal of the exemptions under the Open Government Sunset Review Act; providing a finding of public necessity; 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 994 |
| INTRODUCER: | Senator Latvala |
| SUBJECT: | Public Records/Airports |
| DATE: | March 29, 2011 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Wolfgang | Yeatman | CA | **Fav/1 amendment** |
| 2. | Pugh | Cooper | CM | **Pre-meeting** |
| 3. | | | GO | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | ☐ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☒ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

## I. Summary:


Current law provides several public records exemptions for proprietary confidential business information held by various entities, and for contract proposals exchanged between public and private entities for the use of public infrastructure. However, the statutes do not provide similar exemptions for public airports engaged in business transactions with private companies.

SB 994 creates a public records exemption for proprietary confidential business information submitted to or held by a public airport. The exemption expires when the confidential and exempt information is no longer considered to be proprietary confidential business information by the proprietor.

The bill also creates a public records exemption for a proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities.

SB 994 provides a statement of public necessity as required by the State Constitution, and provides definitions for terms used in the proposed statutes.

Finally, SB 994 provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature.

Pursuant to Article I, s. 24(c) of the State Constitution, passage of SB 994 requires a two-thirds vote in each chamber of the members present and voting for final passage of a newly created public record or public meeting exemption.

SB 994 creates s. 332.16, F.S., and an unnumbered section of chapter law related to the statement of necessity for the proposed public records exemption.

## II. Present Situation:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

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

Section 119.011(12), F.S., defines the term "public records" 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 official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."[1]

The Legislature, however, may provide by general law an exemption of public records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (the so-called "public necessity statement") and must be no broader than necessary to accomplish its purpose.[2] A bill enacting an exemption[3] may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.[4]

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or

[1] *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[2] Section 24(c), Art. I of the State Constitution.
[3] Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[4] Section 24(c), Art. I of the State Constitution.

entities designated in the statute.[5] If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[6]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[7] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

Proprietary Confidential Business Information

Current law provides several public record exemptions for proprietary confidential business information, such as that held by economic development agencies and utilities.[8] However, it does not provide a public record exemption for proprietary confidential business information held by a public airport.

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, 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.

Public Airports in Florida

Section 330.27(6), F.S., defines "public airport" as either a publicly or privately owned airport that is open for use by the public. Florida has 21 commercial airports[9] (meaning they offer

[5] Op. Att'y Gen. Fla. 85-62 (1985).
[6] *Williams v. City of Minneola,* 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).
[7] Section 119.15, F.S.
[8] Public record exemptions for proprietary confidential business information are provided as it relates to the following: electric utility interlocal agreements (s. 163.01, F.S.); communications services tax (s. 202.195, F.S.); alternative investments for state funds (s. 215.44, F.S.); economic development agencies (s. 288.075, F.S.); Institute for Commercialization of Public Research and the Opportunity Fund (s. 288.9626, F.S.); telephone companies (s. 364.183, F.S.); emergency communications number E911 system (s. 365.174, F.S.); public utilities (s. 366.093, F.S.); natural gas transmission companies (s. 368.108, F.S.); Sunshine State One-Call of Florida, Inc. (s. 556.113, F.S.); tobacco companies (s. 569.215, F.S.); prison work program corporation records (s. 946.517, F.S.); and H. Lee Moffitt Cancer Center and Research Institute (s. 1004.43, F.S.).
[9] A map showing the location of these 21 airports is available at:
http://www.dot.state.fl.us/aviation/pdfs/Welcome%20to%20Fl%20Aviation112010.pdf on page 10.

commercial passenger airline service) and 107 general aviation airports,[10] which include municipal airports and private air fields that offer flights other than military and scheduled airline and regular cargo flights.

Based on a 2010 report[11] prepared by the Florida Department of Transportation's Office of Aviation, airport operations account for at least 1 million jobs and annual payroll of nearly $31 billion, and generate an estimated $97 billion in economic activity. For example, air cargo operations generate an estimated $6.6 billion on economic impact, and accounts for about one-third Florida's international trade.

## III. Effect of Proposed Changes:

SB 994 creates two public records exemption related to public airports: one related to proprietary confidential business information submitted to or held by a public airport, and the other related to proposals or counterproposals exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities.

Section 1: Creates s. 332.16, F.S., to create an exemption for proprietary confidential business information submitted to or held by a public airport. The exemption expires when the confidential and exempt information is no longer considered to be proprietary confidential business information by the proprietor.

SB 994 creates definitions for the terms "airport facilities," "governing body," "proprietor," and "public airport." The key definition is "proprietary confidential business information," which means information that has been designated as confidential by the proprietor and includes:

- Business plans;
- Internal auditing controls and reports of internal auditors;
- Reports of external auditors for privately held companies;
- Trade secrets as defined in the Uniform Trade Secrets Act;[12]
- Client and customer lists;
- Potentially patentable material;
- Business transactions; or
- Financial information of the proprietor or projections of financial results for the proprietor or the airport facilities project for which the information is provided.

The bill also creates a public records exemption for a proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities. The public record exemption expires 10 days after the proposal or counterproposal is approved by the governing body of a public airport.

[10] Ibid, pages 8-9.
[11] Ibid, page 6.
[12] Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: 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 is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

SB 944 provides that if a proposal or counterproposal is not submitted to the governing body for approval, then the public records exemption for the proposal or counterproposal expires 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

Additionally, the bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature.

Section 2: Provides in an undesignated section of chapter law the constitutionally required statement of public necessity. However, the public necessity statement only provides the justification for creating the public record exemption for proprietary confidential business information.

Essentially, the bill states that divulging the proprietary confidential business information destroys the value of that property to the proprietor, causing a financial loss not only to the proprietor, but also to the airport and to the state and local governments due to a loss of tax revenue and employment opportunities for residents. Release of that information could give business competitors an unfair advantage and would injure the affected entity in the marketplace.

Section 3: Provides an effective date of July 1, 2011.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

Vote Requirement
Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. Since SB 944 creates new public record exemptions, it requires a two-thirds vote in each chamber for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. SB 994 creates two new public records exemptions. However, the public necessity statement is deficient in that it only provides justification for the public record exemption for proprietary confidential business information. The public necessity statement should be amended to include the justification for protecting proposals or counterproposals exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution, requires that an exemption be drafted as narrowly as possible. The exemption in SB 994, as drafted, could raise concerns whether

it is narrowly drawn regarding its breadth when compared with another similar exemption for seaports.

Current law provides a public record exemption for a proposal or counterproposal exchanged between a deepwater port and a nongovernmental entity.[13] However, that exemption expires 30 days before any such proposal or counterproposal is considered for approval by the governing body of the deepwater port.

The exemption provided by SB 994 requires that the confidentiality be maintained for a period of 10 days after approval by the governing body of the public airport. The need to maintain such confidentiality after a proposal or counterproposal is approved by the governing body at a public meeting is unclear. As such, the proposed exemption could be construed as overly broad.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

Line 62 of SB 994 provides that certain proposals and counterproposals are "confidential and exempt" from public records requirements; however, line 44 of the bill refers to the same proposals and counterproposals as "exempt." The bill should be amended to clarify that the proposals and counterproposals are confidential and exempt from public records requirements, per the sponsor's intent.

In addition, the bill defines "airport facilities" to mean airports, buildings, structures, terminal buildings, parking garages and lots, hangars, land, warehouses, shops, hotels, other aviation facilities of any kind or nature, or any other facility of any kind or nature related to or connected with a public airport and other aviation facility that a public airport is authorized by law to construct, acquire, own, lease, or operate, together with all fixtures, equipment, and property, real or personal, tangible or intangible, necessary, appurtenant, or incidental thereto. The bill

[13] Section 315.18, F.S.

provides that the public record exemption for a proposal or counterproposal applies to the sale, use, development, or lease of airport land or airport facilities. Including a reference to land in the definition of "airport facilities" appears to be redundant.

## VII. Related Issues:

The term "business transactions" could be broadly construed to include even the contracts and other transactions between the proprietor/private tenant and the public airport. In addition, the public necessity for protecting financial information associated with an airport facilities project is unclear, in the case where such projects were paid for with public tax dollars.

An amendment is expected to be filed to clarify this issue and the technical issues identified above.

## 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:

**Barcode 138788 by Community Affairs Committee on March 14, 2011:**
This amendment narrows the categories of public records subject to exemption from public disclosure.

138788

LEGISLATIVE ACTION

| Senate | . | House |
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| 03/14/2011 | . | |
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The Committee on Community Affairs (Ring) recommended the following:

**Senate Amendment**

Delete line 45
and insert:

proprietor; is intended to be and is treated by that proprietor as private, and the disclosure of which would cause harm to the business operations of the proprietor; has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process; and includes:

504128

LEGISLATIVE ACTION

Senate . House

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

**Senate Amendment**

Delete line 185

and insert:

c. Items included in the definition of sales price.

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LEGISLATIVE ACTION

Senate . House

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

**Senate Amendment**

Delete lines 684 - 686

and insert:

~~(27) "Agricultural commodity" means horticultural, aquacultural, poultry and farm products, and livestock and livestock products.~~

423136

LEGISLATIVE ACTION

Senate . House

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

**Senate Amendment**

Delete line 1041

and insert:

sponsored by a state college, state university, or community college

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LEGISLATIVE ACTION

Senate . House

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

**Senate Amendment**

Between lines 1810 and 1811
insert:
3. As used in this paragraph, the term "delivered electronically" means delivered to the purchaser by means other than tangible storage media.

951792

LEGISLATIVE ACTION

Senate . House

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

**Senate Amendment**

Delete line 2859
and insert:
chapter 459, chapter 460, chapter 461, chapter 466, or chapter 474. The term

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LEGISLATIVE ACTION

Senate . House

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

**Senate Amendment (with title amendment)**

Delete lines 3134 - 3252
and insert:
(1) Notwithstanding any other provision of law and for the purpose of compensating persons granting licenses for and the lessors of real and personal property taxed hereunder, for the purpose of compensating dealers in tangible personal property, for the purpose of compensating dealers providing communication services and taxable services, for the purpose of compensating owners of places where admissions are collected, and for the purpose of compensating remitters of any taxes or fees reported

on the same documents utilized for the sales and use tax, as compensation for the keeping of prescribed records, filing timely tax returns, and the proper accounting and remitting of taxes by them, such seller, person, lessor, dealer, owner, or ~~and~~ remitter shall be allowed a collection allowance based on a percentage of tax remitted for a reporting period. The rate of compensation is:

1. 0.75 percent of the first $6,250 of tax remitted,

2. 0.375 percent of the tax remitted exceeding $6,250 and less than or equal to $62,500, and

3. 0.1875 percent of the tax remitted exceeding $62,500.

(a) The amount of collection allowance for each seller, person, lessor, dealer, owner, or remitter is limited based on the amount of sales and use tax remitted in the twelve month period ending June 30 of the previous calendar year. No collection allowance will be allowed on the total tax remitted by any seller, person, lessor, dealer, owner, or remitter in any month in excess of:

1. $750,000, if the total amount remitted by all dealers in the previous year was equal to or less than $1,000,000,000.00;

2. $1,000,000, if the total amount remitted by all dealers in the previous year was greater than $1,000,000,000.00 but equal to or less than $2,500,000,000.00;

3. $3,000,000.00, if the total amount remitted by all dealers in the previous year was greater than $2,500,000,000.00 but equal to or less than $5,000,000,000.00;

4. $5,000,000.00, if the total amount remitted by all dealers in the previous year was greater than $5,000,000,000.00 but equal to or less than $7,500,000,000.00;



5. $7,000,000.00, if the total amount remitted by all dealers in the previous year was greater than $7,500,000,000.00 but equal to or less than $10,000,000,000.00; or

6. $10,000,000.00, if the total amount remitted by all dealers in the previous year was greater than $10,000,000.00.

~~(except dealers who make mail order sales) shall be allowed 2.5 percent of the amount of the tax due and accounted for and remitted to the department, in the form of a deduction in submitting his or her report and paying the amount due by him or her; the department shall allow such deduction of 2.5 percent of the amount of the tax to the person paying the same for remitting the tax and making of tax returns in the manner herein provided, for paying the amount due to be paid by him or her, and as further compensation to dealers in tangible personal property for the keeping of prescribed records and for collection of taxes and remitting the same. However, if the amount of the tax due and remitted to the department for the reporting period exceeds $1,200, no allowance shall be allowed for all amounts in excess of $1,200. The executive director of the department is authorized to negotiate a collection allowance, pursuant to rules promulgated by the department, with a dealer who makes mail order sales. The rules of the department shall provide guidelines for establishing the collection allowance based upon the dealer's estimated costs of collecting the tax, the volume and value of the dealer's mail order sales to purchasers in this state, and the administrative and legal costs and likelihood of achieving collection of the tax absent the cooperation of the dealer. However, in no event shall the collection allowance negotiated by the executive director exceed~~

~~10 percent of the tax remitted for a reporting period.~~

(b) ~~(a)~~ The Department of Revenue may deny the collection allowance if a taxpayer files an incomplete return or if the required tax return or tax is delinquent at the time of payment.

1. An "incomplete return" is, for purposes of this chapter, a return that ~~which~~ is lacking such uniformity, completeness, and arrangement that the physical handling, verification, review of the return, or determination of other taxes and fees reported on the return may not be readily accomplished.

2. The department shall adopt rules requiring such information as it may deem necessary to ensure that the tax levied hereunder is properly collected, reviewed, compiled, reported, and enforced, including, but not limited to: the amount of gross sales; the amount of taxable sales; the amount of tax collected or due; the amount of lawful refunds, deductions, or credits claimed; the amount claimed as the dealer's collection allowance; the amount of penalty and interest; the amount due with the return; and such other information as the Department of Revenue may specify. The department shall require that transient rentals and agricultural equipment transactions be separately shown. Sales made through vending machines as defined in s. 212.0515 must be separately shown on the return. Sales made through coin-operated amusement machines as defined by s. 212.02 and the number of machines operated must be separately shown on the return or on a form prescribed by the department. If a separate form is required, the same penalties for late filing, incomplete filing, or failure to file as provided for the sales tax return shall apply to said form.


(c) ~~(b)~~ The collection allowance and other credits or deductions provided in this chapter shall be applied proportionally to any taxes or fees reported on the same documents used for the sales and use tax.

(d) ~~(c)~~ 1. A dealer entitled to the collection allowance provided in this section may elect to forego the collection allowance and direct that said amount be transferred into the Educational Enhancement Trust Fund. Such an election must be made with the timely filing of a return and may not be rescinded once made. If a dealer who makes such an election files a delinquent return, underpays the tax, or files an incomplete return, the amount transferred into the Educational Enhancement Trust Fund shall be the amount of the collection allowance remaining after resolution of liability for all of the tax, interest, and penalty due on that return or underpayment of tax. The Department of Education shall distribute the remaining amount from the trust fund to the school districts that have adopted resolutions stating that those funds will be used to ensure that up-to-date technology is purchased for the classrooms in the district and that teachers are trained in the use of that technology. Revenues collected in districts that do not adopt such a resolution shall be equally distributed to districts that have adopted such resolutions.

2. This paragraph applies to all taxes, surtaxes, and any local option taxes administered under this chapter and remitted directly to the department. This paragraph does not apply to any locally imposed and self-administered convention development tax, tourist development tax, or tourist impact tax administered under this chapter.

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3. Revenues from the dealer-collection allowances shall be transferred quarterly from the General Revenue Fund to the Educational Enhancement Trust Fund. The Department of Revenue shall provide to the Department of Education quarterly information about such revenues by county to which the collection allowance was attributed.

Notwithstanding any provision of chapter 120 to the contrary, the Department of Revenue may adopt rules to carry out the amendment made by chapter 2006-52, Laws of Florida, to this section.

(e) Notwithstanding paragraph (a), a small remote seller may elect to receive a collection allowance of 20 percent of the tax to be remitted to the state, not to exceed compensation of $85.00 in any month in lieu of compensation provided in subparagraph (b). Such election shall be effective for a six-month period beginning with the first month that such seller collects Florida tax. After six months, the collection allowance shall be those rates established in subsection (b). The increased amount of collection allowance by this paragraph shall be available to a small remote seller which begins collecting tax for the state within the first 12 months following the date of registration.

1. "Small remote seller" means a new remote seller which has gross national remote sales of no more than $5,000,000.00 and would not otherwise be required to register in this state.

2. "New remote seller" means a remote seller who registers under the agreement, as provided in s. 213.2567, and who was not previously required to collect sales or use tax. A seller merely

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reincorporating, changing its name, or having a change in ownership or any other similar change in its business structure or operation is not a new remote seller.

3. "Remote seller" means a seller not that would not be registered in this state but for the ability of this state to require the seller to collect sales or use tax under federal authority.

(f) If sales and use tax collection from remote sellers is not greater than 20 percent of the amount determined by the Revenue Estimating Conference of potential collections by July 1, 2014, then the collection allowance shall be reduced to 2.5 percent of tax collected, not to exceed $30.

(g) Notwithstanding paragraphs (a) and (b), a Model 1 seller, as defined in s. 213.256 is not entitled to the collection allowance described in paragraphs (a) and (b).

(h)1. In addition to any collection allowance that may be provided under this subsection, the department may provide the monetary allowances required to be provided by the state to certified service providers and voluntary sellers pursuant to Article VI of the Streamlined Sales and Use Tax Agreement, as amended.

2. Such monetary allowances must be in the form of collection allowances that certified service providers or voluntary sellers are permitted to retain from the tax revenues collected on remote sales to be remitted to the state pursuant to this chapter.

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

And the title is amended as follows:

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Between lines 79 and 80

insert:

authorizing collection allowances; setting requirements for a collection allowance to be allowed; authorizing collection allowances for certain remote sellers; providing for a reduction;

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LEGISLATIVE ACTION

Senate . House

. .

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. .

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

**Senate Amendment (with title amendment)**

Delete line 3845

and insert:

distributed accordingly. Beginning January 1, 2012, the amount to be transferred pursuant to this subparagraph to the Local Government Half-cent Sales Tax Trust Fund shall be reduced each fiscal year by an amount determined by the Revenue Estimating Conference for implementation of the Streamlined Sales and Use Tax Agreement in this state and that amount shall remain with the General Revenue Fund. The Revenue Estimating Conference shall determine the impact of implementation of the Streamlined

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Sales and Use Tax Agreement by October 1, 2011.

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

And the title is amended as follows:

Delete line 98

and insert:

order sales; providing for reduction of the Local Government Half-cent Sales Tax Clearing Trust Fund beginning in 2012; creating s. 213.052, F.S.; requiring the

**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 1548 |
| INTRODUCER: | Senator Lynn |
| SUBJECT: | Streamlined Sales and Use Tax Agreement |
| DATE: | April 4, 2011 |
| REVISED: | |

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

## I. Summary:

SB 1548 implements the requirements of the Streamlined Sales and Use Tax Agreement by making substantial changes to Florida's sales and use tax laws in chs. 212 and 213, F.S. Such changes are meant to simplify Florida's sales and use tax system and qualify the state for participation in the Sales and Use Tax Agreement, thereby making it easier for out-of-state businesses to voluntarily collect and remit taxes to Florida.

This bill amends the following sections of Florida Statutes: 212.02, 212.03, 212.0306, 212.031, 212.04, 212.05, 212.0506, 212.054, 212.055, 212.06, 212.07, 212.08, 212.12, 212.15, 212.17, 212.18, 212.20, 213.256, 11.45, 196.012, 202.18, 203.01, 212.052, 212.081, 212.13, 218.245, 218.65, 288.1045, 288.11621, 288.1169, 551.102, and 790.0655.

This bill creates the following sections of Florida Statutes: 212.094, 213.052, 213.0521, 213.215, 213.2562, and 213.2567.

This bill repeals s. 212.0596, F.S.

## II. Present Situation:

Because Florida has no personal state income tax, the state is primarily dependent on consumption-based taxes for its general revenue. Sales tax collections make up over 70% of general revenue.[1] Forty-five states and the District of Columbia impose sales and use taxes.[2]

[1] See Florida Revenue Estimating Conference, 2011 Florida Tax Handbook, available at http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2011.pdf (last visited 3/31/2011).

States that do not have a personal income tax – Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming – rely most heavily on sales tax collections.

Florida Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on most tangible personal property, admissions, storage, transient rentals, commercial rentals, motor vehicles, and a limited number of services.[3] The statutes currently provide more than 200 different exemptions.[4]

A sales tax of 6 percent is levied on the sales prices of tangible personal property sold at retail in Florida.[5] Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

A use tax of 6 percent is levied on the cost prices of tangible personal property when it is used, consumed, distributed, or stored, rather than sold, in Florida.[6] This is levied when sales tax was not paid at the time of purchase. For example, use tax is owed when a person buys:[7]

- A taxable item in Florida and doesn't pay sales tax;
- An item tax-exempt intending to resell it, and then the item is used in a business or for personal use; or
- A taxable item outside Florida and brings or has it delivered into the state within 6 months of the purchase date, and sales tax was not paid on the item.

The use tax attempts to provide a level playing field between in-state retailers and out-of-state vendors. The use tax preserves a key principle of the sales tax – that the tax is due in the state where the product is used or consumed, not necessarily where it is purchased.

If the item brought into Florida is subject to tax, a credit is allowed for taxes paid to another state, a U.S. territory, or Washington, D.C. Credit is not given for taxes paid to another country.

The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections of discretionary sales surtaxes received by DOR are returned monthly to the county imposing the tax. Further, there are several state-shared revenue programs that allocate some portion of the state sales and use tax to local governments. A few revenue sharing programs require as a prerequisite that the county or municipality meet

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[2] Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose a state sales and use tax, although Alaska permits local governments to impose sales and use taxes.
[3] Of the limited services that are taxable, some, such as cable, are taxed at a higher rate.
[4] For a list of exemptions and history, see Florida Revenue Estimating Conference (REC), 2010 Florida Tax Handbook including Fiscal Impact of Potential Changes, available at http://www.edr.state.fl.us/taxhandbooks/taxhandbook2010.pdf (last visited 3/8/2010). Exemptions were estimated to total about $10 billion in FY 2010-2011.
[5] Section 212.05(1)(a)1.a., F.S.
[6] Section 212.05(1)(b), F.S.
[7] DOR, Florida's Sales and Use Tax, GT-800013, last revised 7/2009, available at http://dor.myflorida.com/dor/forms/2009/gt800013.pdf (last visited 3/8/2010).

eligibility criteria. While general law restricts the use of some shared revenues, proceeds derived from other shared revenues may be used for the general revenue needs of local governments.[8]

Local Discretionary Sales Surtax

A "surtax" is an extra tax or charge.[9] Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax on all transactions subject to the state sales and use tax. Only those surtaxes specifically designated may be levied.

