

SB 132 by Thrasher; (Identical to H 0077) Trespassing

944228	A	S	FAV	CA, Thrasher	Delete L.57 - 61:	10/19 02:26 PM
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SB 156 by Latvala; (Similar to H 0133) Assessment of Residential and Nonhomestead Real Property

790938	A	S	RCS	CA, Norman	Delete L.36 - 58.	10/19 02:26 PM
673992	A	S	RCS	CA, Norman	btw L.378 - 379:	10/19 02:26 PM

SB 188 by Flores; (Identical to H 4003) Growth Policy

SB 192 by Bennett; (Similar to CS/CS/CS/H 0107) Special Districts

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Wednesday, October 19, 2011
TIME: 9:00 —11:00 a.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Richter, Ring, Storms, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 132 Thrasher (Identical H 77)	Trespassing; Authorizing the use of purple paint marks to identify a "no trespassing" area; providing requirements for marks; requiring specified signage, etc. CA 10/19/2011 Fav/1 Amendment CJ BC	Fav/1 Amendment (944228) Yeas 6 Nays 0
2	SB 156 Latvala (Similar H 133)	Assessment of Residential and Nonhomestead Real Property; Limiting a review of changes to the assessed or taxable value of real property resulting from certain informal conferences to a review by the Department of Revenue; excluding the value of certain improvements from the assessed value of residential real property; specifying a limitation on the assessed value of residential real property; providing for application of the assessment limitations; requiring a nonrefundable filing fee for a petition to the value adjustment board; specifying additional exceptions to the assessment of homestead property at just value; specifying additional exceptions to assessment of nonhomestead property at just value; providing for the continuity and apportionment of assessment limitations on combined and divided parcels, etc. CA 10/19/2011 Fav/CS CU BC	Fav/CS Yeas 6 Nays 0
3	SB 188 Flores (Identical H 4003)	Growth Policy; Repealing provisions relating to the Urban Infill and Redevelopment Assistance Grant Program, to terminate the program, etc. CA 10/19/2011 Favorable EP BC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Wednesday, October 19, 2011, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 192 Bennett (Similar H 107)	Special Districts; Revising provisions relating to merger and dissolution procedures for special districts; requiring the merger or dissolution of dependent special districts created by a special act to be effectuated by the Legislature; providing for the merger or dissolution of inactive special districts by special act without referenda; requiring involuntary dissolution procedures for independent special districts to include referenda; providing for the merger of certain independent special districts by the Legislature; providing procedures and requirements for the voluntary merger of contiguous independent special districts; revising criteria by which special districts are declared inactive by a governing body, etc.	Favorable Yeas 6 Nays 0
		CA 10/19/2011 Favorable BC	

Other Related Meeting Documents

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 Community Affairs Committee

BILL: SB 132

INTRODUCER: Senator Thrasher

SUBJECT: Trespassing

DATE: October 13, 2011 REVISED: 10/19/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/1 amendment
2.			CJ	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill authorizes the use of purple paint marks on trees, coupled with no trespassing signs at the entrance to the property, to indicate “posted lands” where trespassing would be prohibited.

This bill substantially amends s. 810.011 of the Florida Statutes.

II. Present Situation:

In most cases, trespassing on land is a misdemeanor, but in special cases it can be a felony.¹ Unauthorized entry onto posted land is, on its face, enough to convict someone of illegal trespassing.² Currently, the definition of posted land is land upon which:

- Signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than 2 inches in height, the words “no trespassing” and in addition thereto the name of the owner, lessee, or occupant of the land; or

¹ Section 810.08, 810.09, F.S.

² Section 810.12, F.S.

- Conspicuous no trespassing notice is painted on trees or posts on the property, provided that the notice is:
 - Painted in an international orange color and displaying the stenciled words “No Trespassing” in letters no less than 2 inches high and 1 inch wide either vertically or horizontally;
 - Placed so that the bottom of the painted notice is not less than 3 feet from the ground or more than 5 feet from the ground; and
 - Placed at locations that are readily visible to any person approaching the property and no more than 500 feet apart on agricultural land.

Painted notices must now be accompanied by signs and placed conspicuously at all places where entry to the property is normally expected or known to occur. Additionally, the signs must comply with the sign requirements of s. 810.011(5)(a)1., F.S., which include:

- Signs must be placed not more than 500 ft apart and at each corner of the boundaries of the land;
- “No trespassing” must appear in 2 inch letters; and
- Signs must be placed in positions as to be clearly noticeable from outside the boundary line.

It is not necessary to give notice by posting on any enclosed land or place not exceeding 5 acres in area on which there is a dwelling house in order to obtain the benefits of ss. 810.09 and 810.12, F.S., pertaining to trespass on enclosed lands.