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions and on communications services, defined in ch. 202, F.S. Table 1 identifies the eight taxes, the rate limits, and the number of counties authorized to impose and the number imposing the tax.[10]

**Table 1: Local Discretionary Sales Surtaxes**

| Tax | Authorized Levy (%) | # Counties Authorized to Levy Tax | # Counties Levying Tax |
|---|---|---|---|
| Charter County Transportation System Surtax | up to 1% | 31 | 2 |
| Local Government Infrastructure Surtax | 0.5% or 1% | 67 | 20 |
| Small County Surtax | 0.5% or 1% | 31 | 28 |
| Indigent Care & Trauma Center Surtax | up to 0.25%, or up to 0.5% | 65 | 1 |
| County Public Hospital Surtax | 0.5% | 1 (Miami-Dade County) | 1 |
| School Capital Outlay Surtax | up to 0.5% | 67 | 16 |
| Voter-Approved Indigent Care Surtax | 0.5% or 1% | 60 | 4 |
| Emergency Fire Rescue Services and Facilities Surtax[11] | up to 1% | 65 | 0 |

Source: REC, 2011 Local Government Financial Information Handbook

The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility for the taxes listed in s. 212.055, F.S.; currently, the maximum ranges between 2% and

[8] For more information see the Florida Revenue Estimating Conference (REC), 2011 Local Government Financial Information Handbook, August 2009, available at http://www.floridalcir.gov/UserContent/docs/File/reports/lgfih09.pdf (last visited 3/8/2010)

[9] Black's Law Dictionary (8th ed., 2004), tax.

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

[11] Created in 2009 by ch. 2009-182, L.O.F. (Effective July 1, 2009).

3.5% for Florida's 67 counties. In general, the levy of a particular tax is subject to county voter approval.

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state taxes. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. The surtax does not apply to a sales amount above $5,000 on any item of tangible personal property. This $5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

Internet Sales and Out of State Vendors

Under Florida law, each sale is subject to sales tax unless such transaction is specifically exempt. Chapter 212, F.S., provides no exemptions for sales over the internet. Use taxes are difficult for states to enforce because they must rely on out-of-state vendors to collect the tax money or purchasers must remit the tax themselves. Out-of-state vendors, not wanting to be tax collectors for states and local governments, argue that states have no jurisdiction over them. A state's ability to compel an out-of-state seller to collect and remit sales tax is limited by the Commerce Clause and the Due Process Clause of the U.S. Constitution.[12] The U.S. Supreme Court has held that the state's disparate state and local sales tax systems make collecting taxes an undue burden on out-of-state retailers.[13]

In order for sales occurring over the internet to be subject to the sales tax, there must be sufficient nexus between the seller and the state. Nexus has been found to exist when a seller:

- Has agents in this state who solicit or transact business on behalf of the seller and as a result receive orders for merchandise to be delivered to the purchaser in this state;
- Has a physical location in this state;
- Delivers merchandise into this state in vehicles which are leased or owned by the seller;
- Owns land or buildings located in this state;
- Stores merchandise in this state for sale or use; or
- Rents or leases merchandise that is located in Florida in the possession of a lessee.[14]

If the person selling the property into this state does not have sufficient nexus or is not registered with DOR as a dealer to collect sales tax, and the goods are delivered in Florida, then use tax applies and is due from the purchaser.

According to the U.S. Census Bureau about 70 percent of U.S. households have internet access.[15] The U.S. Census Bureau estimated the total internet or "e-commerce" sales for 2010 at $165.4 billion, an increase of 14.8 percent (±2.3%) from 2009. "Total retail sales in 2010 increased 7.0

[12] Due Process requires some minimal contact with the taxing state for a taxing statute to be upheld. Upholding a statute against a Commerce Clause challenge is dependent upon satisfaction of a 4-part test: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to a service provided by the taxing state.

[13] See Closing the Online Tax Loophole, Blackston, Michelle, NCSL's State Legislatures, April 2008.

[14] Depending on the jurisdiction, courts have found that these things satisfy nexus while others have found that they were insufficient alone.

[15] 2009 data available at http://www.census.gov/population/www/socdemo/computer.html (last visited 3/31/2011).

percent (±0.5%) from 2009. E-commerce sales in 2010 accounted for 4.2 percent of total sales. E-commerce sales in 2009 accounted for 3.9 percent of total sales."[16]

The issue of sales and use taxes on e-commerce is important to the states for three main reasons:

- The continued growth in e-commerce points to an increasing number of transactions on which sales and use taxes will not be collected, resulting in sales tax revenue losses for state and local governments;
- Since out-of-state sellers do not have to collect sales and use taxes, except in states where they have "nexus," they enjoy a competitive advantage over "brick and mortar" businesses; and
- Because of loopholes for on-line retailers, consumers who can afford access to the internet escape paying sales and use taxes while forcing those without access to shoulder a heavier burden of the sales tax.[17]

A study updated in 2009 estimated that for 2012, Florida would lose out on about $1.484 billion in uncollected sales tax revenue from out of state transitions.[18] With 67 different state and local taxing jurisdictions in Florida, an out-of-state retailer may find it difficult to collect and remit sales taxes. There are about 7,500 different taxing jurisdictions at the state and local levels in the U.S.

Internet Tax Freedom Act

In response to the Internet explosion, Congress enacted the Internet Tax Freedom Act in October 1998. This legislation called for a 3-year moratorium, from October 1, 1998, to October 21, 2001, on state and local taxes on Internet access and multiple or discriminatory taxes on electronic commerce. This moratorium has been extended several times and currently expires November 1, 2014.[19]

Streamlined Sales Tax Project

Because of the rise of e-commerce, a group was formed in 2000 with the National Conference of State Legislatures (NCSL), consisting of legislators, tax administrators, and private sector representatives, to design and implement a simplified sales tax collection system that could be used by traditional brick-and-mortar businesses and businesses involved in e-commerce. In response to this effort, the Florida Legislature passed ch. 2000-355, L.O.F., creating a provision in s. 213.27, F.S., which grants DOR authority to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration.

[16] Quarterly Retail E-Commerce Sales, 4th Quarter 2010, available at http://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf (last visited 3/31/2011).
[17] Graham Williams, "Streamlined Sales Tax for the New Economy," National Conference of State Legislatures, Nov./Dec. 2000, Vol. 8, No. 44.
[18] Data collected by the National Conference of State Legislatures (NCSL); Donald Bruce and William F. Fox, Center for Business and Research, University of Tennessee, State and Local Sales Tax Revenue Losses from E-Commerce Estimates as of April 2009, available at http://www.ncsl.org/default.aspx?TabId=20274 (last visited 3/31/2011).
[19] Created by Pub. L. No. 105-277; Extended to November 2003 by Pub. L. No. 107-75; Extended to November 2007 by Pub. L. No. 108-435; Extended to November 2014 by Pub. L. No. 110-108.

In 2001, the Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement was approved and states that adopted the Uniform Sales and Use Tax Administration Act or had their governors issue executive orders or similar authorizations were authorized to participate in the next phase of discussions with other states for the purpose of developing a multi-state, voluntary, streamlined system for the collection and administration of state and local sales and use taxes. The Florida Legislature passed ch. 2001-225, L.O.F., which among other things, created the Simplified Sales and Use Tax Act, authorizing Florida to participate in the next phase of discussions with other states for the purposes of developing the project.

The result of the Streamlined Sales Tax Project is the Streamlined Sales and Use Tax Agreement (SSUTA). It proposes an effort to "modernize" states' sales and use tax structures to create a uniform, simplified taxing system that would apply to all businesses collecting sales and use taxes. Participation in collecting sales tax under the agreement is voluntary for sellers who do not have a physical presence or "nexus" within a state. However, an end goal of the effort is for Congress to require collection from all sellers for all types of commerce.

Streamlined Sales and Use Tax Agreement

SSUTA is a multi-state project intended to simplify the administration of sales and use taxes. One of the goals of the legislation is to encourage sellers who do not have a physical presence in a particular state (such as mail order and internet vendors) to nevertheless collect sales and use taxes from their customers. Among other things, SSUTA provides for the certification of third-party tax collection agents who will assume a vendor's sales tax collection obligations and also provides for the certification of tax collection software.

Key features of SSUTA include:[20]

- Uniform definitions within tax laws. Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions.
- Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances. Local jurisdictions will be allowed one local rate.
- State-level administration of all state and local taxes. Businesses will no longer file tax returns with each local government where it conducts business in a state. States will be responsible for the administration of all state and local taxes and the distribution of the local taxes to the local governments. State and local governments must have common tax bases.
- Uniform sourcing rules. The states will have uniform and simple rules as to how they will source transactions to state and local governments.
- Simplified exemption administration for use- and entity-based exemptions. Sellers will not be liable for uncollected tax when they sell something tax exempt to a purchaser who should have been charged the sales tax. Purchasers will be responsible for paying the tax, interest, and penalties for claiming incorrect exemptions.
- Uniform audit procedures.
- State funding of the system. To reduce the financial burdens on sellers, states pay the cost of collecting the tax for businesses without a physical presence in the state.

[20] See Streamlined Sales Tax Governing Board, Inc., Frequently Asked Questions, available at http://www.streamlinedsalestax.org/index.php?page=faqs (last visited 4/1/2011).

Currently, 20 states are full members of SSUTA because they have state laws which are in compliance with the agreement. These states are: Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. There are 4 states that are associate members, meaning that the state is in compliance with SSUTA, but their laws, rules, regulations, and policies to bring the state into compliance are not in effect but are scheduled to take effect no later than 12 months after becoming an associate member. These states include Georgia, Ohio, Tennessee, and Utah. Also, currently, over 1,000 businesses have voluntarily agreed to collect taxes on out-of-state sales.

## III. Effect of Proposed Changes:

SB 1548 implements the requirements of SSUTA by making substantial changes to Florida's sales and use tax laws in chs. 212 and 213, F.S. Such changes are meant to simplify Florida's sales and use tax system and qualify the state for participation in the SSUTA, thereby making it easier for out-of-state businesses to voluntarily collect and remit taxes to Florida

**SSUTA Conforming Changes**

Section 1 amends current definitions and creates new ones in s. 212.02, F.S., to conform to the definitions adopted in the SSUTA in Appendix C – Library of Definitions.

*Bracket System and Rounding*
The SSUTA does not allow any member state to require a dealer to collect tax based upon a bracket system, which Florida currently uses. Section 15 amends s. 212.12, F.S., to repeal Florida law relating to bracketing. Instead, a provision is added to compute taxes based upon the SSUTA. The SSUTA provides for rounding up and is based upon tax computations to the third decimal place.

Additionally, Section 3 (s. 212.0306(6), F.S.), Section 6 (s. 212.04(1)(b), F.S.), Section 7 (s. 212.05(4), F.S.), Section 8 (s. 212.0506(6), F.S.), remove references to Florida bracket system.

*Sourcing*
In order to meet the requirements of the SSUTA, the bill sets forth specific methods for determining where a sale took place, referred to in the SSUTA as "sourcing." Section 9 amends s. 212.054(3), F.S., to set forth the sourcing guidelines of the SSUTA for:

- Retail sales of tangible personal property, excluding leases or rentals;
- Lease or rental of tangible person property;
- Lease or rental of motor vehicles or aircraft;
- Retail sales of transportation equipment, including leases or rentals;
- Retail sale of modular or manufactured homes, excluding mobile homes;
- Retail sale of motor vehicles or mobile homes, excluding leases or rentals;
- Admission charged for an event;
- Lease or rental of real property;
- Retail sale of aircraft, excluding lease or rental;
- Purchase, use, consumption, distribution, or storage of motor vehicles or mobile homes;

- Transient rentals;
- Coin-operated amusement or vending machines; and
- Orders take by florists.

The bill also amends s. 212.05(1)(e)1.a., F.S., which sets forth special provisions related to the taxation of charges for prepaid calling cards, depending upon where the sale took place, to meet the new sourcing guidelines.

*Taxability Matrix*
The SSUTA requires each member state to complete a taxability matrix approved by the governing board of the SSUTA. Dealers and certified service providers[21] must be relieved from liability for having charged and collected the incorrect amount of sales and use tax based on erroneous data provided by the state in the taxability matrix. Further, purchasers are also to be held harmless when relying on an erroneous taxability matrix provided by the state. Section 12 amends s. 212.07, F.S., to meet these requirements.

*Vendor Databases*
The SSUTA requires states that permit local jurisdictions to levy a sales and use tax to maintain or make available (through a vendor) a database that meets the following requirements:

- Describes the boundaries and boundary changes for all taxing jurisdictions, including the effective dates;
- Provides all sales and use tax rates by jurisdiction;
- For areas that include more than one tax rate, the rates assigned to each 5-digit and 9-digit zip code that applies the lowest combined rate to each zip code; and
- Optionally include address-based boundary database records for assigning taxing jurisdictions and associated tax rates.

The database may be a state-provided database or a state-certified database. A dealer or certified service provider will be held harmless from any tax, interest, or penalties due solely because of reliance on erroneous data in the database. If the 9-digit zip code is unavailable or unknown to a dealer, then the dealer or certified service provider may apply the tax rate for the 5-digit zip code.

The bill creates s. 212.054(8), F.S. to meet these requirements (Section 9).

*Effective and Termination Dates of Taxes*
Current law provides that discretionary sales surtaxes must take effect January 1 and terminate on December 31. The bill provides that any adoption, repeal, or rate change must take effect April 1, and the governing body adopting the tax must notify DOR of the change within 10 days of the decision, but no later than October 20 preceding the next April 1. DOR must notify dealers of the change by February 1 preceding the April 1 effective date. Additionally, the termination of a surtax may only be effective on March 31, including for termination dates set prior to January 1, 2012. These changes in Section 9 meet the requirements of the SSUTA.

[21] "Certified service provider" is defined in s. 213.256, F.S., as an agent certified to perform all of a dealer's sales tax functions other than the dealer's obligation to remit tax on its own purchases. See Section 23 of the bill for clarifying amendments to this definition.

Section 10 also repeals a reference to an effective date of a tax for emergency fire and rescue services and facilities in s. 212.055(8)(i), F.S.

Section 20 creates s. 213.052, F.S., to create provisions in Florida law that meet the effective date requirements of the SSUTA for sales and use taxes. Section 213.052, F.S., provides that a sales and use tax rate change is required to take effect on January 1, April 1, July 1, or October 1. Additionally, DOR must give dealers notice of the rate change at least 60 days before the effective date of the rate change. However, the provision specifies that failure of a dealer to receive notice does not relieve it from collecting sales and use tax.

Section 21 creates s. 213.0521, F.S., to establish the effect of a rate change. It provides that for a rate increase, the new rate applies to the first billing period starting on or after the effective date. For a rate decrease, the new rate applies to bills rendered on or after the effective date.

*Liability to Pay Tax*
Further, the bill provides a rebuttable presumption that the dealer or certified service provider exercised due diligence if it used state-certified software. Dealers or certified service providers may become liable if they do not use the state database. A dealer is not liable for failing to collect tax at a new rate under certain conditions. Additionally, purchasers are held harmless from tax, interest, and penalties for failing to pay the correct tax due as a result of relying on erroneous data or the dealer or certified service provider relying on erroneous data. See s. 212.054(8), (9), and (10), F.S., in Section 9 of the bill.

*Monetary Allowance*
Section 15 amends s. 212.12, F.S., to create a monetary allowance for certified service providers. The monetary allowance is required to be in the form of a collection allowance. The allowance must be based on certain criteria, but may not be greater than 10 percent of the tax remitted for a reporting period.

*Amnesty*
The SSUTA requires member states to provide amnesty for sales and use taxes not collected or paid for dealers who register to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the SSUTA, provided that the dealer was not so registered in the state in the twelve-month period preceding the effective date of the state's participation in the Agreement. Section 22 creates s. 213.215, F.S., in order to meet this requirement of the SSUTA. If a dealer registers with DOR within 12 months after the effective date of Florida's participation in the SSUTA, then the amnesty is provided for uncollected or unpaid sales and use tax and any interest or penalties accrued. The dealer must remain registered and continue collection and remittance of taxes for at least 36 months for the amnesty to apply.

However, there are two situations in which amnesty is specifically not available:

- When a dealer received notice of the commencement of an audit and the audit is not complete, including any related administrative or judicial processes; and
- For taxes already paid to the state or taxes already collected by the dealer.

*Discretionary Sales Surtax*
Section 9 amends s. 212.054, F.S., which provides the administrative provisions for discretionary sales surtaxes authorized for counties.

It caps the maximum taxable amount of a sale of tangible personal property at $5,000 for each individual item. Under the bill, this cap is limited to sales of motor vehicles, aircraft, boards, manufactured homes, modular homes, or mobile homes.

This section is amended to conform the application of surtax rate changes to utility services to the SSUTA. It provides that the new rate applies:

- In the case of a rate adoption or increase, to the first billing period starting on or after the effective date of the adoption or increase.
- In the case of a rate termination or decrease, to bills rendered on or after the effective date of the termination or decrease.

*Sales and Use Tax Exemptions*
The statutes currently provide more than 200 different exemptions, many of which are in s. 212.08, F.S.

Section 13 of the bill amends s. 212.08, F.S., to changes Florida's current sales and use tax exemptions to conform to the requirements of the SSUTA.

Under the SSUTA, taxation of food is determined by the composition of the item. The bill exempts and defines the following items: food and food ingredients, bakery products sold without utensils, dietary supplements, and bottled water. The bill provides that the exemption does not apply to the following terms: prepared food, soft drinks (does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than 50 percent of vegetable or fruit juice by volume), vending machine food, candy (not including candy that includes flour and does not require refrigeration), and tobacco. These changes result in an expansion of some items that are exempt from sales tax under current law, such as ice cream and juice containing between 50 and 100 percent fruit juice, and the restriction of others, such as caramel corn.

Under current law, medical items that are exempt from taxation in Florida are designated by the Department of Health. The bill brings the list of exempt medical items into compliance with the SSUTA. Exempt items include prescription drugs, mobility-enhancing equipment, prosthetic devices, durable medical equipment, hypodermic needles, over-the-counter drugs (not including grooming and hygiene products), band-aids and the like, and funerals. The bill defines these terms for purposes of the exemptions. The bill removes exemptions currently available to veterinarians. The bill repeals language directing the Department of Health to advise DOR as to the taxability of medical items (s. 212.08(14), F.S.).

Section 212.08(5)(g), F.S., currently provides an exemption for building materials used in the rehabilitation of real property in an enterprise zone. Only one exemption through a refund of previously paid taxes is permitted for any single parcel unless there is a change in ownership, a new lessor, or a new lessee of the property. The bill would amend this paragraph to provide that

only one exemption through a refund of previously paid taxes is permitted for any single building. Also the bill adds a definitions for "full-time employee" and "temporary employee."

Currently the definition of "lease," "let," or "rental" excludes hourly, daily, or mileage charges subject to the jurisdiction of the Interstate Commerce Commission and certain payments to owners of high-voltage bulk transmission facilities. Due to changes made to bring the current law definitions into compliance with SSUTA, these exclusions were struck. The bill restores these exclusions as exemptions from the sales and use tax in s. 212.08(14), F.S.

*Mail Order*
The SSUTA contains specific provisions related to mail order sales. The bill makes several changes to conform to the agreement, including:

- Section 11 amends s. 212.06(2)(c), F.S., to strike "a retailer who transacts a mail order sale" from the definition of "dealer."
- Section 11 amends s. 212.06(3)(b), F.S., to conform to SSUTA guidelines to the sales of advertising, promotional direct mail, and other direct mail, including guidelines on sourcing the sale (and deletes provisions related to mail order sales in s. 212.06(5)(a)2., F.S.).
- Section 7 amends s. 212.05, F.S. to remove a reference to "mail order."
- Section 15 amends s. 212.12, F.S., to remove references to "mail order" and a provision authorizing DOR to negotiate collection allowances with dealers who make mail order sales.
- Section 18 amends s. 212.18, F.S., to remove a provision related to mail orders.
- Section 19 amends s. 212.20(4), F.S., to remove a provision related to mail orders.
- Section 42 repeals s. 212.0596, F.S., which relates to taxation of mail order sales.

*Motor Vehicles*
The SSUTA contains specific provisions related to the lease or rental of motor vehicles. Section 7 amends s. 212.05(1)(c), F.S. to remove special provisions related to the lease or rental of motor vehicles from the provisions related to the tax of the lease or rental of tangible personal property.

*Coin-operated Amusement Machines*
Section 7 amends s. 212.05(1)(h), F.S., to raise the tax on coin operated machines from 4 to 6 percent and amends the divisors to be used to calculate the tax.

*Dealer Registration*
Section 18 amends s. 212.18, F.S., to allow DOR to waive the $5 registration fee for applications submitted through the multistate electronic registration system. The SSUTA requires each member state to participate in an online sales and use tax registration system in cooperation with the other member states.

*Refunds*
Section 14 creates s. 212.094, F.S., related to purchaser requests for refunds. Under current law, a purchaser who has overpaid tax to a dealer, or who has paid tax to a dealer when no tax is due, must seek a refund from the dealer, not DOR. There is no requirement that a purchaser must provide a written request to the dealer.

The bill provides that in order to obtain a refund or credit for a tax collected by a dealer, the purchaser must submit a request in writing to the dealer. The purchaser is not permitted to take any other action for 60 days after the dealer receives the completed, written request. This does not apply to refunds resulting from a return of merchandise to a dealer.

Section 17 deals with credits or refunds for dealers who remit taxes on transactions that ultimately turn out to be unpaid, bad debts. The bill amends s. 212.17(3), F.S., to conform to the SSUTA provisions on dealer recovery of bad debts. Changes include:

- Specifying that the calculation of bad debt may not include financing charges or interest, sales tax, uncollectable amounts on property that remain in the possession of the selling dealer, expenses incurred in collection efforts, and repossessed property.
- Requiring a refund claim to be filed within 12 months after the due date of the return on which the bad debt could be claimed when the amount of bad debt exceeds the amount of taxable sales for the period of write-off.
- Allowing a certified service provider to file a claim on behalf of a dealer when the provider has assumed the filing responsibilities of the dealer. The certified service provider is required to credit or refund the full amount of any bad debt recovery to the dealer.
- Allowing a dealer or certified service provider to allocate the bad debts across different states when the books and records of the dealer or certified service provider support this.

**Simplified Sales and Use Tax Administration Act**

The Simplified Sales and Use Tax Administration Act (the act) is set forth in s. 213.256, F.S. Section 23 makes changes to this section of law to conform to the updated SSUTA.

As used in ss. 213.256 and 213.2567, F.S., the bill adds definitions to the act, including:

- "Agent" means a person appointed by a seller to represent the seller before DOR.
- "Dealer" means any person making sales, leases, or rentals of personal property or services.
- "Model 1 seller" means a dealer that has selected a certified service provider as its agent to perform all the dealer's sales and use tax functions.
- "Model 2 seller" means a dealer that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.
- "Model 3 seller" means a dealer that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states which establishes a tax performance standard for the dealer. This could also mean an affiliated group of dealers using the same proprietary system.
- "Model 4 seller" means a dealer who is registered under SSUTA but is not one of the other models of sellers.
- "Registered under this agreement" means registration by a dealer with the member states under the central registration system.

DOR is authorized to prepare and submit reports and certifications as necessary according to the terms of the SSUTA, and to enter into agreements with the governing board of the SSUTA, member states, and service providers to facilitate the administration of the tax laws in Florida.

Section 24 creates s. 213.2562, F.S., to permit DOR to review and approve software submitted to the governing board of the SSUTA as a certified automated system that accurately reflects the taxability of products.

Section 25 creates s. 213.2567, F.S., related to registration, certification, liability, and audit under the SSUTA.

A dealer that registers pursuant to the SSUTA agrees to collect and remit sales and use taxes for all taxable sales into the member states. A dealer selects which model to remit tax under when registering, and may be registered by an agent if the registration is submitted in writing to a member state. With respect to liability and audits:

- A model 1 seller may contract with a certified service provider to act as its agent and to collect and remit sales and use taxes. As the model 1 seller's agent, the certified service provider is also liable for sales and use tax due on all sales transactions it processes for the model 1 seller. A dealer selecting this model is also liable for any tax, interest, or penalty due in Florida. The state may audit the dealer and its certified service provider under Florida law or may audit the certified service provider jointly with other member states.
- A model 2 seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax. However, a model 2 seller is not responsible for errors in reliance on the certified automated system.
- A model 3 seller is liable for the failure of the proprietary system to meet the performance standard. DOR is permitted to adopt rules to establish sales tax performance standards for model 3 sellers.

A person who provides a certified automated system is not liable for errors in the software that was approved by DOR and certified to the governing board of the SSUTA. However, such person is responsible for the proper functioning of the system, liable to the state for underpayments of tax due to errors in the functioning of the software, and liable for misclassifications of items or transactions that are not corrected within 10 days of notice by DOR.

A person may be certified as certified service provider by DOR if the person:

- Uses a certified automated system;
- Integrates that system with the system of a dealer so that tax can be calculated at the time of sale;
- Agrees to remit taxes, file returns, and protect the privacy of tax information pursuant to Florida law; and
- Enters into an agreement with DOR concerning the disclosure of information.

DOR is directed to review software submitted to the governing board of the SSUTA as a certified automated system and certify approval of the system if the software meets certain standards for calculating taxes and reporting.

Disclosure of confidential tax information may only be made according to a written agreement between DOR and the certified service provider. Breach of confidentiality by a certified service provider is a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.

**Other Changes**

*Food or Drink Concessionaire Services*

Section 4 amends s. 212.031(1)(a)10., F.S. Under current law, this section provides that a person is not engaging in a taxable privilege when renting, leasing, letting, or granting a license to use real property if the real property is leased, subleased, licensed, or rented to a person providing food and drink concessionaire service within the premises of certain facilities listed in the section. The bill adds a provision that the exception to the tax for property used for food or drink concessionaire services applies only to the space used exclusively for selling and distributing food and drink. Section 5 of the bill provides that this amendment operates retroactively and is remedial in nature. This section states that the retroactivity does not create the right to a refund or require a refund by any governmental entity of any tax, penalty, or interest remitted to DOR before January 1, 2012.

*Admissions Charges*

Section 6 amends s. 212.04(2)(a)2.b., F.S. Under current law, this section provides an exemption for admission charges to events that are sponsored by a governmental entity, sports authority, or sports commission when held in a facility. The exemption only applies when the governmental entity, sports authority, or sports commission is responsible for 100 percent of the risk of success or failure of the event and owns 100 percent of the funds at risk for the event. The event may not exclusively use student or faculty talent. The terms "sports authority" and "sports commission" mean a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts.

The bill eliminates the exemption for a sponsor that is a "sports authority" or "sports commission" and rewords the sub-subparagraph.

**Emergency Rules**

Section 26 authorizes DOR to adopt emergency rules to implement this act.

**Legislative Joint Select Committee**

Section 27 directs the President of the Senate and the Speaker of the House of Representatives to create a joint select committee to study alternatives for the modernization, simplification, and streamlining of taxes in Florida, including the communications services tax. The committee is also directed to study how sales and use tax exemptions may be used to encourage economic development and how the state's corporate income tax may be reviews to ensure fairness to all businesses.

**Cross-References**

Section 2 (s. 212.03(7)(c), F.S.), Section 28 (s. 11.45(5)(a), F.S.), Section 16 (s. 212.15(1), F.S.), Section 29 (s. 196.012(6), F.S.), Section 30 (s. 202.18(1)(b) and (2)(b), F.S.), Section 31 (s. 203.01(1), F.S.), Section 32 (s. 212.052(1), F.S.), Section 33 (s. 212.13(3), F.S.), Section 34 (s.

212.081, F.S.), Section 35 (s. 218.245(3), F.S.), Section 36 (s. 218.65(5), (6), and (7), F.S.), Section 37 (s. 288.1045(1)(s), F.S.), Section 38 (s. 288.11621(3)(a) and (d), F.S.), Section 39 (s. 288.1169(6), F.S.), Section 40 (s. 551.102(8), F.S.), and Section 41 (s. 790.0655(1)(a), F.S.) make amendments to conform to changes made by the bill and correct cross-references.

**Effective Date**
Section 43 provides an effective date of January 1, 2012.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art VII, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 5 of the bill provides that changes made in Section 4 of the bill to s. 212.031(1)(a)10., F.S. are remedial in nature and shall apply retroactively. Retroactive application of legislation can implicate the due process provisions of the constitution.[22] As a general matter, statutes which do not alter vested rights but relate only to remedies or procedure can be applied retroactively.[23]

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The purpose of SSUTA is to simplify Florida sales and use tax such that out-of-state dealers can voluntarily remit taxes to Florida through the simplified system. The fiscal impact of the collection and remittance of sales and use taxes by mail-order and e-commerce businesses that currently do not collect such taxes for Florida is indeterminate, but could be significant once the Streamlined Sales and Use Tax Agreement is fully implemented.

[22] *See* State Department of Transportation v. Knowles, 402 So.2d 1155 (Fla. 1981).
[23] *See* Metropolitan Dade County v. Chase Federal Housing Corporation, 737 So.2d. 494 (Fla. 1999). *See also* City of Orlando v. Desjardins, 493 So.2d 1027, 1028 (Fla. 1986)(citations omitted) ("If a statute is found to be remedial in nature, it can and should be retroactively applied in order to serve its intended purposes.").

A version of this bill was reviewed by the Revenue Estimating Conference in February 2005.

> Estimates were done by issue. The changes in the definitions of "fruit drinks," "ice cream," "medical exemptions," and "farm equipment" made by this act will result in a loss of sales tax revenue. Changing the method used to calculate sales taxes from brackets to rounding will also lead to a decrease in sales tax revenue. The change in the definition of "sales price" to include all delivery charges will result in an increase in sales tax revenue. The removal of the local option sales surtax cap for certain tangible personal property will increase local revenue. The net impact of the committee substitute [was] negative.[24]

The 2005 staff analysis contained the following data:

Streamlining Fiscal Impact (millions of dollars) 2005

| | State | | Local | | Total | |
|---|---|---|---|---|---|---|
| **Issues** | **Cash** | **Recurr.** | **Cash** | **Recurr.** | **Cash** | **Recurr.** |
| Rounding | (16.5) | (39.5) | (3.4) | (8.3) | (19.9) | (47.8) |
| Farm Equipment | (3.1) | (7.5) | (0.7) | (1.6) | (3.8) | (9.1) |
| Fruit Drinks Contain. 50% or more juice | (1.0) | (2.4) | (0.2) | (0.5) | (1.2) | (2.9) |
| Frozen Dairy and non-dairy | (3.6) | (8.5) | (0.7) | (1.7) | (4.3) | (10.2) |
| Medical Exemptions | (1.2) | (2.9) | (0.2) | (0.6) | (1.4) | (3.5) |
| Delivery Charges | 5.5 | 13.4 | 1.2 | 2.8 | 6.7 | 16.2 |
| Candy/Food | 2.5 | 5.9 | 0.5 | 1.3 | 3.0 | 7.2 |
| Local Option | | | 20.7 | 49.7 | 20.7 | 49.7 |
| **Total** | (17.4) | (41.5) | 17.2 | 41.1 | (0.2) | (0.4) |

## B. Private Sector Impact:

The implementation of the SSUTA should reduce the costs of collecting and remitting state and local sales and use taxes for dealers doing business in Florida and in other member states in the long-term.

Additionally, DOR has pointed out short-term costs that dealers may incur to meet the requirements of the SSUTA:[25]

> Due to the multiple changes to ch. 212, F.S., proposed by this bill, the bill could potentially affect every dealer with an active Florida sales and use tax registration (553,934 dealers). Taxpayers may incur costs in retraining employees or in reprogramming computers to properly tax or exempt various products and to calculate the correct amount of tax. Dealers may also incur additional costs in

[24] See Senate Staff Analysis and Economic Impact Statement for CS/SB 56, March 7, 2005, on file with the Senate Commerce and Tourism Committee.

[25] DOR, 2011 Bill Analysis, on file with the Senate Commerce and Tourism Committee. See ss. 120.54(3)(b) and 120.541, F.S.

hiring certified service providers to collect and remit the dealer's tax, or in purchasing or leasing certified tax software or in creating proprietary tax software, both of which would be used to calculate tax due from the dealer.

C. Government Sector Impact:

DOR has estimated the cost of implementing the provisions of the bill to conform Florida to the SSUTA.[26] DOR estimated costs of $96,000 for FY 2010-11; $1.181 million for FY 2011-12; $449,486 for FY 2012-13; and $203,215 for FY 2013-14. Estimated costs include:

- For FY 2010-11: nonrecurring costs of $96,000 for SUNTAX programming costs related to operating as a member of the SSUTA;
- For FY 2011-12:
  - $252,175 in nonrecurring costs for two Tax Information Publications to be sent to the 554,000 dealers in Florida;
  - $53,000 in nonrecurring costs to hire temporary staff to provide taxpayer services;
  - $250,000 in nonrecurring costs and $50,000 in recurring costs related to the required rate and jurisdictional database of SSUTA;
  - $526,080 in nonrecurring costs for SUNTAX programming costs related to operating as a member of the SSUTA; and
  - $50,000 in recurring costs for the annual fee to participate as a member state in SSUTA;
- For FY 2012-13:
  - $225,240 in nonrecurring costs for Tax Information Publications to be sent to dealers in Florida related to the implementation of the SSUTA;
  - $74,557 in nonrecurring costs and $49,669 in recurring costs for return and revenue processing;
  - $50,000 in recurring costs related to the required rate and jurisdictional database of SSUTA; and
  - $50,000 in recurring costs for the annual fee to participate as a member state in SSUTA;
- For FY 2013-14:
  - $99,338 in nonrecurring costs and $3,877 in recurring costs for return and revenue processing; and
  - $50,000 in recurring costs related to the required rate and jurisdictional database of SSUTA; and
  - $50,000 in recurring costs for the annual fee to participate as a member state in SSUTA.

Additionally, DOR has stated that the SSUTA was amended in 2010 to provide a new formula for rate of compensation (also known as collection allowance) for dealers registered with the SSUTA. Florida law currently caps collection allowance at $30 per month; however, under the new SSUTA provisions, dealers may be eligible for amounts greater than the current cap in Florida.

[26] DOR, Fiscal Impact Analysis – 2011 Session, on file with the Senate Commerce and Tourism Committee.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

In its analysis of the bill, DOR highlighted provisions that were problematic or needed to be amended to conform to the current SSUTA. Additionally, DOR has stated with regard to administrative rules needed to implement the bill:[27]

> It is anticipated that the statement of estimated regulatory costs may exceed $1 million in the aggregate within 5 years of implementation and may require ratification of any proposed rules and forms by the Legislature. If this occurs, it could take until after the 2012 Legislative Session for the amended rules to take effect.

## 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.



[27] DOR, 2011 Bill Analysis, on file with the Senate Commerce and Tourism Committee. See ss. 120.54(3)(b) and 120.541, F.S.

361518

LEGISLATIVE ACTION

Senate . House

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

**Senate Amendment (with title amendment)**

Delete line 8
and insert:
Section 1. Sections 817.559 and 817.56, Florida Statutes, are repealed.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 3 - 4
and insert:
s. 817.559, F.S., and s. 817.56, F.S., relating to

361518

television picture tubes; 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 1626 |
| INTRODUCER: | Senator Lynn |
| SUBJECT: | Television picture tubes |
| DATE: | April 4, 2011 |
| REVISED: | |

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

## I. Summary:

This bill repeals s. 817.559, F.S., which requires cathode ray tubes (CRT, or television picture tubes) be correctly labeled to indicate the new and used components and materials in such picture tubes.

## II. Present Situation:

Enacted in 1973, s. 817.559, F.S., controls television picture tube labels and provides the following definitions:

- "Picture tube" means a cathode ray tube (CRT), commonly known as a television picture tube, designed primarily for use in a home-type television receiver alone or in combination with any electronic device or appliance.
- "Used picture tube" means a picture tube which has been sold to and used by a consumer.
- "Used component or material" means any part or material salvaged from a used or secondhand picture tube.

The statute also provides that no manufacturer, processor, or distributor of television picture tubes may offer for sale, or expose for sale, any such tube unless the television picture tube and its container, if any, are correctly labeled to indicate the new and used components and materials of such tube according to the schedule and manner hereinafter provided.

The description of the picture tube by new and used components and materials shall be indicated by setting forth on the label the particular grade and verbatim description as selected from the following which applies to such tube:

- Black and white picture tube.—
  - Grade AA.—Description: All new components and materials, including new glass envelope.
  - Grade A.—Description: Used glass envelope; all other components and materials are new.
  - Grade B.—Description: Used glass envelope, used phosphorescent viewing screen, used aluminization, and used internal conductive coating; all other components and materials are new.
  - Grade C.—Description: Used picture tube for resale; all significant components and materials are used.
- Color picture tube.—
  - Grade AA.—Description: All new components and materials, including new glass envelope.
  - Grade A.—Description: Used glass envelope and new or used shadow mask; all other components and materials are new.
  - Grade B.—Description: New electron gun; all other components and materials are used.
  - Grade C.—Description: Used picture tube for resale; all significant components and materials are used.
- Used picture tube.—The fact that a used picture tube has been rejuvenated, has a new or used brightener attached to it, or has fresh paint or coating on the outside, or any combination of the above, shall not change its status or description as a Grade C picture tube, and the terms "rebuilt" or "reconditioned" or words of like import shall not be used to describe such tube.
- Picture tube seconds.—When a picture tube is a "second," such tube shall be designated by label as a "second" to the exclusion of any other grade designation or component description, and the following additional notation shall appear verbatim on the label: "This picture tube is a manufacturer's reject or second line quality tube, but it is capable of giving satisfactory performance."

Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

## III. Effect of Proposed Changes:

**Section 1** repeals s. 817.559, F.S., relating to television picture tube labeling requirements.

**Section 2** provides that the act will 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:

There is a possible cost savings to private industry in that they will no longer have to label picture tubes as outlined in the current statute.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

Preliminary research indicates that the demise of the "picture tube" had been expected as far back as 2006, where USA Today reported that retailers expect little to no demand for CRTs by 2009, partly because of a government-imposed deadline requiring television broadcasts nationwide to switch to all-digital by February of that year.[1]

## VIII. Additional Information:

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

None.

[1] http://www.usatoday.com/tech/products/gear/2006-10-22-crt-demise_x.htm

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 1632 |
| INTRODUCER: | Senator Lynn |
| SUBJECT: | Florida Industrial Development Corporation |
| DATE: | April 4, 2011 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Pugh | Cooper | CM | **Pre-meeting** |
| 2. | | | BC | |
| 3. | | | | |
| 4. | | | | |
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## I. Summary:


Chapter 289, F.S., approved by the Legislature in 1961, created a process by which Florida residents, businesses, and financial institutions could create a Florida Industrial Development Corporation (FIDC) with the power to issue revenue bonds for economic development projects. It appears that only two FIDCs have been created, and both have dissolved, according to the state Division of Corporations. Despite a statutory reporting requirement, there also appears to be no information about these FIDCs' activities.

SB 1632 repeals ch. 289, F.S., and deletes cross-references to it in other statutes.

The repeal of ch. 289, F.S., will not impact other industrial development revenue bond programs created for local governments and for the Office of Tourism, Trade, and Economic Development, or managed by Enterprise Florida, Inc., (EFI).

SB 1632 repeals ss. 289.011, 289.021, 289.031, 289.041, 289.051, 289.061, 289.071, 289.081, 289.091, 289.101, 289.111, 289.121, 289.131, 289.141, 289.151, 289.161, 289.171, 289.181, 289.191, and 289.201, F.S., and amends ss. 212.08, 220.08, 220.183, 220.62, 440.491, and 658.67, F.S.

## II. Present Situation:

The Legislature in 1961 passed HB 1508[1] (ch. 61-177, L.O.F.) that created ch. 289, F.S., the Florida Industrial Development Corporation. The chapter established a process by which a minimum of 25 Florida "persons" (meaning individuals and businesses) could file incorporation documents with the state Division of Corporations for the purposes of issuing industrial revenue bonds. The chapter specified the powers and duties of an FIDC, which could have a duration of 50 years unless its board of directors dissolved it. Each FIDC was to make annual reports to what is now the Office of Financial Services of the state Financial Services Commission,[2] which also was statutorily directed to annually examine each FIDC's financial records. The FIDCs were specifically prohibited, pursuant to s. 289.161, F.S., from pledging the credit of the state of Florida when issuing revenue bonds.

Information about how many FIDCs actually were formed, whether they issued any bonds, and if so, what types of projects were financed, is lacking. Staff of the Office of Financial Services can find no documentation that the required examinations were conducted, nor copies of any annual reports. The state Division of Corporations Sunbiz database lists two entities that may be FIDCS – the Industrial Development Corporation of Florida, created in 1961 and dissolved in 1991, and the Florida Industrial Development Corporation, created in 1979 and dissolved in 1980 – but there is no absolute certainty that these entities were created pursuant to ch. 289, F.S.

The last time any section of this chapter was amended was in 2003, to update obsolete references.

Since the creation of ch. 189, F.S., the Legislature has passed legislation facilitating the creation of other bond financing entities focused on economic development, including the Florida Development Finance Corporation, in Part IX of ch. 288, F.S., and managed by EFI, and Parts II, III and VI of ch. 159, F.S., which allows local governments and local authorities to issue revenue bonds.

## III. Effect of Proposed Changes:

Section 1: Repeals all the sections in ch. 289, F.S., relating to the Florida Industrial Development Corporation. This removes the statutory provisions related to: the incorporation of an industrial development corporation; the FIDC's special corporate powers; authorized financial transactions; membership of financial institutions; powers of stockholders and members; procedures for amending the articles of incorporation; the conduct of corporation business and affairs; requirements for saving a portion of annual earned surplus; requirements for meetings; corporate existence; dissolution; credit of the state; Federal Small Business Investment Act; tax exemptions; credits or privileges; required periodic examinations; and the $50 annual occupational license tax for industrial development corporations.

Section 2: Amends s. 212.08, F.S., to remove a cross-reference.

[1] Sponsored by young legislators Lawton Chiles (future U.S. Senator and Florida Governor) and Don Fuqua (future U.S. Congressman)
[2] This commission is comprised of the Governor and Cabinet.

Section 3: Amends s. 220.183, F.S., to remove a cross-reference.

Section 4: Amends s. 220.62, F.S., to remove a cross-reference.

Section 5: Amends s. 440.491, F.S., to remove a cross-reference.

Section 6: Amends s. 658.67, F.S., to remove a cross-reference.

Section 7: Specifies 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:

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.

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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 51 - 182.

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

And the title is amended as follows:

Delete lines 3 - 18

and insert:

amending s. 48.193, F.S.; including as an

**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 1878 |
| INTRODUCER: | Senator Margolis |
| SUBJECT: | The jurisdiction of the courts |
| DATE: | April 4, 2011 |
| REVISED: | |

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

## I. Summary:


This bill amends s. 48.081, F.S., to permit process to be served on the Secretary of State if other individuals identified by statute cannot be personally served, and amends s. 48.151, F.S., to specify the requirements related to such actions.

The bill amends s. 48.193, F.S., to provide in the Florida long-arm statute that Florida courts have personal jurisdiction, in some instances, over persons who contractually consent to personal jurisdiction in Florida, consistent with current provisions in s. 685.102, F.S., relating to contracts.

Section 685.101, F.S., is amended to allow non-residents that do not have a business presence in Florida to agree that Florida Law will govern the contract, and consequently agree that Florida Courts will have jurisdiction in any contractual disputes, should they arise.

The bill also

- Amends s. 55.502, F.S., to clarify that judgments from Puerto Rico and other U.S. territories are entitled to enforcement in Florida;
- Corrects cross-references in the Florida International Commercial Arbitration Act, consistent with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law) as amended in 2006; and
- Amends s. 685.102, F.S., to provide that certain contracts with forum-selection clauses are enforceable if made "consistent with" rather than "pursuant to" s. 685.101, F.S., and apply the change prospectively.

This bill substantially amends the following sections of the Florida Statutes: 48.081, 48.151, 48.193, 55.502, 684.0019, 684.0026, 685.101, and 685.102.

## II. Present Situation:

Under Florida law, service of process and personal jurisdiction are two distinct but related concepts. Both are necessary before a defendant, either an individual or business entity, may be compelled to answer a claim brought in a court of law. Personal jurisdiction refers to whether the actions of an individual or business entity as set forth in the applicable statutes permit the court to exercise jurisdiction in a lawsuit brought against the individual or business entity in this state. Service of process is the means of notifying a party of a legal claim and, when accomplished, enables the court to exercise jurisdiction over the defendant and proceed to judgment. Personal jurisdiction over a nonresident of the state is circumscribed by constitutional considerations of minimum contacts as stated in the seminal case of *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), and its progeny. As explained in *Venetian Salami*, two inquiries must be made regarding personal jurisdiction over a nonresident:

> First, it must be determined that the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of the statute; and if it does, the next inquiry is whether sufficient "minimum contacts" are demonstrated to satisfy due process requirements.[1]

"It is well-settled that '[a] judgment entered without valid service is void for lack of personal jurisdiction and may be collaterally attacked at any time.'"[2]

Section 48.081, F.S., specifies the requirements for service of process on corporations who are named as defendant in lawsuits. This statute does not address situations regarding a foreign private corporation who used to do business in Florida but no longer has a presence, employees or officers in the state. Consequently, a plaintiff is unable to serve such a corporation with process.

Section 48.151, F.S., specifies the requirements for effectuating service of process on statutory agents for certain persons. Subsection (1), establishes the following responsibilities for statutory agents for service of process:

> The public officer, board, agency, or commission so served shall file one copy in his or her or its records and promptly send the other copy, by registered or certified mail, to the person to be served as shown by his or her or its records. Proof of service on the public officer, board, agency, or commission shall be by a notice accepting the process which shall be issued by the public officer, board, agency, or commission promptly after service and filed in the court issuing the process. The notice accepting service shall state the date upon which the copy of the process was mailed by the public officer, board, agency, or commission to the person being served and the time for pleading prescribed by the rules of procedure shall run from this date.

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[1] *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 591-592 (Fla. 2006) (internal citations omitted).

[2] *Alvarado v. Cisneros*, 919 So. 2d 585, 587 (Fla. 3d DCA 2006) (quoting *Great Am. Ins. Co. v. Bevis*, 652 So. 2d 382, 383(Fla. 2d DCA 1995)).

Subsection (5) states that the Secretary of State is the agent for service of process for any retailer, dealer or vendor who has failed to designate an agent for service of process.

**Long-Arm Jurisdiction**

Section 48.193, F.S., establishes a broad list of acts that can subject a person to the jurisdiction of courts of this state.[3] This section is also known as the Florida long-arm statute.

Section 685.102, F.S., establishes acts relating to contracts that can subject a person to the jurisdiction of the courts of this state, including a foreign defendant who enters into a contract and satisfies the other requirements related to choice of law in s. 685.101, F.S.

Section 685.101, F.S., establishes a choice of law provision within Florida Statutes whereby parties to any agreement may chose to have the law of this state govern such contract. However, subsection (2) restricts the choice of law to contracts, agreements or undertakings:

[3] Section 48.193, F.S., states in part:

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

(a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.

(b) Committing a tortious act within this state.

(c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.

(d) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:

1. The defendant was engaged in solicitation or service activities within this state; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.

(g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

(h) With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.

(2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

(3) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally serving the process upon the defendant outside this state, as provided in s. 48.194. The service shall have the same effect as if it had been personally served within this state.

(4) If a defendant in his or her pleadings demands affirmative relief on causes of action unrelated to the transaction forming the basis of the plaintiff's claim, the defendant shall thereafter in that action be subject to the jurisdiction of the court for any cause of action, regardless of its basis, which the plaintiff may by amendment assert against the defendant.

(5) Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereinafter provided by law.

- Regarding any transaction which does not bear a substantial or reasonable relation to this state in which every party is either or a combination of:

    1. A resident and citizen of the United States, but not of this state; or
    2. Incorporated or organized under the laws of another state and does not maintain a place of business in this state; . . .

**Florida Enforcement of Foreign Judgments Act**
Under the Florida Enforcement of Foreign Judgments Act (act), ss. 55.501-55.509, F.S., foreign judgments may be enforced in Florida. The foreign judgments that may be enforced under the act include "any judgment, decree, or order of a court of any other state or of the United States if such judgment, decree, or order is entitled to full faith and credit in this state."[4] In *Rodriguez v. Nasrallah,* 659 So. 2d 437, 439 (Fla. 1st DCA 1995), the court stated that "[j]udgments of courts in Puerto Rico are entitled to full faith and credit in the same manner as judgments from courts of sister States." As a result, the court permitted the enforcement of a Puerto Rican judgment in Florida. However, a judgment from a Puerto Rican court is not a judgment from a *state court* as required by the act. Accordingly, the wording of the act would appear to preclude the enforcement of the judgments of courts for U.S. territories and possessions in Florida.

**Florida International Commercial Arbitration Act**
Chapter 2010-60, L.O.F., repealed the then current law relating to international commercial arbitration and adopted instead the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law) as amended in 2006.

Chapter 684, F.S., in accordance with the UNCITRAL Model Law on International Commercial Arbitration, applies to any international commercial arbitration subject to an agreement between the United States of America and any other country. The law provides certain definitions, principles under which the law is to be interpreted, procedural requirements, discovery and evidentiary requirements, and arbitral tribunal powers and immunity.

The law also limits a court's authority to intervene in arbitration and specifies when a court should intervene.

## III. Effect of Proposed Changes:

**Section 1** amends s. 48.081, F.S., to permit process to be served on the Secretary of State if representatives of a corporation, as identified in this section, cannot be personally served pursuant to s. 48.151, F.S.

**Section 2** amends s. 48.151, F.S., setting out the procedure to be used for service on the Secretary of State when a domestic corporation or a registered foreign corporation is being served pursuant s. 48.081, F.S., as amended in Section 1 of the bill. Specifically, to require:

[4] Section 55.502(1), F.S.

- That process served on the Secretary of State on behalf of a defendant corporation be accompanied by a fee, an affidavit detailing other attempts to serve the corporation, and known addresses of representatives of the corporation, and multiple copies of the process;
- That the Secretary of State mail, by regular and registered/certified mail, a copy of the process to representatives of the defendant corporation;
- That the Secretary of State provide a notice of service to the plaintiff or plaintiff's attorney; and
- The Secretary of State shall explain the reasons for rejecting the service of process.

**Section 3** amends s. 48.193, F.S., to provide in the Florida long-arm statute that Florida courts have personal jurisdiction, in some instances, over persons who contractually consent to personal jurisdiction in Florida, consistent with current provisions in s. 685.102, F.S. Specifically, persons who enter into contracts that comply with s. 685.102, F.S., are subject to the jurisdiction of Florida courts.

**Section 4** amends subsection (1) of s. 55.502, F.S., to delete the limitation of the term foreign judgments to "any other state or of the United States," thereby allowing for judgments from Puerto Rico and other territories or possession of the United States to be recognized and be entitled to enforcement in Florida.

**Sections 5 and 6** amend the Florida International Commercial Arbitration Act (act), which was adopted in 2010, to change cross-references that the International Law Section of the Florida Bar represent were "inadvertent clerical errors" in the crafting of the act, which are inconsistent with the UNCITRAL Model Law on commercial Arbitration.

Section s. 684.0018, F.S., authorizes arbitral tribunals to order interim measures, unless otherwise agreed to by the parties. An interim measure must be requested by a party and is a temporary measure that may include an order to:

(1) Maintain or restore the status quo;
(2) Take action to prevent, or refrain from an action that is likely to cause, current or imminent harm or prejudice to the arbitral process;
(3) Preserve assets, which may be used to satisfy an award; or
(4) Preserve evidence relevant and material to the dispute being arbitrated.

Section 684.0019, F.S., requires a party to prove certain conditions prior to requesting an interim measure. Subsection (1) specifies that a party must prove:

- Without the interim measure, there would be irreparable harm that an award would not repair and the irreparable harm outweighs the harm that would affect the party to whom the interim measure is against; and
- It is reasonably possible that the party requesting the interim measure will succeed on the merits of its claim.

Subsection (2) of s. 684.019, F.S., states that with regard to a request for an interim measure under s. 684.018, F.D., the requirements apply only to the extent the arbitral tribunal considers appropriate.

Section 5 amends 684.019(2), F.S., to replace the general reference to s. 684.018, F.S., to a specific reference to subsection (4) of s. 684.018, F.S., which is consistent with the UNCITRAL model law.

Section 684.026, F.S., provides for the recognition and enforcement of an interim measure. Subsection (1) states that an interim measure is binding upon the parties and enforced, upon application of a party, by a court or a country's equivalent authority, "subject to s. 684.0019(1)."

Section 6 amends s. 684.0026(1), F.S., to replace the reference to s. 684.0019(1), F.S., with s. 684.0027, F.S., which specifies the grounds for refusing recognition or enforcement. This is consistent with the UNCITRAL model law.

**Section 7** amends s. 685.101, F.S., to allow entities who are entering into any contract, agreement, or undertaking contingent or otherwise involving in the aggregate at least $250,000, to agree that the law of this state govern such contract, agreement, or undertaking. This change removes the requirement that the transaction bear a substantial or reasonable relation to this state.

Changes to this section take effect prospectively – for contracts entered into on or after July 1, 2011.

**Section 8** amends s. 685.102, F.S., to clarify that certain contracts with forum-selection clauses are enforceable if made "consistent with" rather than "pursuant to" s. 685.101, F.S., which relates to choice of law.

Changes to this section take effect prospectively – for contracts entered into on or after July 1, 2011.

**Section 9** 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.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Section 2 of the bill authorizes a service fee of $10 for service on the Secretary of State.

B. Private Sector Impact:

According to The Florida Bar, International Law Section, the bill enhances the business climate in Florida by clarifying and streamlining existing legislation related to international law matters in order to increase Florida's attractiveness as a business friendly state.[5]

C. Government Sector Impact:

Currently the Secretary of State accepts substitute service of process under 17 statutory provisions. This bill affects two of these provisions and it is estimated that the yearly cost to comply with the requirements of this bill will be $917,397, with revenue projected to be $37,500.[6]

The change in law to allow parties the choice of using Florida Law in their contracts may increase the amount of litigation in the state and create a corresponding cost with respect to the court system.

## 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.



[5] Memo from The Florida Bar, International Law Section on file with the Senate Commerce and Tourism Committee.
[6] Department of State analysis on file with the Senate Commerce and Tourism Committee.

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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. Subsection (7) is added to section 20.21, Florida Statutes, to read:

20.21 Department of Revenue.—There is created a Department of Revenue.

(7) The Destination Resort Commission is created within the Department of Revenue.

Section 2. Subsection (17) is added to section 120.80,

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Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(17) THE DESTINATION RESORT COMMISSION.—

(a) The Destination Resort Commission is exempt from the hearing and notice requirements of ss. 120.569 and 120.57(1)(a) in proceedings for the issuance, denial, renewal, or amendment of a destination resort license.

(b) Section 120.60 does not apply to applications for a destination resort license.

(c) Notwithstanding the provisions of s. 120.542, the Destination Resort Commission may not accept a petition for waiver or variance and may not grant any waiver or variance from the requirements of the Destination Resort Act, sections 3 through 35 of this act.

Section 3. This section and sections 4 through 35 of this act may be cited as the "Destination Resort Act" or the "Resort Act."

Section 4. Definitions.—As used in the Resort Act, the term:

(1) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries:

(a) Controls, is controlled by, or is under common control of;

(b) Is in a partnership or joint venture relationship with; or

(c) Is a shareholder of a corporation, a member of a limited liability company, or a partner in a limited liability partnership with,

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an applicant for a resort license or a resort licensee.

(2) "Ancillary areas" includes the following areas within a limited gaming facility, unless the context otherwise requires:

(a) Major aisles, the maximum area of which may not exceed the limit within any part of the limited gaming facility as specified by the commission.

(b) Back-of-house facilities.

(c) Any reception or information counter.

(d) Any area designated for the serving or consumption of food and beverages.

(e) Any retail outlet.

(f) Any area designated for performances.

(g) Any area designated for aesthetic or decorative displays.

(h) Staircases, staircase landings, escalators, lifts, and lift lobbies.

(i) Bathrooms.

(j) Any other area that is not intended to be used for the conduct or playing of games or as a gaming pit as defined by rules of the commission or specified in the application for the destination resort license.

(3) "Applicant," as the context requires, means a person who applies for a resort license, supplier's license, or occupational license. A county, municipality, or other unit of government is prohibited from applying for a resort license.

(4) "Chair" means the chair of the Destination Resort Commission.

(5) "Commission" means the Destination Resort Commission.

(6) "Conflict of interest" means a situation in which the

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private interest of a member, employee, or agent of the commission may influence his or her judgment in the performance of his or her public duty under the Resort Act. A conflict of interest includes, but is not limited to:

(a) Any conduct that would lead a reasonable person having knowledge of all of the circumstances to conclude that the member, employee, or agent of the commission is biased against or in favor of an applicant.

(b) The acceptance of any form of compensation from a source other than the commission for any services rendered as part of the official duties of the member, employee, or agent of the commission.

(c) Participation in any business transaction with or before the commission in which the member, employee, or agent of the commission, or the parent, spouse, or child of a member, employee, or agent, has a financial interest.

(7) "Department" means the Department of Revenue.

(8) "Destination resort" or "resort" means 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.

(9) "Destination resort license" or "resort license" means a license to operate and maintain a destination resort having a limited gaming facility.

(10) "District" means any of the following five districts of the state:


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(a) 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.

(b) District Two: Nassau, Duval, Clay, Putnam, St. Johns, Flagler, Marion, Volusia, Lake, Seminole, Orange, Hernando, Polk, and Osceola Counties.

(c) District Three: Citrus, Sumter, Pasco, Pinellas, Hillsborough, Manatee, Hardee, DeSoto, Sarasota, Charlotte, Lee, Collier, Monroe, Highlands, Okeechobee, Glades, and Hendry Counties.

(d) District Four: Brevard, Indian River, St. Lucie, Martin, and Palm Beach Counties.

(e) District Five: Broward and Miami-Dade Counties.

(11) "Executive director" means the executive director of the commission.

(12) "Financial interest" or "financially interested" means any interest in investments or awarding of contracts, grants, loans, purchases, leases, sales, or similar matters under consideration or consummated by the commission, or ownership in an applicant or a licensee. A member, employee, or agent of the commission is deemed to have a financial interest in a matter if:

(a) The individual owns any interest in any class of outstanding securities that are issued by a party to the matter under consideration by the commission, except indirect interests such as a mutual fund; or

(b) The individual is employed by or is an independent


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contractor for a party to a matter under consideration by the commission.

(13) "Gaming pit" means an area commonly known as a gaming pit or any similar area from which limited gaming employees administer and supervise the games.

(14) "Gross receipts" means the total of cash or cash equivalents received or retained as winnings by a resort licensee and the compensation received for conducting any game in which the resort licensee is not party to a wager, less cash taken in fraudulent acts perpetrated against the resort licensee for which the resort licensee is not reimbursed. The term does not include:

(a) Counterfeit money or tokens;

(b) Coins of other countries which are received in gaming devices and which cannot be converted into United States currency;

(c) Promotional credits or "free play" as provided by the resort licensee as a means of marketing the limited gaming facility; or

(d) The amount of any credit extended until collected.

(15) "Individual" means a natural person.

(16) "Institutional investor" means, but is not limited to:

(a) A retirement fund administered by a public agency for the exclusive benefit of federal, state, or county public employees.

(b) An employee benefit plan or pension fund that is subject to the Employee Retirement Income Security Act of 1974 (ERISA).

(c) An investment company registered under the Investment

Company Act of 1940.

(d) A collective investment trust organized by a bank under 12 C.F.R. part 9, s. 9.18.

(e) A closed-end investment trust.

(f) A life insurance company or property and casualty insurance company.

(g) A financial institution.

(h) An investment advisor registered under the Investment Advisers Act of 1940.

(17) "Junket enterprise" means any person who, for compensation, employs or otherwise engages in the procurement or referral of persons for a junket to a destination resort licensed under the Resort Act regardless of whether those activities occur within this state. The term does not include a resort licensee or applicant for a resort license or a person holding an occupational license.

(18) "License," as the context requires, means a resort license, supplier's license, or an occupational license.

(19) "Licensee," as the context requires, means a person who is licensed as resort licensee, supplier licensee, or occupational licensee.

(20) "Limited gaming," "game," or "gaming," as the context requires, means 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.

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(21) "Limited gaming employee" means any employee of a resort licensee, including, but not limited to:

(a) Cashiers.

(b) Change personnel.

(c) Count room personnel.

(d) Slot machine attendants.

(e) Hosts or other individuals authorized to extend complimentary services, including employees performing functions similar to those performed by a representative for a junket enterprise.

(f) Machine mechanics, computer machine technicians, or table game device technicians.

(g) Security personnel.

(h) Surveillance personnel.

(i) Promotional play supervisors, credit supervisors, pit supervisors, cashier supervisors, shift supervisors, table game managers, assistant managers, and other supervisors and managers.

(j) Boxmen.

(k) Dealers or croupiers.

(l) Floormen.

(m) Personnel authorized to issue promotional credits.

(n) Personnel authorized to issue credit.

The term includes an employee of a person holding a supplier's license whose duties are directly involved with the repair or distribution of slot machines or table game devices or associated equipment sold or provided to a resort licensee. The term does not include bartenders, cocktail servers, or other

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persons solely engaged in preparing or serving food or beverages, clerical or secretarial personnel, parking attendants, janitorial staff, stage hands, sound and light technicians, and other nongaming personnel as determined by the commission. The term includes a person employed by a person or entity other than a resort licensee who performs the functions of a limited gaming employee.

(22) "Limited gaming facility" means the limited gaming floor and any ancillary areas.

(23) "Limited gaming floor" means the approved gaming area of a resort. Ancillary areas in or directly adjacent to the gaming area are not part of the limited gaming floor for purposes of calculating the size of the limited gaming floor.

(24) "Managerial employee" has the same meaning as in s. 447.203(4), Florida Statutes.

(25) "Occupational licensee" means a person who is licensed to be a limited gaming employee.

(26) "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

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gaming operations as defined by the rules of the commission.

(27) "Supplier licensee" or "supplier" means a person who is licensed to furnish gaming equipment, devices, or supplies or other goods or services to a resort licensee.

(28) "Wagerer" means a person who plays a game authorized under the Resort Act.

Section 5. Destination Resort Commission; creation and membership.—

(1) CREATION.—There is created the Destination Resort Commission assigned to the Department of Revenue for administrative purposes only. The commission is a separate budget entity not subject to control, supervision, or direction by the Department of Revenue in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. The commission shall be composed of seven members who are residents of the state and who have experience in corporate finance, tourism, convention and resort management, gaming, investigation or law enforcement, business law, or related legal experience. The members of the commission shall serve as the agency head of the Destination Resort Commission. The commission is exempt from the provisions of s. 20.052, Florida Statutes.

(2) MEMBERS.—The members shall be appointed by the Governor and confirmed by the Senate in the legislative session following appointment. Each member shall be appointed to a 4-year term. However, for the purpose of providing staggered terms, of the initial appointments, four members shall be appointed to 4-year terms and three members shall be appointed to 2-year terms. Terms expire on June 30. Upon the expiration of the term of a

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commissioner, the Governor shall appoint a successor to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a replacement is appointed. If a vacancy on the commission occurs before the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(a)1. One member of the commission must be a certified public accountant licensed in this state who possesses at least 5 years of experience in general accounting. The member must also possess a comprehensive knowledge of the principles and practices of corporate finance or auditing, general finance, gaming, or economics.

2. One member of the commission must have experience in the fields of investigation or law enforcement.

3. Each district must be represented by at least one member of the commission who must reside in that district.

4. When making appointments to the commission, the Governor shall announce the district and classification by experience of the person appointed.

(b) A person may not be appointed to or serve as a member of the commission if the person:

1. Is an elected state official;

2. Is licensed by the commission, or is an officer of, has a financial interest in, or has a direct or indirect contractual relationship with, any applicant for a resort license or resort licensee;

3. Is related to any person within the second degree of consanguinity or affinity who is licensed by the commission; or

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4. Has, within the 10 years preceding his or her appointment, been under indictment for, convicted of, pled guilty or nolo contendere to, or forfeited bail for a felony or a misdemeanor involving gambling or fraud under the laws of this or any other state or the United States.

(c) Members of the commission shall serve full time.

(3) CHAIR AND VICE CHAIR.—

(a) The chair shall be appointed by the Governor. The vice chair of the commission shall be elected by the members of the commission during the first meeting of the commission on or after July 1 of each year. The chair shall be the administrative head of the commission. The chair shall set the agenda for each meeting. The chair shall approve all notices, vouchers, subpoenas, and reports as required by the Resort Act. The chair shall preserve order and decorum and shall have general control of the commission meetings. The chair shall decide all questions of order. The chair may name any member of the commission to perform the duties of the chair for a meeting if such substitution does not extend beyond that meeting.

(b) If for any reason the chair is absent and fails to name a member, the vice chair shall assume the duties of the chair during the chair's absence. On the death, incapacitation, or resignation of the chair, the vice chair shall perform the duties of the office until the Governor appoints a successor.

(c) The administrative responsibilities of the chair are to plan, organize, and control administrative support services for the commission. Administrative functions include, but are not limited to, finance and accounting, revenue accounting, personnel, and office services.


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(4) QUORUM.—Four members of the commission constitute a quorum.

(5) HEADQUARTERS.—The headquarters of the commission shall be located in Tallahassee.

(6) MEETINGS.—The commission must meet at least monthly. Meetings may be called by the chair or by four members of the commission upon 72 hours' public notice. The initial meeting of the commission must be held by October 1, 2011.

(7) AGENCY HEAD.—The commission shall serve as the agency head for purposes of chapter 120, Florida Statutes. The executive director of the commission may serve as the agency head for purposes of final agency action under chapter 120, Florida Statutes, for all areas within the regulatory authority delegated to the executive director's office.

Section 6. Destination Resort Commission; powers and duties.—

(1) The commission has jurisdiction over and shall supervise all destination resort limited gaming activity governed by the Resort Act, including the power to:

(a) Authorize limited gaming at five destination resorts.

(b) Conduct such investigations as necessary to fulfill its responsibilities.

(c) Use an invitation to negotiate process for applicants based on minimum requirements established by the Resort Act and rules of the commission.

(d) Investigate applicants for a resort license and determine the eligibility of applicants for a resort license and to select from competing applicants the applicant that best serves the interests of the residents of Florida, based on the

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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.

(e) Grant a license to the applicant best suited to operate a destination resort that has limited gaming.

(f) Establish and collect fees for performing background checks on all applicants for licenses and all persons with whom the commission may contract for the providing of goods or services and for performing, or having performed, tests on equipment and devices to be used in a limited gaming facility.

(g) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, and other pertinent documents as provided by law, and to administer oaths and affirmations to the witnesses, if, in the judgment of the commission, it is necessary to enforce the Resort Act or commission rules. If a person fails to comply with a subpoena, the commission may petition the circuit court of the county in which the person subpoenaed resides or has his or her principal place of business for an order requiring the subpoenaed person to appear and testify and to produce books, records, and documents as specified in the subpoena. The court may grant legal, equitable, or injunctive relief, which may include, but is not limited to, issuance of a writ of ne exeat or restraint by injunction or appointment of a receiver of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until the person subpoenaed has fully

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complied with the subpoena and the commission has completed the audit, examination, or investigation. The commission is entitled to the summary procedure provided in s. 51.011, Florida Statutes, and the court shall advance the cause on its calendar. Costs incurred by the commission to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena shall be charged against the subpoenaed person, and failure to comply with such order is a contempt of court.

(h) Require or permit a person to file a statement in writing, under oath or otherwise as the commission or its designee requires, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.

(i) Keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

(j) Take any other action as may be reasonable or appropriate to enforce the Resort Act and rules adopted by the commission.

(k) Apply for injunctive or declaratory relief in a court of competent jurisdiction to enforce the Resort Act and any rules adopted by the commission.

(l) Establish field offices, as deemed necessary by the commission.

(2) The Department of Law Enforcement and local law enforcement agencies have concurrent jurisdiction to investigate criminal violations of the Resort Act and may investigate any other criminal violation of law occurring at the limited gaming facilities. Such investigations may be conducted in conjunction with the appropriate state attorney.

(3)(a) The commission, the Department of Law Enforcement,

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and local law enforcement agencies have unrestricted access to the limited gaming facility at all times and shall require of each resort licensee strict compliance with the laws of this state relating to the transaction of such business. The commission, the Department of Law Enforcement, and local law enforcement agencies may:

1. Inspect and examine premises where authorized limited gaming devices are offered for play.

2. Inspect slot machines, other authorized gaming devices, and related equipment and supplies.

(b) In addition, the commission may:

1. Collect taxes, assessments, fees, and penalties.

2. Deny, revoke, suspend, or place conditions on a licensee who violates any provision of the Resort Act, a rule adopted by the commission, or an order of the commission.

(4) The commission must revoke or suspend the license of any person who is no longer qualified or who is found, after receiving a license, to have been unqualified at the time of application for the license.

(5) This section does not:

(a) Prohibit the Department of Law Enforcement or any law enforcement authority whose jurisdiction includes a resort licensee or a supplier licensee from conducting investigations of criminal activities occurring at the facilities of a resort licensee or supplier licensee;

(b) Restrict access to the limited gaming facility by the Department of Law Enforcement or any local law enforcement authority whose jurisdiction includes a resort licensee’s facility; or

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(c) Restrict access by the Department of Law Enforcement or a local law enforcement agency to information and records necessary for the investigation of criminal activity which are contained within the facilities of a resort licensee or supplier licensee.

Section 7. Rulemaking.—

(1) The commission shall adopt all rules necessary to implement, administer, and regulate limited gaming under the Destination Resort Act. The rules must include:

(a) The types of limited gaming activities to be conducted and the rules for those games, including any restriction upon the time, place, and structures where limited gaming is authorized.

(b) Requirements, procedures, qualifications, and grounds for the issuance, renewal, revocation, suspension, and summary suspension of a resort license, supplier's license, or occupational license.

(c) Requirements for the disclosure of the complete financial interests of licensees and applicants for licenses.

(d) Technical requirements and the qualifications that are necessary to receive a license.

(e) Procedures to scientifically test and technically evaluate slot machines and other authorized gaming devices for compliance with the Resort Act and the rules adopted by the commission. The commission may contract with an independent testing laboratory to conduct any necessary testing. The independent testing laboratory must have a national reputation for being demonstrably competent and qualified to scientifically test and evaluate slot machines and other authorized gaming

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devices. An independent testing laboratory may not be owned or controlled by a licensee. The use of an independent testing laboratory for any purpose related to the conduct of slot machine gaming and other authorized gaming by a resort licensee shall be made from a list of laboratories approved by the commission.

(f) Procedures relating to limited gaming revenues, including verifying and accounting for such revenues, auditing, and collecting taxes and fees.

(g) Requirements for limited gaming equipment, including the types and specifications of all equipment and devices that may be used in limited gaming facilities.

(h) Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to limited gaming which allow the commission and the Department of Law Enforcement to audit the operation, financial data, and program information of a resort licensee, as required by the commission or the Department of Law Enforcement, and provide the commission and the Department of Law Enforcement with the ability to monitor, at any time on a real-time basis, wagering patterns, payouts, tax collection, and compliance with any rules adopted by the commission for the regulation and control of limited gaming. Such continuous and complete access, at any time on a real-time basis, shall include the ability of either the commission or the Department of Law Enforcement to suspend play immediately on particular slot machines or other gaming devices if monitoring of the facilities-based computer system indicates possible tampering or manipulation of those slot machines or gaming devices or the ability to suspend play immediately of the

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entire operation if the tampering or manipulation is of the computer system itself. The commission shall notify the Department of Law Enforcement or the Department of Law Enforcement shall notify the commission, as appropriate, whenever there is a suspension of play pursuant this paragraph. The commission and the Department of Law Enforcement shall exchange information that is necessary for, and cooperate in the investigation of, the circumstances requiring suspension of play pursuant to this paragraph.

(i) Procedures for requiring each resort licensee at his or her own cost and expense to supply the commission with a bond as required.

(j) Procedures for requiring licensees to maintain and to provide to the commission records, data, information, or reports, including financial and income records.

(k) Procedures to calculate the payout percentages of slot machines.

(l) Minimum standards for security of the facilities, including floor plans, security cameras, and other security equipment.

(m) The scope and conditions for investigations and inspections into the conduct of limited gaming.

(n) The standards and procedures for the seizure without notice or hearing of gaming equipment, supplies, or books and records for the purpose of examination and inspection.

(o) Procedures for requiring resort licensees and supplier licensees to implement and establish drug-testing programs for all employees.

(p) Procedures and guidelines for the continuous recording

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of all gaming activities at a limited gaming facility. The commission may require a resort licensee to timely provide all or part of the original recordings pursuant to a schedule.

(q) The payment of costs incurred by the commission or any other agencies for investigations or background checks or costs associated with testing limited gaming related equipment, which must be paid by an applicant for a license or a licensee.

(r) The levying of fines for violations of the Resort Act or any rule adopted by the commission, which fines may not exceed $250,000 per violation arising out of a single transaction.

(s) The amount of any application fee or fee to renew an occupational license or a suppliers license.

(t) Any other rule necessary to accomplish the purposes of the Resort Act.

(2) The commission may at any time adopt emergency rules pursuant to s. 120.54, Florida Statutes. The Legislature finds that such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to benefit the public. The Legislature further finds that the unique nature of limited gaming operations requires, from time to time, that the commission respond as quickly as is practicable. Therefore, in adopting such emergency rules, the commission need not make the findings required by s. 120.54(4)(a), Florida Statutes. Emergency rules adopted under this section are exempt from s. 120.54(4)(c), Florida Statutes. However, the emergency rules may not remain in effect for more than 180 days except that the commission may renew the emergency rules during the pendency of procedures to

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adopt permanent rules addressing the subject of the emergency rules.

Section 8. Law enforcement officers.—

(1) The commission may employ sworn law enforcement officers to enforce any criminal law, conduct any criminal investigation, or enforce any statute within the jurisdiction of the commission.

(2) Each law enforcement officer must meet the qualifications for law enforcement officers under s. 943.13, Florida Statutes, and must be certified as a law enforcement officer by the Department of Law Enforcement. Upon certification, each law enforcement officer is subject to and has the authority provided to law enforcement officers generally under chapter 901, Florida Statutes, and has statewide jurisdiction.

(3) Each officer has arrest authority as provided for state law enforcement officers under s. 901.15, Florida Statutes, and full law enforcement powers granted to other officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and proceeds from illegal activities.

(4) Each law enforcement officer of the commission, upon certification under s. 943.1395, Florida Statutes, has the same right and authority to carry arms as do the sheriffs of this state.

Section 9. Executive director.—The commission shall appoint or remove the executive director of the commission by a majority vote. An interim executive director shall be appointed within 10 days after the initial meeting of the commission.

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(1) The executive director:

(a) Shall devote full time to the duties of the office;

(b) May not hold any other office or employment;

(c) Shall perform all duties assigned by the commission; and

(d) May hire assistants and employees as necessary to conduct the business of the commission, and consultants necessary for the efficient operation of destination resorts.

(2)(a) The executive director may not employ a person who, during the 3 years immediately preceding employment, held a direct or indirect interest in, or was employed by:

1. A resort licensee or supplier licensee;

2. An applicant for a resort license or an applicant for a similar license in another jurisdiction;

3. An entity licensed to operate a gaming facility in another state;

4. A pari-mutuel gaming facility licensed to operate in this state; or

5. A tribal gaming facility within this state.

(b) Notwithstanding paragraph (a), a person may be employed by the commission if the commission finds that the person's former interest in any licensee will not interfere with the objective discharge of the person's employment obligations. However, a person may not be employed by the commission if:

1. The person's interest in an applicant, licensee, or tribal facility constituted a controlling interest; or

2. The person, or the person's spouse, parent, child, child's spouse, or sibling, is a member of the commission, or a director of, or person financially interested in, an applicant

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or a licensee.

Section 10. Code of ethics.—

(1) The commission shall adopt a code of ethics by rule for its members, employees, and agents.

(2) A member of the commission or the executive director may not hold a direct or indirect interest in, be employed by, or enter into a contract for service with an applicant or person licensed by the commission for a period of 5 years after the date of termination of the person's membership on or employment with the commission.

(3) An employee of the commission may not acquire a direct or indirect interest in, be employed by, or enter into a contract for services with an applicant or person licensed by the commission for a period of 3 years after the date of termination of the person's employment with the commission.

(4) A commission member or a person employed by the commission may not represent a person or party other than the state before or against the commission for a period of 3 years after the date of termination of the member's term of office or the employee's period of employment with the commission.

(5) A business entity in which a former commission member, employee, or agent has an interest, or any partner, officer, or employee of that business entity, may not appear before or represent another person before the commission if the former commission member, employee, or agent would be prohibited from doing so. As used in this subsection, the term "business entity" means a corporation, limited liability company, partnership, limited liability partnership association, trust, or other form of legal entity.

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(6) A member, employee, or agent of the commission may not engage in political activity or politically related activity during the duration of the person's appointment or employment. As used in this paragraph, the terms "political activity" or "politically related activity" include:

(a) Using the person's official authority or influence for the purpose of interfering with or affecting the result of an election;

(b) Knowingly soliciting, accepting, or receiving political contributions from any person;

(c) Running for nomination or as a candidate for election to a partisan political office; or

(d) Knowingly soliciting or discouraging the participation in any political activity of any person who is:

1. Applying for any compensation, grant, contract, ruling, license, permit, or certificate pending before the commission; or

2. The subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the commission.

(7) A former member, employee, or agent of the commission may appear before the commission as a witness testifying as to factual matters or actions handled by the former member, employee, or agent during his or her tenure with the commission. However, the former member, employee, or agent of the commission may not receive compensation for the appearance other than a standard witness fee and reimbursement for travel expenses as established by statute or rules governing administrative proceedings before the Division of Administrative Hearings.

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(8)(a) The executive director must approve outside employment for an employee or agent of the commission.

(b) An employee or agent of the commission granted permission for outside employment may not conduct any business or perform any activities, including solicitation, related to outside employment on premises used by the commission or during the employee's working hours for the commission.

(c) As used in this subsection, the term "outside employment" includes, but is not limited to:

1. Operating a proprietorship;

2. Participating in a partnership or group business enterprise; or

3. Performing as a director or corporate officer of any for-profit corporation or banking or credit institution.

(9) A member, employee, or agent of the commission may not participate in or wager on any game conducted by any resort licensee or applicant or any affiliate of a licensee or applicant regulated by the commission in this state or in any other jurisdiction, except as required as part of the person's surveillance, security, or other official duties.

Section 11. Disclosures by commissioners, employees, and agents.—

(1) COMMISSIONERS.—

(a) Each member of the commission shall file a financial disclosure statement pursuant to s. 112.3145, Florida Statutes.

(b) Each member must disclose information required by rules of the commission to ensure the integrity of the commission and its work.

(c) By January 1 of each year, each member must file a

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statement with the commission:

1. Affirming that the member, and the member's spouse, parent, child, or child's spouse, is not a member of the board of directors of, financially interested in, or employed by an applicant or resort licensee.

2. Affirming that the member is in compliance with the Resort Act and the rules of the commission.

3. Disclosing any legal or beneficial interest in real property that is or may be directly or indirectly involved with activities or persons regulated by the commission.

(d) Each member must disclose involvement with any gaming interest in the 5 years preceding appointment as a member.

(2) EMPLOYEES AND AGENTS.—

(a) The executive director and each managerial employee and agent, as determined by the commission, shall file a financial disclosure statement pursuant to s. 112.3145, Florida Statutes. All employees and agents must comply with the provisions of chapter 112, Florida Statutes.

(b) The executive director and each managerial employee and agent identified by rule of the commission must disclose information required by rules of the commission to ensure the integrity of the commission and its work.

(c) By January 31 of each year, each employee and agent of the commission must file a statement with the commission:

1. Affirming that the employee, and the employee's spouse, parent, child, or child's spouse, is not financially interested in or employed by an applicant or licensee.

2. Affirming that the person does not have any financial interest prohibited by laws or rules administered by the

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commission.

3. Disclosing any legal or beneficial interest in real property that is or may be directly or indirectly involved with activities or persons regulated by the commission.

(d) Each employee or agent of the commission must disclose involvement with any gaming interest during the 5 years before employment.

(3) CIRCUMSTANCES REQUIRING IMMEDIATE DISCLOSURE.—

(a) A member, employee, or agent of the commission who becomes aware that the member, employee, or agent of the commission or his or her spouse, parent, or child is a member of the board of directors of, financially interested in, or employed by an applicant or licensee must immediately provide detailed written notice to the chair.

(b) A member, employee, or agent of the commission must immediately provide detailed written notice of the circumstances to the chair if the member, employee, or agent is indicted, charged with, convicted of, pleads guilty or nolo contendere to, or forfeits bail for:

1. A misdemeanor involving gambling, dishonesty, theft, or fraud;

2. A violation of any law in any state, or a law of the United States or any other jurisdiction, involving gambling, dishonesty, theft, or fraud which substantially corresponds to a misdemeanor in this state; or

3. A felony under the laws of this or any other state, or the laws of the United States, or any other jurisdiction.

(c) A member, employee, or agent of the commission who is negotiating for an interest in a licensee or an applicant, or is

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affiliated with such a person, must immediately provide written notice of the details of the interest to the chair. The member, employee, or agent of the commission may not act on behalf of the commission with respect to that person.

(d) A member, employee, or agent of the commission may not enter into negotiations for employment with any person or affiliate of any person who is an applicant, licensee, or an affiliate. If a member, employee, or agent of the commission enters into negotiations for employment in violation of this paragraph or receives an invitation, written or oral, to initiate a discussion concerning employment with any person who is a licensee, applicant, or an affiliate, he or she must immediately provide written notice of the details of any such negotiations or discussions to the chair. The member, employee, or agent of the commission may not take any action on behalf of the commission with respect to that licensee or applicant.

(e) A licensee or applicant may not knowingly initiate a negotiation for, or discussion of, employment with a member, employee, or agent of the commission. A licensee or applicant who initiates a negotiation or discussion about employment shall immediately provide written notice of the details of the negotiation or discussion to the chair as soon as that person becomes aware that the negotiation or discussion has been initiated with a member, employee, or agent of the commission.

(f) A member, employee, or agent of the commission, or a parent, spouse, sibling, or child of a member, employee, or agent of the commission, may not accept any gift, gratuity, compensation, travel, lodging, or anything of value, directly or indirectly, from a licensee, applicant, or affiliate or

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representative of a person regulated by the commission unless the acceptance is permitted under the rules of the commission and conforms with chapter 112, Florida Statutes. A member, employee, or agent of the commission who is offered or receives any gift, gratuity, compensation, travel, lodging, or anything of value, directly or indirectly, from any licensee or an applicant or affiliate or representative of a person regulated by the commission must immediately provide written notice of the details to the chair.

(g) A licensee, applicant, or affiliate or representative of an applicant or licensee may not, directly or indirectly, knowingly give or offer to give any gift, gratuity, compensation, travel, lodging, or anything of value to any member, employee, or agent, or to a parent, spouse, sibling, or child of a member, employee, or agent, which the member, employee, or agent is prohibited from accepting under paragraph (f).

(h) A member, employee, or agent of the commission may not engage in any conduct that constitutes a conflict of interest, and must immediately advise the chair in writing of the details of any incident or circumstances that would suggest the existence of a conflict of interest with respect to the performance of commission-related work or duty of the member, employee, or agent of the commission.

(i) A member, employee, or agent of the commission who is approached and offered a bribe must immediately provide a written account of the details of the incident to the chair and to a law enforcement agency having jurisdiction over the matter.

Section 12. Ex parte communications.—

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(1) A licensee, applicant, or any affiliate or representative of an applicant or licensee may not engage directly or indirectly in ex parte communications concerning a pending application, license, or enforcement action with a member of the commission or concerning a matter that likely will be pending before the commission. A member of the commission may not engage directly or indirectly in any ex parte communications concerning a pending application, license, or enforcement action with members of the commission, or with a licensee, applicant, or any affiliate or representative of an applicant or licensee, or concerning a matter that likely will be pending before the commission.

(2) Any commission member, licensee, applicant, or affiliate or representative of a commission member, licensee, or applicant who receives any ex parte communication in violation of subsection (1), or who is aware of an attempted communication in violation of subsection (1), must immediately report details of the communication or attempted communication in writing to the chair.

(3) If a commissioner knowingly receives an ex parte communication relative to a proceeding to which he or she is assigned, he or she must place on the record copies of all written communications received, copies of all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall give written notice to all parties to the communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission

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within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte communication received by him or her, withdraw from the proceeding potentially impacted by the ex parte communication. After a commissioner withdraws from the proceeding, the chair shall substitute another commissioner for the proceeding if the proceeding was not assigned to the full commission.

(4) Any individual who makes an ex parte communication must submit to the commission a written statement describing the nature of such communication, including the name of the person making the communication, the name of the commissioner or commissioners receiving the communication, copies of all written communications made, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made. The commission shall place on the record of a proceeding all such communications.

(5) A member of the commission who knowingly fails to place on the record any ex parte communications, in violation of this section, within 15 days after the date of the communication is subject to removal and may be assessed a civil penalty not to exceed $5,000.

(6) The Commission on Ethics shall receive and investigate sworn complaints of violations of this section pursuant to ss. 112.322-112.3241, Florida Statutes.

(7) If the Commission on Ethics finds that a member of the commission has violated this section, it shall provide the

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Governor with a report of its findings and recommendations. The Governor may enforce the findings and recommendations of the Commission on Ethics pursuant to part III of chapter 112, Florida Statutes.

(8) If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties assessed pursuant to this section, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

(9) If, during the course of an investigation by the Commission on Ethics into an alleged violation of this section, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the commission or otherwise represent anyone before the commission for 2 years.

Section 13. Penalties for misconduct by a commissioner, employee, or agent.—

(1) A violation of the Resort Act by a member of the commission may result in disqualification or constitute cause for removal by the Governor or other disciplinary action as determined by the commission.

(2) A violation of the Resort Act by an employee or agent of the commission does not require termination of employment or other disciplinary action if:

(a) The commission determines that the conduct involved does not violate the purposes the Resort Act; or

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(b) There was no intentional action on the part of the employee or agent, contingent on divestment of the financial interest within 30 days after the interest was acquired.

(3) Notwithstanding subsection (2), an employee or agent of the commission who violates the Resort Act shall be terminated if a financial interest in a licensee, applicant, or affiliate, or representative of a licensee or applicant, is acquired by:

(a) An employee of the commission; or

(b) The employee's or agent's spouse, parent, or child.

(4) A violation the Resort Act does not create a civil cause of action.

Section 14. Authorization of limited gaming at destination resorts.—Notwithstanding any other provisions of law, the commission may not award a resort license authorizing limited gaming unless a majority of the electors in a countywide referendum have approved the conduct of limited gaming in the respective county. If limited gaming is authorized through the award of a resort license, the resort licensee may possess slot machines and other authorized gaming devices and conduct limited gaming at the licensed location. Notwithstanding any other provision of law, a person may lawfully participate in authorized games at a facility licensed to possess authorized limited gaming devices and conduct limited gaming or to participate in limited gaming as described in the Resort Act.

Section 15. Legislative authority; administration of act.—The regulation of the conduct of limited gaming activity at a resort licensee is preempted to the state and a county, municipality, or other political subdivision of the state may not enact any ordinance relating to limited gaming. Only the

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commission and other authorized state agencies shall administer the Resort Act and regulate limited gaming, including limited gaming at resort licensees and the assessment of fees or taxes relating to the conduct of limited gaming.

Section 16. Process for awarding destination resort licenses.—

(1) The commission shall by rule use an invitation to negotiate process for determining the award of a resort license. The application, review, and issuance procedures for awarding a license shall be by a process in which applicants rely on forms provided by the commission in response to an invitation to negotiate issued by the commission.

(2) The commission may, at its discretion, stagger the issuance of invitations to negotiate, the period for review of replies, and the awarding of one or more licenses to conduct limited gaming, provided that the number of licenses does not exceed five destination resort licensees. Invitations to negotiate shall require a response within no less than 6 months of the date after the issuance of the invitation.

(3) The commission may specify in its invitation to negotiate the district in which the facility would be located. When determining whether to authorize the destination resort located within a specific county or counties, the commission shall, if practicable, hold a public hearing in such county or counties.

(4) The commission shall review all complete replies received pursuant to an invitation to negotiate. The commission may select one or more replies with which to commence negotiations after determining which replies are in the best

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interest of the state based on the selection criteria. The commission shall award or deny a destination resort license within 12 months after the deadline for the submission of a reply.

Section 17. Criteria for the award of a destination resort license.-

(1) The commission may award a resort license to the applicant of an invitation to negotiate which best serves the interests of the residents of Florida. The reply to an invitation to negotiate for a resort license must include an application that demonstrates the applicant's ability to meet the following minimum criteria:

(a) Only one destination resort license may be awarded per district.

(b) The applicant must demonstrate a capacity to increase tourism, generate jobs, provide revenue to the local economy, and provide revenue to the General Revenue Fund.

(c) The resort must provide a minimum of 1,000 hotel rooms.

(d) The resort must contain convention and meeting floor space of at least 500,000 square feet.

(e) The area in which the conduct of limited gaming is authorized may constitute no more than 10 percent of the resort development's total square footage. The resort development's total square footage is the aggregate of the total square footage of the limited gaming facility, the hotel or hotels, convention space, retail facilities, nongaming entertainment facilities, service centers, and office space or administrative areas.

(f) The applicant must demonstrate a history of, or a bona

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fide plan for, community involvement or investment in the community where the resort having a limited gaming facility will be located.

(g) The applicant must demonstrate the financial ability to purchase and maintain an adequate surety bond.

(h) The applicant must demonstrate that it has adequate capitalization to develop, construct, maintain, and operate the proposed resort and convention center having a limited gaming facility in accordance with the requirements of the Resort Act and rules adopted by the commission and to responsibly meet its secured and unsecured debt obligations in accordance with its financial and other contractual agreements.

(i) The applicant shall demonstrate 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.

(j) The commission may, at its discretion, assess the quality of the proposed development's aesthetic appearance in the context of its potential to provide substantial economic benefits to the community and the people of Florida, including, but not limited to its potential to provide substantial employment opportunities.

(k) The applicant shall demonstrate how it will comply with state and federal affirmative action guidelines.

(l) The applicant shall demonstrate the ability to generate substantial gross receipts.

(2) A resort license may be issued only to persons of good moral character who are at least 21 years of age. A resort

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license may issued to a corporation only if its officers are of good moral character and at least 21 years of age.

(3) A resort license may not be issued to an applicant if the applicant, qualifier, or institutional investor:

(a) Has, within the last 10 years, filed for protection under the Federal Bankruptcy Code or had an involuntary bankruptcy petition filed against them.

(b) Has, within the last 5 years, been adjudicated by a court or tribunal for failure to pay income, sales, or gross receipts tax due and payable under any federal, state, or local law, after exhaustion of all appeals or administrative remedies.

(c) Has been convicted of a felony under the laws of this or any other state, or the United States.

(d) Has been convicted of any violation under chapter 817, Florida Statutes, or under a substantially similar law of another jurisdiction.

(e) Knowingly submitted false information in the application for the license.

(f) Is a member or employee of the commission.

(g) Was licensed to own or operate gaming or pari-mutuel facilities in this state or another jurisdiction and that license was revoked.

(h) Fails to meet any other criteria for licensure set forth in the Resort Act.

The term "conviction" includes an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.

Section 18. Application for destination resort license.—

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(1) APPLICATION.—A reply submitted in response to an invitation to negotiate must include a sworn application in the format prescribed by the commission. The application must include the following information:

(a)1. The name, business address, telephone number, social security number, and, where applicable, the federal tax identification number of the applicant and each qualifier; and

2. Information, documentation, and assurances concerning financial background and resources as may be required to establish the financial stability, integrity, and responsibility of the applicant. This includes business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant must provide written authorization for the examination of all bank accounts and records as may be deemed necessary by the commission.

(b) The identity and, if applicable, the state of incorporation or registration of any business in which the applicant or a qualifier has an equity interest of more than 5 percent. If the applicant or qualifier is a corporation, partnership, or other business entity, the applicant or qualifier must identify any other corporation, partnership, or other business entity in which it has an equity interest of more 5 percent, including, if applicable, the state of incorporation or registration.

(c) A statement as to whether the applicant or a qualifier has developed and operated a gaming facility within a jurisdiction in the United States, including a description of

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the gaming facility, the gaming facility's gross revenue, and the amount of revenue the gaming facility has generated for state and local governments within that jurisdiction.

(d) A statement as to whether the applicant or a qualifier has been indicted, convicted of, pled guilty or nolo contendere to, or forfeited bail for any felony or for a misdemeanor involving gambling, theft, or fraud. The statement must include the date, the name and location of the court, the arresting agency, the prosecuting agency, the case caption, the docket number, the nature of the offense, the disposition of the case, and, if applicable, the location and length of incarceration.

(e) A statement as to whether the applicant or a qualifier has ever been granted any license or certificate in any jurisdiction which has been restricted, suspended, revoked, not renewed, or otherwise subjected to discipline. The statement must describe the facts and circumstances concerning that restriction, suspension, revocation, nonrenewal, or discipline, including the licensing authority, the date each action was taken, and an explanation of the circumstances for each disciplinary action.

(f) A statement as to whether the applicant or qualifier has, as a principal or a controlling shareholder, within the last 10 years, filed for protection under the Federal Bankruptcy Code or had an involuntary bankruptcy petition filed against it.

(g) A statement as to whether the applicant or qualifier has, within the last 5 years, been adjudicated by a court or tribunal for failure to pay any income, sales, or gross receipts tax due and payable under federal, state, or local law, after exhaustion of all appeals or administrative remedies. This


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statement must identify the amount and type of the tax and the time periods involved and must describe the resolution of the nonpayment.

(h) A list of the names and titles of any public officials or officers of any unit of state government or of the local government or governments in the county or municipality in which the proposed resort is to be located, and the spouses, parents, and children of those public officials or officers, who, directly or indirectly, own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instrument issued by the applicant or a qualifier, or hold or have an interest in any contractual or service relationship with the applicant or qualifier. As used in this paragraph, the terms "public official" and "officer" do not include a person who would be listed solely because the person is a member of the Florida National Guard.

(i) The name and business telephone number of any attorney, lobbyist, or other person who is representing an applicant before the commission during the application process.

(j) A description of the applicant's history of and proposed plan for community involvement or investment in the community where the resort having a limited gaming facility would be located.

(k) A description of the applicant's proposed resort, including a description of the economic benefit to the community in which the facility would be located, the anticipated number of employees, a statement regarding how the applicant would comply with federal and state affirmative action guidelines, a projection of admissions or attendance at the limited gaming

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facility, a projection of gross receipts, and scientific market research pertaining to the proposed facility, if any.

(l) Proof of a countywide referendum authorizing limited gaming at a resort in the county. The referendum must be approved by the electors of the county before the application deadline established by the commission.

(m) A schedule or timeframe for completing the resort.

(n) A plan for training residents of this state for jobs at the resort. The job-training plan must provide training to enable low-income persons to qualify for jobs at the resort.

(o) The identity of each person, association, trust, or corporation or partnership having a direct or indirect equity interest in the applicant of greater than 5 percent. If disclosure of a trust is required under this paragraph, the names and addresses of the beneficiaries of the trust must also be disclosed. If the identity of a corporation must be disclosed, the names and addresses of all stockholders and directors must also be disclosed. If the identity of a partnership must be disclosed, the names and addresses of all partners, both general and limited, must also be disclosed.

(p) A destination resort and limited gaming facility development plan.

(q) The fingerprints of the all officers or directors of the applicant and qualifiers, and any persons exercising operational or managerial control of the applicant, as determined by rule of the commission, for a criminal history record check.

(2) DISCRETION TO REQUIRE INFORMATION.—Notwithstanding any other provision of law, the commission is the sole authority for

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determining the information or documentation that must be included in an application for a resort license or in an application to renew a resort license. Such documentation and information may relate to: demographics, education, work history, personal background, criminal history, finances, business information, complaints, inspections, investigations, discipline, bonding, photographs, performance periods, reciprocity, local government approvals, supporting documentation, periodic reporting requirements, and fingerprint requirements.

(3) DUTY TO SUPPLEMENT APPLICATION.—The application shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license. Any submission required to be in writing may otherwise be required by the commission to be made by electronic means.

(4) CRIMINAL HISTORY CHECKS.—The commission may contract with private vendors, or enter into interagency agreements, to collect electronic fingerprints where fingerprints are required for licensure or where criminal history record checks are required.

(5) APPLICATION FEES.—

(a) The application for a resort license must be submitted along with a nonrefundable application fee of $1 million to be used by the commission to defray costs associated with the review and investigation of the application and to conduct a background investigation of the applicant and each qualifier. If the cost of the review and investigation exceeds $1 million, the

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applicant must pay the additional amount to the commission within 30 days after the receipt of a request for an additional payment.

(b) The application for a destination resort license must be submitted with a one-time licensing fee of $50 million. If the commission denies the application, the commission must refund the licensing fee within 30 days after the denial of the application. If the applicant withdraws the application after the application deadline established by the commission, the commission must refund 80 percent of the licensing fee within 30 days after the application is withdrawn.

Section 19. Incomplete applications.—

(1) An incomplete application for a resort license is grounds for the denial of the application.

(2)(a) If the commission determines that an application for a resort license is incomplete, the executive director shall immediately provide written notice to the applicant of the incomplete items. The applicant may then request a confidential informal conference with the executive director or his designee to discuss the application.

(b) The executive director shall provide the applicant an extension of 30 days to complete the application following the date of the informal conference. If the executive director finds that the application has not been completed within the extension, the applicant may appeal the finding to the commission. During an extension or the pendency of an appeal to the commission, the award of resort licenses in the applicable district is stayed.

Section 20. Institutional investors as qualifiers.—


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(1) An application for a resort license that has an institutional investor as a qualifier need not contain information relating to the institutional investor other than the identity of the investor and information relating to qualifications under the Resort Act if the institutional investor:

(a) Holds less than 5 percent of the equity securities or 5 percent of the debt securities of an applicant or affiliate of the applicant;

(b) Is a publicly traded corporation; and

(c) Files a certified statement that the institutional investor does not intend to influence or affect the affairs of the applicant or an affiliate of the applicant and further states that its holdings of securities of the applicant or affiliate were purchased for investment purposes only.

The commission may limit the application requirements as provided in this subsection for an institutional investor that is a qualifier and that holds 5 percent or more of the equity or debt securities of an applicant or affiliate of the applicant upon a showing of good cause and if the conditions specified in paragraphs (b) and (c) are satisfied.

(2) An institutional investor that is exempt from the full application requirements under this section and that subsequently intends to influence or affect the affairs of the issuer must first notify the commission of its intent and file an application containing all of the information that would have been required of the institutional investor in the application for a resort license. The commission may deny the application if

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it determines that granting the application will impair the financial stability of the licensee or impair the ability of the licensee to comply with its development plans or other plans submitted to the commission by the applicant or licensee.

(3) An applicant for a license or a resort licensee or affiliate shall immediately notify the commission of any information concerning an institutional investor holding its equity or debt securities which may disqualify an institutional investor from having a direct or indirect interest in the applicant or licensee, and the commission may require the institutional investor to file all information that would have been required of the institutional investor in the application for a license.

(4) If the commission finds that an institutional investor that is a qualifier fails to comply with the requirements of subsection (1) or, if at any time the commission finds that by reason of the extent or nature of its holdings an institutional investor is in a position to exercise a substantial impact upon the controlling interests of a licensee, the commission may require the institutional investor to file an application containing all of information that would have been required of the institutional investor in the application for a license.

(5) Notwithstanding paragraph (1)(c), an institutional investor may vote on all matters that are put to the vote of the outstanding security holders of the applicant or licensee.

Section 21. Lenders and underwriters; exemption as qualifiers.—A bank, lending institution, or any underwriter in connection with any bank or lending institution that, in the ordinary course of business, makes a loan to, or holds a


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security interest in, a licensee or applicant, a supplier licensee or applicant or its subsidiary, or direct or indirect parent company of any of the foregoing is not a qualifier and is not required to be licensed.

Section 22. Conditions for a resort license.—As a condition to licensure and to maintain continuing authority, a resort licensee must:

(1) Comply with the Resort Act and the rules of the commission.

(2) Allow the commission and the Department of Law Enforcement unrestricted access to and right of inspection of facilities of a licensee in which any activity relative to the conduct of gaming is conducted.

(3) Complete the resort in accordance with the plans and timeframe proposed to the commission in its application, unless a waiver is granted by the commission.

(4) Ensure that the facilities-based computer system that the licensee will use for operational and accounting functions of the facility is specifically structured to facilitate regulatory oversight. The facilities-based computer system shall be designed to provide the commission and the Department of Law Enforcement with the ability to monitor, at any time on a real-time basis, the wagering patterns, payouts, tax collection, and such other operations as necessary to determine whether the facility is in compliance with statutory provisions and rules adopted by the commission for the regulation and control of gaming. The commission and the Department of Law Enforcement shall have complete and continuous access to this system. Such access shall include the ability of either the commission or the

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Department of Law Enforcement to suspend play immediately on particular slot machines or gaming devices if monitoring of the system indicates possible tampering or manipulation of those slot machines or gaming devices or the ability to suspend play immediately of the entire operation if the tampering or manipulation is of the computer system itself. The computer system shall be reviewed and approved by the commission to ensure necessary access, security, and functionality. The commission may adopt rules to provide for the approval process.

(5) Ensure that each game, slot machine, or other gaming device is protected from manipulation or tampering that may affect the random probabilities of winning plays. The commission or the Department of Law Enforcement may suspend play upon reasonable suspicion of any manipulation or tampering. If play has been suspended on any game, slot machine, or other gaming device, the commission or the Department of Law Enforcement may conduct an examination to determine whether the game, machine, or other gaming device has been tampered with or manipulated and whether the game, machine, or other gaming device should be returned to operation.

(6) Submit a security plan, including the facilities' floor plans, the locations of security cameras, and a listing of all security equipment that is capable of observing and electronically recording activities being conducted in the facilities of the licensee. The security plan must meet the minimum security requirements as determined by the commission and be implemented before the operation of gaming. The licensee's facilities must adhere to the security plan at all times. Any changes to the security plan must be submitted by the

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licensee to the commission prior to implementation. The commission shall furnish copies of the security plan and changes in the plan to the Department of Law Enforcement.

(7) Create and file with the commission a written policy for:

(a) Creating opportunities to purchase from vendors in this state, including minority vendors.

(b) Creating opportunities for the employment of residents of this state, including minority residents.

(c) Ensuring opportunities for obtaining construction services from minority contractors.

(d) Ensuring that opportunities for employment are offered on an equal, nondiscriminatory basis.

(e) Training employees on responsible gaming and working with a compulsive or addictive gambling prevention program.

(f) Implementing a drug-testing program that includes, but is not limited to, requiring each employee to sign an agreement that he or she understands that the resort is a drug-free workplace.

(g) Using the Internet-based job-listing system of the Agency for Workforce Innovation in advertising employment opportunities.

(h) Ensuring that the payout percentage of each slot machine is at least 85 percent.

(8) A resort licensee shall keep and maintain permanent daily records of its limited gaming operations and shall maintain such records for a period of not less than 5 years. These records must include all financial transactions and contain sufficient detail to determine compliance with the

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requirements of the Resort Act. All records shall be available for audit and inspection by the commission, the Department of Law Enforcement, or other law enforcement agencies during the resort licensee's regular business hours.

Section 23. Surety bond.—A destination resort licensee must, at its own cost and expense, before the license is delivered, give a bond in the penal sum to be determined by the commission payable to the Governor of the state and her or his successors in office. The bond must be issued by a surety or sureties approved by the commission and the Chief Financial Officer and the bond must be conditioned on the licensee faithfully making the required payments to the Chief Financial Officer in her or his capacity as treasurer of the commission, keeping the licensee's books and records and make reports as provided, and conducting its limited gaming activities in conformity with the Resort Act. The commission shall fix the amount of the bond at the total amount of annual license fees and the taxes estimated to become due as determined by the commission. In lieu of a bond, an applicant or licensee may deposit with the commission a like amount of funds, a savings certificate, a certificate of deposit, an investment certificate, or a letter of credit from a bank, savings bank, credit union, or savings and loan association situated in this state which meets the requirements set for that purpose by the Chief Financial Officer. If security is provided in the form of a savings certificate, a certificate of deposit, or an investment certificate, the certificate must state that the amount is unavailable for withdrawal except upon order of the commission. The commission may review the bond or other security

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for adequacy and require adjustments, including increasing the amount of the bond and other security. The commission may adopt rules to administer this section and establish guidelines for such bonds or other securities.

Section 24. Conduct of limited gaming.—

(1) Limited gaming may be conducted by a resort licensee, subject to the following:

(a) The site of the limited gaming facility is limited to the resort licensee's site location as approved by the commission.

(b) Limited gaming may not be conducted by a resort licensee until the resort is completed according to the proposal approved by the commission.

(c) The commission's agents and employees may enter and inspect a limited gaming facility or other facilities relating to a resort licensee's gaming operations at any time for the purpose of determining whether the licensee is in compliance with the Resort Act.

(d) A resort licensee may lease or purchase gaming devices, equipment, or supplies customarily used in conducting gaming only from a licensed supplier.

(e) A resort licensee may not permit any form of wagering on games except as permitted by the Resort Act.

(f) A resort licensee may receive wagers only from a person present in the limited gaming facility.

(g) A resort licensee may not permit wagering using money or other negotiable currency except for wagering on slot machines.

(h) A resort licensee may not permit a person who is less


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than 21 years of age to engage in gaming activity or remain in an area of a limited gaming facility where gaming is being conducted, except for a limited gaming employee of the resort licensee who is at least 18 years of age.

(i) A resort licensee may not sell or distribute tokens, chips, or electronic cards used to make wagers outside the limited gaming facility. The tokens, chips, or electronic cards may be purchased by means of an agreement under which the licensee extends credit to a wagerer. The tokens, chips, or electronic cards may be used only for the purpose of making wagers on games within a limited gaming facility.

(j) All gaming activities must be conducted in accordance with commission rules.

(2) A limited gaming facility may operate 24 hours per day, every day of the year.

(3) A resort licensee may set the minimum and maximum wagers on all games.

(4) A resort licensee shall give preference in employment, reemployment, promotion, and retention to veterans and to the persons included under s. 295.07(1), Florida Statutes, who possess the minimum qualifications necessary to perform the duties of the positions involved.

(5) A resort licensee shall use the E-Verify program, or a similar program developed under the Immigration Reform and Control Act of 1986 or the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, to verify the employment eligibility of all prospective employees. Applicants for a resort license must require that all contractors use such a program to verify the employment eligibility of their

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prospective employees.

(6) The commission shall renew a resort license if:

(a) The licensee has demonstrated an effort to increase tourism, generate jobs, provide revenue to the local economy, and provide revenue to the state General Revenue Fund.

(b) The commission has not suspended or revoked the license of the licensee.

(c) The licensee continues to satisfy all the requirements of the initial application for licensure.

Section 25. License fee; tax rate; disposition.—

(1) LICENSE FEE.—On the anniversary date of the issuance of the initial resort license and annually thereafter, the licensee must pay to the commission a nonrefundable annual license fee of $5 million. The license shall be renewed annually, unless the commission has revoked the license for a violation of the Resort Act or rule of the commission. The license fee shall be deposited into the Destination Resort Trust Fund to be used by the commission and the Department of Law Enforcement for investigations, regulation of limited gaming, and enforcement of the Resort Act.

(2) GROSS RECEIPTS TAX.—

(a) Each resort licensee shall pay a gross receipts tax on its gross receipts to the state. Upon completion of the resort and before limited gaming may be conducted, the resort licensee must submit proof, as required by the commission, of the total investment made in the construction of the resort. Upon submission of this information, the gross receipts tax rate shall be set as follows:

1. If the total infrastructure investment is $2 billion or


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more, the tax rate shall be 10 percent of the gross receipts.

2. If the total infrastructure investment is at least $1 billion but less than $2 billion, the tax rate shall be 15 percent of the gross receipts.

3. If the total infrastructure investment is less than $1 billion, the tax rate shall be 20 percent of the gross receipts.

(b) The gross receipts tax is in lieu of any other state taxes on gross or adjusted gross receipts of a resort licensee.

(3) TAX PROCEEDS.—

(a) The gross receipts tax shall be deposited into the Destination Resort Trust Fund and shall be used to fund the operating costs of the commission pursuant to appropriations by the Legislature.

(b) On June 30 of each year, all unappropriated funds in excess of $5 million shall be deposited as follows:

1. Ninety-five percent shall be deposited into the General Revenue Fund.

2. Two and 1/2 percent shall be deposited into the Tourism Promotional Trust Fund for use by the Florida Commission on Tourism.

3. One and 1/4 percent shall be deposited into the Employment Security Administration Trust Fund for the benefit of the school readiness program.

4. One and 1/4 percent shall be deposited into the Transportation Disadvantaged Trust Fund for use by the Commission for the Transportation Disadvantaged.

Section 26. Fingerprint requirements.—Any fingerprints required to be taken under the Resort Act must be taken in a manner approved by, and shall be submitted electronically by the

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commission to, the Department of Law Enforcement. The Department of Law Enforcement shall submit the results of the state and national records check to the commission. The commission shall consider the results of the state and national records check in evaluating an application for any license.

(1) The cost of processing fingerprints and conducting a criminal history record check shall be borne by the applicant. The Department of Law Enforcement may submit a monthly invoice to the commission for the cost of processing the fingerprints submitted.

(2) All fingerprints submitted to the Department of Law Enforcement pursuant to the Resort Act shall be retained by the Department of Law Enforcement and entered into the statewide automated fingerprint identification system as authorized by s. 943.05(2)(b), Florida Statutes, and shall be available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system pursuant to s. 943.051, Florida Statutes.

(3) The Department of Law Enforcement shall search all arrest fingerprints received pursuant to s. 943.051, Florida Statutes, against the fingerprints retained in the statewide automated fingerprint identification system. Any arrest record that is identified with the retained fingerprints of a person subject to the criminal history screening under the Resort Act shall be reported to the commission. Each licensee shall pay a fee to the commission for the cost of retention of the fingerprints and the ongoing searches under this subsection. The commission shall forward the payment to the Department of Law Enforcement. The amount of the fee to be imposed for performing

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these searches and the procedures for the retention of licensee fingerprints shall be as established by rule of the Department of Law Enforcement. The commission shall inform the Department of Law Enforcement of any change in the license status of licensees whose fingerprints are retained under subsection (2).

(4) The commission shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history records check every 3 years following issuance of a license. If the fingerprints of a person who is licensed have not been retained by the Department of Law Enforcement, the person must file another set of fingerprints. The commission shall collect the fees for the cost of the national criminal history record check under this subsection and shall forward the payment to the Department of Law Enforcement. The cost of processing fingerprints and conducting a criminal history record check under this paragraph shall be borne by the licensee or applicant. The Department of Law Enforcement may submit an invoice to the commission for the fingerprints submitted each month. Under penalty of perjury, each person who is licensed or who is fingerprinted as required by this section must agree to inform the commission within 48 hours if he or she is convicted of or has entered a plea of guilty or nolo contendere to any disqualifying offense, regardless of adjudication.

Section 27. Compulsive or addictive gambling prevention program.—

(1) A resort licensee shall offer training to employees on responsible gaming and shall work with a compulsive or addictive gambling prevention program to recognize problem gaming


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situations and to implement responsible gaming programs and practices.

(2) The commission shall, subject to competitive bidding, contract for services relating to the prevention of compulsive and addictive gambling. The contract shall provide for an advertising program to encourage responsible gaming practices and to publicize a gambling telephone help line. Such advertisements must be made both publicly and inside the resort's limited gaming facility. The terms of any contract for such services shall include accountability standards that must be met by any private provider. The failure of any private provider to meet any material terms of the contract, including the accountability standards, constitutes a breach of contract or is grounds for nonrenewal. The commission may consult with the Department of the Lottery or the Department of Business and Professional Regulation in the development of the program and the development and analysis of any procurement for contractual services for the compulsive or addictive gambling prevention program.

(3) The compulsive or addictive gambling prevention program shall be funded from an annual nonrefundable regulatory fee of $250,000 paid by each resort licensee to the commission.

Section 28. Suppliers' licenses.—

(1) A person must have a supplier's license in order to furnish on a regular or continuing basis to a resort licensee or an applicant for a resort license gaming equipment, devices, or supplies or other goods or services regarding the realty, construction, maintenance, or business of a proposed or existing resort facility. This requirement includes, but is not limited

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to, junket enterprises, security businesses, manufacturers, distributors, persons who service gaming devices or equipment, garbage haulers, maintenance companies, food purveyors, and construction companies.

(2) An applicant for a supplier's license must apply to the commission on forms adopted by the commission by rule. The licensing fee for the initial and annual renewal of the license is $5,000.

(3) An applicant for a supplier's license must include in the application the fingerprints of the persons identified by commission rule for the processing of state and national criminal history record checks.

(4)(a) An applicant for a supplier's license is not eligible for licensure if:

1. A person for whom fingerprinting is required under subsection (3) has been convicted of a felony under the laws of this or any other state or the United States;

2. The applicant knowingly submitted false information in the application for a supplier's license;

3. The applicant is a member of the commission;

4. The applicant is not a natural person and an officer, director, or managerial employee of that person is a person defined in subparagraphs 1.-3.;

5. The applicant is not a natural person and an employee of the applicant participates in the management or operation of limited gaming authorized under the Resort Act; or

6. The applicant has had a license to own or operate a resort facility or pari-mutuel facility in this or a similar license in any other jurisdiction revoked.

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(b) The commission may revoke a supplier's license at any time it determines that the licensee no longer satisfies the eligibility requirements in this subsection.

(5) The commission may deny an application for a supplier's license for any person:

(a) Who is not qualified to perform the duties required of the licensee;

(b) Who fails to disclose information or knowingly submits false information in the application;

(c) Who has violated the Resort Act or rules of the commission; or

(d) Who has had a gaming-related license or application suspended, restricted, revoked, or denied for misconduct in any other jurisdiction.

(6) A supplier licensee shall:

(a) Furnish to the commission a list of all gaming equipment, devices, and supplies it offers for sale or lease in connection with limited gaming authorized in the Resort Act;

(b) Keep books and records documenting the furnishing of gaming equipment, devices, and supplies to resort licensees separate and distinct from any other business that the supplier operates;

(c) File quarterly returns with the commission listing all sales or leases of gaming equipment, devices, or supplies to resort licensees;

(d) Permanently affix its name to all gaming equipment, devices, or supplies sold or leased to licensees; and

(e) File an annual report listing its inventories of gaming equipment, devices, and supplies.

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(7) All gaming devices, equipment, or supplies furnished by a licensed supplier must conform to standards adopted by commission rule.

(8)(a) The commission may suspend, revoke, or restrict the supplier's license of a licensee:

1. Who violates the Resort Act or the rules of the commission; or

2. Who defaults on the payment of any obligation or debt due to this state or a county.

(b) The commission must revoke the supplier's license of a licensee for any cause that, if known to the commission, would have disqualified the applicant from receiving a license.

(9) A supplier's licensee may repair gaming equipment, devices, or supplies in a facility owned or leased by the licensee.

(10) Gaming devices, equipment, or supplies owned by a supplier's licensee which are used in an unauthorized gaming operation shall be forfeited to the county where the equipment is found.

(11) The commission may revoke the license or deny the application for a supplier's license of a person who fails to comply with this section.

(12) A person who knowingly makes a false statement on an application for a supplier's license commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

Section 29. Occupational licenses.—

(1) The Legislature finds that, due to the nature of their employment, some gaming employees require heightened state

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scrutiny, including licensing and criminal history record checks.

(2) Any person who desires to be a gaming employee and has a bona fide offer of employment from a licensed gaming entity shall apply to the commission for an occupational license. A person may not be employed as a gaming employee unless that person holds an appropriate occupational license issued under this section. The commission may adopt rules to reclassify a category of nongaming employees or gaming employees upon a finding that the reclassification is in the public interest and consistent with the objectives of the Resort Act.

(3) An applicant for an occupational license must apply to the commission on forms adopted by the commission by rule. An occupational license is valid for 1 year following issuance. The application must be accompanied by the licensing fee set by the commission. The licensing fee may not exceed $50 for an employee of a resort licensee.

(a) The applicant shall set forth in the application whether the applicant:

1. Has been issued a gaming-related license in any jurisdiction.

2. Has been issued a gaming-related license in any other jurisdiction under any other name and, if so, the name and the applicant’s age at the time of licensure.

3. Has had a permit or license issued by another jurisdiction suspended, restricted, or revoked and, if so, for what period of time.

(b) An applicant for an occupational license must include his or her fingerprints in the application.

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(4) To be eligible for an occupational license, an applicant must:

(a) Be at least 21 years of age to perform any function directly relating to limited gaming by patrons;

(b) Be at least 18 years of age to perform nongaming functions;

(c) Not have been convicted of a felony or a crime involving dishonesty or moral turpitude in any jurisdiction; and

(d) Meet the standards for the occupational license as provided in commission rules.

(5) The commission must deny an application for an occupational license for any person:

(a) Who is not qualified to perform the duties required of the licensee;

(b) Who fails to disclose or knowingly submits false information in the application;

(c) Who has violated the Resort Act; or

(d) Who has had a gaming-related license or application suspended, restricted, revoked, or denied in any other jurisdiction.

(6)(a) The commission may suspend, revoke, or restrict the occupational license of a licensee:

1. Who violates the Resort Act or the rules of the commission;

2. Who defaults on the payment of any obligation or debt due to this state or a county; or

3. For any just cause.

(b) The commission shall revoke the occupational license of a licensee for any cause that, if known to the commission, would

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have disqualified the applicant from receiving a license.

(7) Any training provided for an occupational licensee may be conducted in the facility of a resort licensee or at a school with which the resort licensee has entered into an agreement for that purpose.

(8) A person who knowingly makes a false statement on an application for an occupational license commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

Section 30. Temporary supplier's license; temporary occupational license.—

(1) Upon the written request of an applicant for a supplier's license or an occupational license, the executive director shall issue a temporary license to the applicant and permit the applicant to undertake employment with or provide gaming equipment, devices, or supplies or other goods or services to a resort licensee or an applicant for a resort license if:

(a) The applicant has submitted a completed application, an application fee, all required disclosure forms, and other required written documentation and materials;

(b) A preliminary review of the application and the criminal history record check does not reveal that the applicant or a person subject to a criminal history record check has been convicted of a crime that would require denial of the application;

(c) A deficiency does not appear to exist in the application which may require denial of the application; and

(d) The applicant has an offer of employment from, or an

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agreement to begin providing gaming devices, equipment, or supplies or other goods and services to, a resort licensee or an applicant for a resort license, or the applicant for a temporary license shows good cause for being granted a temporary license.

(2) A temporary occupational license or supplier's license may not be valid for more than 90 days.

(3) An applicant who receives a temporary license may undertake employment with or supply a resort licensee with gaming devices, equipment, or supplies or other goods or services until a license is issued or denied or until the temporary license expires or is suspended or revoked.

Section 31. Quarterly report.—The commission shall file quarterly reports with the Governor, the President of the Senate, and the Speaker of the House of Representatives covering the previous fiscal quarter. The report must include:

(1) A statement of receipts and disbursements related to limited gaming;

(2) A summary of disciplinary actions taken by the commission; and

(3) Any additional information and recommendations that the commission believes may improve the regulation of limited gaming or increase the economic benefits of limited gaming to this state.

Section 32. Hearings by the commission.—

(1) The chair of the commission may participate in any proceeding pending before the commission when administrative duties and time permit. In order to distribute the workload and expedite the commission's calendar, the chair, in addition to other administrative duties, may assign the various proceedings

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pending before the commission requiring hearings to two or more commissioners. Only those commissioners assigned to a proceeding requiring hearings may participate in the final decision of the commission as to that proceeding. However, if only two commissioners are assigned to a proceeding requiring a hearing and they cannot agree on a final decision, the chair shall cast the deciding vote for final disposition of the proceeding. If more than two commissioners are assigned to any proceeding, a majority of the members assigned shall constitute a quorum and a majority vote of the members assigned shall be essential to final commission disposition of those proceedings. If a commissioner becomes unavailable after assignment to a particular proceeding, the chair must assign a substitute commissioner. A petition for reconsideration must be voted upon by those commissioners participating in the final disposition of the proceeding.

(2) A majority of the commissioners may determine that the full commission will sit in any proceeding. Any party to a proceeding may file a petition requesting that the proceeding be assigned to the full commission. Within 15 days after receipt by the commission of any petition, the full commission must dispose of such petition by majority vote and render a written decision before the matter may be heard by less than the full commission.

(3) This section does not prohibit a commissioner designated by the chair from conducting a hearing as provided under ss. 120.569 and 120.57(1), Florida Statutes, and the rules of the commission.

Section 33. Resolution of disputes between licensees and patrons.—


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(1) Whenever a resort licensee has a dispute with a patron which is not resolved to the satisfaction of the patron and involves:

(a) Alleged winnings, alleged losses, or the award or distribution of cash, prizes, benefits, tickets, or any other item or items in a game, tournament, contest, drawing, promotion, race, or similar activity or event; or

(b) The manner in which a game, tournament, contest, drawing, promotion, race, or similar activity or event was conducted,

the licensee must immediately notify the commission of the dispute if the amount disputed is $500 or more. If the dispute involves an amount less than $500, the licensee must immediately notify the patron of his or her right to file a complaint with the commission.

(2) Upon notice of a dispute or receipt of a complaint, the commission shall conduct any investigation it deems necessary and may order the licensee to make a payment to the patron upon a finding that the licensee is liable for the disputed amount. The decision of the commission is effective on the date the aggrieved party receives notice of the decision. Notice of the decision is deemed sufficient if it is mailed to the last known address of the licensee and the patron. The notice is deemed to have been received by the resort licensee or the patron 5 days after it is deposited with the United States Postal Service with postage prepaid.

(3) The failure of a resort licensee to notify the commission of the dispute or the patron of the right to file a

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complaint is grounds for disciplinary action.

Section 34. Enforcement of credit instruments.—

(1) A credit instrument and the debt that instrument represents are valid and may be enforced by legal process.

(2) A resort licensee may accept an incomplete credit instrument that:

(a) Is signed by the patron; and

(b) States the amount of the debt in numbers, and may complete the instrument as is necessary for the instrument to be presented for payment.

(3) A resort licensee may accept a credit instrument that is payable to an affiliate or may complete a credit instrument payable to an affiliate if the credit instrument otherwise complies with this section and the records of the affiliate pertaining to the credit instrument are made available to the commission upon request.

(4) A resort licensee may accept a credit instrument before, during, or after the patron incurs the debt. The credit instrument and the debt that the instrument represents are enforceable without regard to whether the credit instrument was accepted before, during, or after the incurring of the debt.

(5) This section does not prohibit the establishment of an account by a deposit of cash, recognized traveler’s check, or any other instrument that is equivalent to cash.

(6) If a credit instrument is lost or destroyed, the debt represented by the credit instrument may be enforced if the resort licensee or person acting on behalf of the licensee can prove the existence of the credit instrument.

(7) The existence of a mental disorder in a patron who

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provides a credit instrument to a resort licensee:

(a) Is not a defense in any action by a resort licensee to enforce a credit instrument or the debt that the credit instrument represents.

(b) Is not a valid counterclaim in an action to enforce the credit instrument or the debt that the credit instrument represents.

(8) The failure of a resort licensee to comply with the provisions of this section or commission rules does not invalidate a credit instrument or affect its ability to enforce the credit instrument or the debt that the credit instrument represents.

(9) The commission may adopt rules prescribing the conditions under which a credit instrument may be redeemed or presented to a bank or credit union for collection or payment.

Section 35. Voluntary self-exclusion from a limited gaming facility.—

(1) A person may request that he or she be excluded from limited gaming facilities in this state by personally submitting a Request for Voluntary Self-exclusion from Limited Gaming Facilities Form to the commission. The form must require the person requesting exclusion to:

(a) State his or her:

1. Name, including any aliases or nicknames;

2. Date of birth;

3. Current residential address;

4. Telephone number;

5. Social security number; and

6. Physical description, including height, weight, gender,

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hair color, eye color, and any other physical characteristic that may assist in the identification of the person.

A self-excluded person must update the information in this paragraph on forms supplied by the commission within 30 days after any change.

(b) Select one of the following as the duration of the self-exclusion:

1. One year.

2. Five years.

3. Lifetime.

(c) Execute a release in which the person:

1. Acknowledges that the request for exclusion has been made voluntarily.

2. Certifies that the information provided in the request for self-exclusion is true and correct.

3. Acknowledges that the individual requesting self-exclusion is a problem gambler.

4. Acknowledges that a person requesting a lifetime exclusion will not be removed from the self-exclusion list and that a person requesting a 1-year or 5-year exclusion will remain on the self-exclusion list until a request for removal is approved by the commission.

5. Acknowledges that, if the individual is discovered on the gaming floor of a limited gaming facility, the individual may be removed and may be arrested and prosecuted for criminal trespass.

6. Releases, indemnifies, holds harmless, and forever discharges the state, commission, and all licensee from any

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claims, damages, losses, expenses, or liability arising out of, by reason of or relating to the self-excluded person or to any other party for any harm, monetary or otherwise, which may arise as a result of one or more of the following:

a. The failure of a resort licensee to withhold gaming privileges from or restore gaming privileges to a self-excluded person.

b. Permitting or prohibiting a self-excluded person from engaging in gaming activity in a limited gaming facility.

(2) A person submitting a self-exclusion request must present to the commission a government-issued form of identification containing the person's signature.

(3) The commission shall take a photograph of a person requesting self-exclusion at the time the person submits a request for self-exclusion.

Section 36. 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


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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 35 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 35 of this act, or chapter 551 and the registering, recording, and labeling of which have been duly performed by the manufacturer or

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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 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 35 of this act.

Section 37. 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


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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.

(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 35 of this act.

Section 38. 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

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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.

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

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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).

(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 35 of this act.

Section 39. 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 destination resorts; amending s. 20.21, F.S.; creating the Destination Resort Commission within the Department of Revenue; amending s. 120.80, F.S.; exempting the Destination Resort Commission from specified provisions of the Administrative Procedure Act; creating the Destination


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Resort Act; providing definitions; providing that the Destination Resort Commission is a separate budget entity from the Department of Revenue; providing for the appointment and qualifications of members of the commission; providing for the selection of the chair and vice chair of the commission; providing that the chair is the administrative head of the commission; specifying the responsibilities of the chair; providing that the commission serves as the agency head for purposes of the Administrative Procedure Act; providing that the executive director of the commission may serve as the agency head for purposes of final agency action within the authority delegated by the commission; specifying 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; specifying the jurisdiction of the commission, the Department of Law Enforcement, and local law enforcement agencies to investigate criminal violations relating to limited gaming; requiring the commission to revoke or suspend the licensee of a person who was unqualified at the time of licensure or who is no longer qualified to be licensed; authorizing the commission to adopt rules relating to the types of gaming authorized, requirements for the issuance, renewal, revocation, and suspension of licenses, the

disclosure of financial interests, procedures to test gaming equipment, procedures to verify gaming revenues and the collection of taxes, requirements for gaming equipment, procedures relating to a facilities-based computer system, bond requirements of resort licensees, the maintenance of records, procedures to calculate the payout percentages of slot machines, security standards, the scope and conditions for investigations and inspections into the conduct of limited gaming, the seizure of gaming equipment and records without notice or a warrant, employee drug-testing programs, and the payment of costs, fines, and application fees; authorizing the commission to adopt emergency rules; exempting the rules from specified provisions of the Administrative Procedure Act; authorizing the commission to employ law enforcement officers; specifying the qualifications and powers of law enforcement officers employed by the commission; providing for the appointment, qualifications, and powers of the executive director of the commission; specifying persons who may not be employed by the commission; requiring the commission to adopt a code of ethics for its employees, members, and agents; specifying prohibited financial interests and relationships; imposing postemployment restrictions on members, employees, and agents of the commission; restricting the political activities of members, employees, and agents of the commission; prohibiting commissioners, employees, and agents of the commission

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from wagering under certain circumstances; requiring members, employees, and agents of the commission to annually disclose certain financial interests; specifying conditions under which members, employees, and agents of the commission must immediately disclose certain financial matters, criminal matters, employment negotiations, the offering or acceptance of gifts, and the offering of a bribe; prohibiting ex parte communications between applicants or licensees and members of the commission; requiring parties to an ex parte communication to disclose the substance of the communication; authorizing the imposition of a fine on a member of the commission who fails to disclose an ex parte communication; authorizing the Commission on Ethics to investigate complaints alleging an ex parte communication; requiring the Commission on Ethics to provide a report of its findings to the Governor if it finds that a commissioner violated the prohibitions on ex parte communications; authorizing the Commission on Ethics to bring an action against a commissioner to collect any penalties assessed; prohibiting a person who participated in an ex parte communication from appearing or representing a person before the commission for a certain time; specifying grounds for removal or termination of employment of commissioners and employees who violate the laws regulating limited gaming; requiring a referendum in the county where a destination resort is to be located as a prerequisite


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to the conduct of limited gaming activities; preempting the regulation of limited gaming at a destination resort to the state; requiring the commission to develop an invitation to negotiate process to award a resort license; specifying the minimum criteria that an applicant must meet to be awarded a destination resort license; specifying events that disqualify an applicant from eligibility for a resort license; specifying the information that must be on or included with an application for a resort license; specifying the amount of a nonrefundable application fee for a resort license to be used to defray the costs of an investigation of the applicant; authorizing the imposition of additional fees if the amount of the application fee is insufficient to cover the costs of the investigation; requiring the payment of a one-time licensing fee to be submitted along with an application for a resort license; requiring the executive director to notify an applicant for a resort license if the application is incomplete; authorizing the applicant to have an informal conference with the executive director to discuss an incomplete application; authorizing the executive director to grant an extension to complete an application; providing for the stay of the award of a resort license during an extension or the appeal to the commission of a finding by the executive director that an application is incomplete; exempting an institutional investor that is a qualifier for a


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resort licensee from certain application requirements under certain circumstances; requiring notice to the commission of any changes that may require a person to comply with the full application requirements; exempting lending institutions and underwriters from licensing requirements as a qualifier under certain circumstances; specifying conditions for a resort licensee to maintain licensure; requiring that the licensee post a bond; specifying conditions for the conduct of limited gaming by a resort licensee; requiring the commission to renew the license of a resort licensee if the licensee satisfies specified conditions; specifying an annual fee for the renewal of a resort license; imposing a tiered gross receipts tax based on the amount of a resort licensee's infrastructure costs; providing for the deposit of the tax into the Destination Resort Trust Fund; providing for certain unappropriated funds in the Destination Resort Trust Fund to be deposited into the General Revenue Fund, the Tourism Promotional Trust Fund, the Employment Security Administration Trust Fund, and the Transportation Disadvantaged Trust Fund; providing for the proceeds of the gross receipts tax to fund the operations of the commission; providing procedures for the submission and processing of fingerprints of certain persons regulated by the commission; providing that the cost of processing the fingerprints shall be borne by a licensee or applicant; requiring a person to report to the commission certain pleas and


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convictions for disqualifying offenses; requiring a resort licensee to train its employees about compulsive gambling; requiring a resort licensee to work with a compulsive gambling prevention program; requiring the commission to contract for services relating to the prevention of compulsive gambling; providing for the commission's compulsive gambling prevention program to be funded from a regulatory fee imposed on resort licensees; requiring a person to have a supplier's license to furnish certain goods and services to a resort licensee; specifying the amount of the application fee for a supplier's license; specifying persons who are disqualified from receiving a supplier's license; specifying circumstances under which the commission may revoke a supplier's license; authorizing the commission to adopt rules relating to the licensing of suppliers; requiring a supplier licensee to furnish a list of gaming devices and equipment to the commission, maintain records, file quarterly returns, and affix its name to the gaming equipment and supplies that it offers; requiring that the supplier licensee annually report its inventory to the commission; authorizing the commission to revoke a supplier's license under certain circumstances; providing that the equipment of a supplier's licensee which is used in unauthorized gaming will be forfeited to the county where the equipment is found; imposing a criminal penalty on a person who knowingly makes a false statement on an application for a supplier's


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license; requiring a person to have an occupational license to serve as a limited gaming employee of a resort licensee; requiring a person to apply to the commission for an occupational license and pay an application fee; specifying information that an applicant must include in an application for an occupational license; specifying grounds for the commission to deny an application for an occupational license; imposing a criminal penalty on a person who knowingly makes a false statement on an application for an occupational license; authorizing the executive director of the commission to issue a temporary occupational or temporary supplier's license under certain circumstances; requiring the commission to file quarterly reports with the Governor, the President of the Senate, and the Speaker of the House of Representatives; specifying procedures for the conduct of proceedings by the commission; authorizing the chair of the commission to assign a proceeding to less than the full commission; providing procedures for the resolution of certain disputes between a resort licensee and a patron; requiring a resort licensee to notify the commission of certain disputes with a patron involving amounts of $500 or more; requiring a resort licensee to notify a patron of the right to file a complaint with the commission regarding certain disputes of an amount less than $500; authorizing the commission to investigate disputes and to order a resort licensee to make a

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payment to a patron; providing for the enforcement of credit instruments; authorizing a resort licensee to accept an incomplete credit instrument and to complete incomplete credit instruments under certain circumstances; providing that existence of a mental disorder is not a defense or a valid counterclaim in an action to enforce a credit instrument; authorizing the commission to adopt rules prescribing the conditions under which a credit instrument may be presented to a bank; providing that a resort licensee has the right to exclude a person from its limited gaming facility; authorizing a person to request that the commission exclude her or him from limited gaming facilities; specifying the required contents of the request; providing that a self-excluded person who is found on a gaming floor may be arrested and prosecuted for criminal trespass; providing that a self-excluded person holds harmless the commission and licensees from claims for losses and damages under certain circumstances; amending s. 849.15, F.S.; authorizing slot machine gaming in a resort licensee and the transportation of slot machines pursuant to federal law; amending s. 849.231, F.S.; providing that a prohibition on gambling devices does not apply to limited gaming as authorized in the act; amending s. 849.25, F.S.; providing that a prohibition on gaming does not apply to limited gaming as authorized in the 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 (609550)**

Delete lines 106 - 107
and insert:
Flagler, Marion, Volusia, and Hernando Counties.

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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 (609550)**

Delete lines 987 - 989.

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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 (609550)**

Delete lines 1146 - 1149
and insert:
(l) Proof that the electors of the county in a countywide referendum have approved limited gaming at a resort in the county before the application deadline has been established by the commission for any district. However, a referendum is not required in any county where slot machine gaming as defined in s. 551.102(8) is currently conducted within a county.

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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 (609550) (with title amendment)**

Between lines 1970 and 1971

insert:

Section 36. Slot machine licensees.—Notwithstanding any law to the contrary, if a resort licensee receives final authorization to conduct limited gaming activities in Miami-Dade County or Broward County, a pari-mutuel facility licensed to operate slot machine gaming under s. 551.104, Florida Statutes, may conduct all games, including such games identified in the Destination Resort Act as limited gaming, during the same hours

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of operation and limits of wagering authorized for a resort licensee. However, before conducting limited gaming, such licensee is subject to the provisions of subsection (3) of section 17. The facility shall pay the same tax on gross receipts as the resort licensee located within Miami-Dade County or Broward County. For purposes of this section, the term "final authorization" means the anticipated opening date of the resort casino, or the actual opening date, whichever occurs first.

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

And the title is amended as follows:

Delete line 2352

and insert:

circumstances; allowing pari-mutuel facilities to conduct all games under certain conditions when a resort license to conduct limited gaming activities is authorized in Miami-Dade County or Broward County; amending s. 849.15, F.S.; authorizing

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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 (609550) (with title amendment)**

Delete lines 2058 - 2060
and insert:
(4) This section does not apply to slot machine licensees authorized under chapter 551 or limited gaming authorized by 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:
Between lines 2356 and 2357

961392

insert:

slot machine licenses authorized under state law and

877056

LEGISLATIVE ACTION

Senate . House

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

**Senate Amendment to Amendment (609550) (with title amendment)**

Between lines 2116 and 2117

insert:

Section 39. Effective July 1, 2013, all powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of chapter 551, Florida Statutes, are transferred intact by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation to the


877056

Destination Resort Commission.

Section 40. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

And the title is amended as follows:

Delete line 2360

and insert:

act; transferring all powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of ch. 551, F.S., intact by a type two transfer from the Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation to the Destination Resort Commission; providing for severability; 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 2050 |
| INTRODUCER: | Senator Braynon |
| SUBJECT: | Destination Resorts |
| DATE: | April 4, 2011 |
| REVISED: | |

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

## I. Summary:


SB 2050 creates the seven-member Destination Resort Commission (commission), with the principal responsibility to license and regulate no more than five destination resorts that would offer limited gaming, such as baccarat, twenty-one, poker, craps, slot machines, video gaming of chance, and roulette wheels.

Licenses would be awarded through an invitation-to-negotiate process. The commission is not required to award five licenses. The bill establishes a $1 million application fee, a $50 million initial license fee, and a $2 million annual license fee.

The bill also provides a graduated gross receipts tax rate that would be based upon the infrastructure investment in each resort. The tax rate ranges from 10 percent for investments of $2.5 billion or more, 15 percent for investments of between $1 billion to $2.5 billion, and 20 percent for investments under $1 billion. The commission would receive $5 million of these revenues to pay its operations; the rest would be allocated among the General Revenue Fund, Visit Florida's tourism marketing campaign, school readiness programs, and transportation for the disadvantaged.

The bill specifies a number of requirements for applicants, including that they plan to train and hire Florida residents.

SB 2050 amends ss. 20.21, 120.80, 849.231, and 849.25, F.S.; and creates several unnumbered sections of law.

## II. Present Situation:

Overview of Florida Gaming Laws and Regulations

In general, gambling is illegal in Florida.[1] 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[2] 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,[3] and running a lottery.[4] 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.[5]

Gaming is permitted at licensed pari-mutuel wagering tracks and frontons,[6] by the state operated lottery,[7] which must operate "so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens,"[8] 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.[9] 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.

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.[10] 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 [11] 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.[12]

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[1] Section 849.08, F.S.
[2] Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S.
[3] Section 849.01, F.S.
[4] Section 849.09, F.S.
[5] 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.
[6] *See* ch. 550, F.S., for the regulation of pari-mutuel activities.
[7] 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.
[8] *See* s. 24.104, F.S.
[9] "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.
[10] Section 849.086(8)(b), F.S. Prior to the effective date of ch. 2010-29, L.O.F., the maximum bet was $5.
[11] Section 849.086(2)(j), F.S., defines "house" as "the cardroom operator and all employees of the cardroom operator.
[12] Section 849.086(13)(a), F.S.

Slot Machine Gaming

Slot machine[13] 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.[14] In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.[15]

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[16] that authorizes the Tribe to conduct Class III gaming[17] at seven tribal facilities throughout the state. The compact was subsequently ratified by the Legislature.[18]

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.[19]

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[13] 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.

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

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

[16] 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.

[17] 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.

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

[19] *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).

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[20] 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.
- 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.

[20] 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."

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.

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.[21] Data on how many casinos are stand-alone operations and how many are "destination resorts"[22] is not readily available.

In the most recent numbers available, the American Gaming Association reported in 2008[23] 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.,[24] 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[25] 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:

[21] 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.

[22] "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.

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

[24] 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.

[25] 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.

- 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.

The database does not calculate indirect and induced economic benefits from casino operations. Destination resorts are also popular internationally among tourists.[26] What is purported to be the largest destination resort east of Las Vegas is under construction in the Bahamas.[27] 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.

Tourism and Convention Space

According to preliminary estimates[28] by Visit Florida, an estimated 82.6 million visitors came to Florida in 2010, an increase of 2.1 percent over 2009 figures.[29] 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.[30]

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.[31]

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;[32] the Peabody Orlando has 300,000

[26] An example of websites advertising international casinos and destination resorts is http://www.worldcasinodirectory.com. Last visited March 19, 2011.
[27] Information posted at http://starglobaltribune.com/2011/destination-resorts-a-new-generation-of-tourists-destinations-opened-5954. Last visited March 8, 2011.
[28] 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.
[29] *See* http://media.visitflorida.org/news/news.php?id=169, (last visited March 19, 2011).
[30] *Id.*
[31] *Id.*
[32] See http://www.gaylordhotels.com/palms-home.html?intcmp=gp-pl=topnav-ref=home.

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;[33] 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.
- 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.

Executive Branch Structure

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 the functional equivalent of a department.

In summary, there appears to be 22 state entities that are executive departments, so Florida has three available slots for any new agencies the Legislature may in the future consider creating.

## III. Effect of Proposed Changes:

SB 2050 creates several undesignated sections of law and amends four sections of existing law to establish the Destination Resort Commission (commission), which will select and regulate any destination resort operations that open in Florida.

**Section 1:** Amends s. 20.21, F.S., to create the commission within the Department of Revenue (DOR).

[33] See http://www.marriottworldcenter.com/.

**Section 2:** Amends s. 120.80, F.S., to exempt the commission from certain provisions of the Florida Administrative Procedures Act, in ch. 120, F.S., specifically:

- The notice and hearing requirements of ss. 120.569 and 120.57(1)9a), F.S., for proceedings related to the issuance, denial, renewal, or amendment of a destination resort license;
- The process and deadlines in s. 120.60, F.S., for granting licenses does not apply to applications for a destination resort license; and
- The process for petitioning for, or granting, a waiver or variance, or granting a waiver or variance, pursuant to s. 120.542, F.S.

**Section 3:** Specifies that sections 4-35 of SB 2050 may be cited as the "Destination Resort Act" or "Resort Act."

**Section 4:** Creates definitions for 27 terms used in this act. Key definitions are:

- Destination resort or resort means 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.
- Gross receipts means the total of cash or cash equivalents received or retained as winnings by a resort licensee and the compensation received for conducting any game in which the resort licensee is not party to a wager, less any cash taken in fraudulent acts perpetrated against the resort licensee for which the resort licensee is not reimbursed. The term does not include tokens, foreign currency that cannot be converted into U.S. currency, promotional credits or "free plays," or the amount of extended credit until collected from the customer.
- Licensee means, as the context requires, a resort licensee, supplier licensee, or occupational licensee.
- Limited gaming, game, or gaming means 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.
- 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.

**Section 5:** Creates the Destination Resort Commission and specifies its governance. This section specifies that 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 is exempt from the provisions of s. 20.052, F.S., which creates a public-purpose evaluation of all advisory councils, boards and commissions before they are statutorily created. The commission will consist of seven full-time members:

- Three appointed by the Governor and confirmed by the Senate in the legislative session following the appointments;
- Two appointed by the President of the Senate; and
- Two appointed by the Speaker of the House of Representatives.

For the initial appointments, the Governor's appointees shall serve 2-year terms and the other appointees shall serve 4-year terms; thereafter, all appointees shall serve 4-year terms. Terms expire on June 30 of the applicable year. Any commissioner whose term has expired shall continue serving until a replacement is appointed. Vacancies are filled in the same manner as initial appointments.

SB 2050 specifies that the commissioners must be Florida residents and experienced in corporate finance, tourism, convention and resort management, gaming, investigation or law enforcement, business law, or related legal experience, except that:

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

A quorum consists of 4 members.

The bill prohibits the appointment to the commission of:

- Elected officials;
- Persons with a direct or indirect financial interest in applicants for a resort license or resort licensees;
- Persons who are related within the "second degree of consanguinity"[34] or affinity to any person licensed by the commission; and
- Persons who have been indicted for, convicted of, pled guilty or nolo contendere to, or forfeited bail for any felony or misdemeanor crime involving gambling or fraud, in any of the 50 states, within the 10 years preceding their appointment.

The Governor will appoint one member of the commission to serve as the chair. The chair will 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 his or her fellow members during the commission's first meeting.

Other governance issues include:

- The commission headquarters will be in Tallahassee;

[34] Legally defined as grandparents, siblings, grandchildren, aunts and uncles, nieces and nephews, and first cousins.

- The initial meeting of the commission must be held by October 1, 2011;
- The commission must meet at least monthly;
- The chair or 4 commissioners can call a meeting, upon 72 hours' notice; and
- The commission *in toto* sits as the agency head for purposes of ch. 120, F.S., except that the commission's executive director is the agency head for purposes of final agency action under ch. 120, F.S., for all regulatory issues delegated to the executive director.

**Section 6:** Specifies the commission's powers and duties. The commission will have jurisdiction over and shall supervise all destination resort gaming activity governed by this act, including the power to:

- Authorize limited gaming at five destination resorts;
- Conduct investigations as necessary to fulfill its responsibilities;
- Use an invitation-to-negotiate process for applicants based on minimum requirements established by this legislation;
- Investigate each applicant for a resort license and determine eligibility, among competing applicants, based on which ones best serve 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.
- Grant licenses;
- Establish and collect fees for conducting background checks on all applicants for licenses and persons who are contracted to perform services at the resorts;
- Issue subpoenas;
- Require a person to file a statement in writing and under oath in response to the commission's investigation;
- Keep accurate and complete records of its proceedings;
- Apply to the courts for injunctive relief to enforce the act and any rules adopted by the commission;
- Establish field offices, as necessary; and
- 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.

Additionally, the commission, the Florida Department of Law Enforcement (FDLE), and local law enforcement agencies have unrestricted access to inspect resort facilities and gaming devices at all times, and share concurrent authority to investigate criminal violations of this act and any other criminal activity that may be occurring at a resort.

**Section 7:** The commission is authorized to adopt all rules necessary, including emergency rules, 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.

**Section 8:** The commission is authorized to employ sworn law enforcement officers, who must have arrest authority pursuant to s. 901.15, F.S., have full law enforcement powers, and be certified under s. 943.1395, F.S.

**Section 9:** The commission is authorized to appoint (and remove) a full-time executive director, who will perform all the duties assigned him by the commission, and employee staff and consultants as necessary.

This section also specifies the types of people who may not be hired, depending on their previous 3 years' work history.

**Section 10:** The commission must adopt a comprehensive code of ethics for its members and staff to follow. Generally, the code of ethics will prohibit commissioners, the executive director, and employees from having a direct or indirect financial interest in the entities they will regulate. It would also prohibit engaging in political activity, including using one's official position to influence the result of an election. Also, employees or agents of the commission will be prohibited from engaging in outside employment related to the activities or persons regulated by the commission, until 5 years after leaving employment or membership on the commission.

**Section 11:** The commissioners, the executive director, and each managerial employee must file annual financial disclosures. The bill also specifies the circumstances in which commissioners and staff 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; accepting gifts from licensees, applicants, or entities otherwise affiliated with licensees or applicants; and report any attempted bribes.

**Section 12:** Commissioners, licensees, applicants, or any affiliate or representative of an applicant or licensee are prohibited 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.

Any such violation will be investigated by the Commission on Ethics.

**Section 13:** 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.

**Section 14:** The regulation of gaming at destination resorts is pre-empted to the state, and no local government may enact any ordinance attempting to regulate such activities.

**Section 15:** SB 2050 establishes a detailed process for awarding destination resort licenses. Licenses will be awarded through an invitation-to-negotiate (invitation) process in which applicants reply on forms provided by the commission in response to the invitation to bid. The commission may stagger its issuance of the invitations, although replies to the invitation to bid must be received by the commission within 6 months of the date the invitations were 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. The commission must award a resort license within 12 months after the deadline for submission of the applications. The commission may not award more than five licenses statewide.

**Section 16:** SB 2050 specifies a number of minimum criteria the commission must use when evaluating resort license applications. Key criteria include:

- The applicant for a resort license must demonstrate that the resort will:
  - Increase tourism;
  - Generate jobs;
  - Provide revenue to the local economy; and
  - Provide revenue to the General Revenue Fund.
- Additionally, 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;
  - 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 aesthetic appearance of the proposed resort, if the commission chooses to make this a consideration.
- The applicant must demonstrate how it will comply with state and federal affirmative action guidelines.
- The applicant must demonstrate the ability to generate substantial gross receipts.

This section of the bill also specifies that resort licenses will be issued "only to persons of good moral character who are at least 21 years of age.

A resort license will not be issued to any applicant, if such applicant, a qualifier, or an institutional investor:

- Has, within the last 10 years, filed for protection under the Federal Bankruptcy Code or had an involuntary bankruptcy petition filed against the applicant;

- Has, within the last 5 years, been adjudicated by a court or tribunal for failure to pay income, sales, or gross receipts tax due and payable under any federal, state, or local law, after exhaustion of all appeals or administrative remedies;
- Has been convicted of a felony under the laws of any state or the United States;
- Has been convicted of any violation under ch. 817, F.S., related to fraudulent practices, or under a substantially similar law of another jurisdiction;
- Knowingly submitted false information in the application for the license;
- Is a member or employee of the commission;
- Was licensed to own or operate gaming or pari-mutuel facilities in this state or another jurisdiction and that license was revoked; or
- Fails to meet any other criteria for licensure set forth in the Resort Act.

In this context, the "conviction" includes an adjudication of guilt on a plea of guilty or *nolo contendere* or the forfeiture of a bond when charged with a crime.

**Section 17:** SB 2050 specifies the information that must be included in the application. The application must be sworn. Key required information includes:

- A description of the proposed resort, including a description of the anticipated economic benefit to the community, number of employees, a projection of attendance at the resort, a projection of gross receipts, and other information;
- The time-frame for completing the resort;
- A plan for training Floridians for jobs at the resort;
- Identifying information about the applicant and all qualifiers, except those persons who specifically do not have to be identified, such as anyone with less than 5 percent interest in the resort project;
- Identification of elected officials, their spouses, and their children who, directly or indirectly, have any type of financial relationship with the applicant; and
- Fingerprints of the applicant, officers, qualifiers, and any person who will be responsible for operational controls.

The commission, however, is the sole arbiter on what information should be included in the application. It also may order criminal history checks based on the fingerprint data received with the application.

The applicant has a responsibility to file a supplemental report to the application if there is any material change in any circumstance relevant to the commission's review of the proposal.

Each application must be submitted along with a $1 million non-refundable application fee to defray the commission's costs of reviewing it. Additionally, a one-time licensing fee of $50 million must be submitted along with the application, but this fee is refundable to the applicant within 30 days if the commission denies the application. If the applicant withdraws, the commission only has to refund 80 percent of the licensing fee, also within 30 days.

**Section 18:** An incomplete application is grounds for denial of an application, under SB 2050. 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. If the executive director still finds the application incomplete, the applicant may appeal to the commission – at which point, the issuance of licenses is stayed until the commission rules on the appeal.

**Section 19:** Provides a limited application process for institutional investors, generally defined as pension funds, public retirement funds, insurance companies, financial institutions, or trusts 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 also must 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 be treated as a qualifier if it finds that such investor is in a position to exercise a substantial impact upon the controlling interests of a licensee.

**Section 20:** The bill also exempts lenders and underwriters as qualifiers, meaning they are not required to be licensed.

**Section 21:** SB 2050 establishes several conditions for obtaining a new or renewed resort license. The key conditions require that the licensee:

- Comply with the Resort Act and rules of the commission;
- Allow the commission and FDLE 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 plans and timeframe 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 FDLE;
- Ensure that each game, machine, or device is protected from tampering or manipulation;
- Submit and comply at all times with a detailed security plan;
- 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 resort must keep and maintain permanent daily records of its gaming operations for not less than 5 years.

**Section 22:** Each destination resort licensee is required to maintain a surety bond, at its own cost and expense. The penal sum[35] of the bond is 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.

**Section 23:** Limited gaming may be conducted at a licensed resort, but only within a designated area 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, and may set the amount of wagers. The facility may not accept wagers using money, except for slot machine gaming. Further, the gaming facility may be open 24 hours per day, 365 days per year.

**Section 24:** On each anniversary date of receipt of its resort license, the licensee must pay the commission a $2 million license fee. The license fee shall be deposited in the Destination Resort Trust Fund to be used by the commission and FDLE for investigations, regulation of resorts, and enforcement.

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.

The gross receipts tax rate is calculated this way:

- If the total infrastructure investment is $2.5 billion or more, the gross receipts tax rate is 10 percent;
- If the total infrastructure investment is at least $1 billion but less than $2.5 billion, the gross receipts tax is 15 percent; and
- If the total infrastructure investment is less than $1 billion, the gross receipts tax is 20 percent.

Proceeds of the gross receipts tax will be deposited in the Destination Resort Trust Fund and shall be used to fund the commission's operating costs, pursuant to legislative appropriation.

On June 30 of each year, all unappropriated revenues in excess of $5 million must be deposited as follows:

- 95 percent of the money in the fund is deposited to the General Revenue Fund;
- 2.5 percent is deposited in the Tourism Promotional Trust Fund for use by the Florida Commission on Tourism;
- 1.25 percent is deposited into the Employment Security Administration Trust Fund for use by the school readiness program; and
- 1.25 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.

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

**Section 25:** SB 2050 requires that FDLE implement the fingerprint requirements, and shall submit the results to the commission. The costs of the fingerprinting and background check shall be borne by the applicant.

Additionally, all the fingerprints must be entered into the statewide database, as authorized in s. 943.05(2)(b), F.S., and available for all specified purposes. The fingerprints also may be forwarded to the FBI.

Any applicant who is fingerprinted and who has been convicted or pleaded guilty or nolo contendere to a disqualifying offense must notify the commission within 48 hours.

**Section 26:** 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.

**Section 27:** 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.

All applicants for suppliers' licenses must submit to background investigations and comply with the fingerprint requirements in the act.

The bill authorizes the commission to revoke a license for a violation of the act and commission rules.

**Section 28:** 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.

All applicants for 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. A person who has committed a felony or crime involving dishonesty or moral turpitude in any jurisdiction is not eligible for an occupational license.

**Section 29:** The commission's executive director may grant temporary suppliers and occupational licenses, under certain conditions. The temporary license expires after 90 days.

**Section 30:** SB 2050 requires the commission 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.

**Section 31:** 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 the matter to be heard before the full commission; the full commission must convene within 15 days to hear the matter.

**Section 32:** 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 at least $500.

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 his or her right to file a complaint constitutes grounds for disciplinary action against the resort licensee.

**Section 33:** SB 2050 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 also 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.

However, SB 2050 also allows patrons to establish an account by a cash deposit, recognized traveler's check, or any other credit instrument that is equivalent to cash.

The bill also establishes that a patron's mental disorder is not a defense against paying the debt; nor does the failure of a resort to comply with all of the requirements of this section erase the debt.

The commission is authorized to adopt rules to address the credit instrument issues.

**Section 34:** SB 2050 provides that a person may request to be excluded from 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.

**Section 35:** Amends s. 849.15, F.S., to reference the Destination Resort Act.

**Section 36:** Amends s. 849.231, F.S., to exempt the limited gaming at destination resorts from the statutory prohibition against possession of gambling devices in Florida.

**Section 37:** Amends s. 849.25, F.S., to correct cross-references and to exempt the limited gaming at destination resorts from the statutory prohibition against bookmaking.

**Section 38:** Specifies 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.

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

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

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 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.

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 $2 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 $2.5 billion or more, the gross receipts tax rate is 10 percent. If the total infrastructure investment is at least $1 billion but less than $2.5 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 2050.

However, the casino industry estimates that implementation of a similar bill filed this session may:

- Generate total non-gaming revenue for the first year of $85.4 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).

- 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.

B. Private Sector Impact:

The industry estimates that five resorts, if authorized by the commission, would create 140,000 construction jobs and would generate $10 billion 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:

Sections 35-37 of the bill refer to the "sections 3 through 35" of the Destination Resort Act in their cross-references. Actually, only sections 3 through 34 are part of the Destination Resort Act. It is also unusual to refer in substantive law to the unnumbered sections of a particular act, because the numbering could change as the bill travels through the committee and floor process. Perhaps the cross-references should refer simply to the "Destination Resort Act."

Also, it is typical in statutes for appointed commissioners to be term-limited. SB 2050 does not limit the Destination Resort commissioners to a specific number of terms.

## 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-sharing 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.

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.



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