Texas,³ Missouri,⁴ and recently Illinois⁵ use purple paint to designate a no trespassing area.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 810.011, F.S., to allow purple paint marks on trees and posts to designate “posted land” where trespassing is prohibited. The section sets out the technical requirements for the purple paint, including the requirement that the marks be no more than 100 feet apart. When a landowner uses purple paint marks to identify a no trespassing area, the marks must be accompanied by no trespassing signs at the entrance to the property. The signs must comply with the sign requirements of s. 810.011(5)(a)1., F.S., which include:

- Signs must be placed not more than 500 ft apart and at each corner of the boundaries of the land;
- “No trespassing” must appear in 2 inch letters; and
- Signs must be placed in positions as to be clearly noticeable from outside the boundary line.

Sections 2 and 3 reenact provisions of law directly relating to the definition of “posted land.”

Section 4 provides an effective date of July 1, 2012.

³ Title 7, s. 30.05, Texas Penal Code.

⁴ Section 569.145, Missouri Statutes.

⁵ Illinois Senate Bill 1914 (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:

Allowing purple paint marks to indicate a no trespassing area may save property owners money because it is likely to be less costly than signs or orange painted notices stenciled with no trespassing.

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:

Barcode 944228 by Community Affairs on October 19, 2011:

Clarifies language and deletes the requirement that the signs must comply with the sign requirements of s. 810.011(5)(a)1., F.S., which includes:

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- Signs must be placed not more than 500 feet apart and at each corner of the boundaries of the land;
 - “No trespassing” must appear in 2 inch letters; and
 - Signs must be placed in positions as to be clearly noticeable from outside the boundary line.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.



944228

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
10/19/2011	.	
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	.	
	.	

The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment

Delete lines 57 - 61
and insert:

b. When a landowner uses purple paint marks to identify a "no trespassing" area, those marks shall be accompanied by signs placed conspicuously at all places where entry to the property is normally expected or known to occur. Such signs must include the name of the owner, lessee, or occupant of the land. Additionally, the words "no trespassing" must appear prominently on such signs in letters of not less than 2 inches in height.

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10-19-11

Date

SB 132

Bill Number

Barcode

Name Rick Beseler, Sheriff

Phone 904-213-6001

Address CLAY COUNTY Sheriff

E-mail

Street

GREEN COVE SPRINGS FL 32043

Job Title

City

State

Zip

Speaking: [X] For [] Against [] Information

Appearing at request of Chair []

Subject TRESPASSING

Representing FLORIDA SHERIFFS ASSOC

Lobbyist registered with Legislature: [] Yes [X] No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

19 OCT 2011
Date

SB 132
Bill Number

Barcode

Name PAUL JESS

Phone 224-9403

Address 218 S MONROE ST

E-mail

TALLAHASSEE FL 32301
City State Zip

Job Title

Speaking: For Against Information

Appearing at request of Chair

Subject PURPLE PAINT

Representing FLORIDA JUSTICE ASSOCIATION

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

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 Community Affairs Committee

BILL: CS/SB 156

INTRODUCER: Community Affairs Committee and Senator Latvala

SUBJECT: Assessment of Residential and Nonhomestead Real Property

DATE: September 16, 2011 **REVISED:** 10/19/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.			CU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

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

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

The amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such a device is installed and operated.

¹ FLA. CONST. art. VII, s. 4.

This committee substitute (CS) implements the 2008 Constitutional Amendment. Specifically, the CS defines “changes or improvements made for the purpose of improving a property’s resistance to wind damage” and “renewable energy source devices.” The CS provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider the just value of changes or improvements made for the purpose of improving a property’s resistance to wind damage or the installation and operation of a renewable energy source device. The CS specifies that these provisions apply to both new and existing construction used for residential purposes.

The CS also clarifies the meaning of “placed on the tax roll” and “combining and dividing parcels” as they relate to the 10 percent limitation on assessed value of nonhomestead property resulting from a reassessment.

This CS may require a two-thirds vote of the membership of each house of the Legislature for passage.

The CS substantially amends the following sections of the Florida Statutes: 193.155, 193.1554, 193.1555, 196.012, 196.121, and 196.1995.

This CS creates section 193.624, F.S., and repeals section 196.175, F.S.

II. Present Situation:

Property Tax Assessments

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm’s length transaction.² Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property’s just valuation.³

Exceptions to the just valuation requirement exist for agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes. Each of these property categories may be assessed solely on the basis of their character or use.⁴ Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.⁵ The State Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.⁶

² See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ See s. 193.011(5), F.S.

⁴ FLA. CONST. art. VII, s. 4.

⁵ Section 196.185, F.S.

⁶ See FLA. CONST. art. VII, s. 4(d) and (g) (stating that the assessed value of homestead property may not increase over the prior year’s assessment more than 3 percent or the percentage change in the Consumer Price Index, and levies for non-school tax purposes, the assessment of residential real property and non-residential real property may not increase more than 10 percent over the prior year.).

Article VII, sections 3 and 6 of the Florida Constitution permit a number of ad valorem tax exemptions. These include exemptions for homesteads and for charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the property's taxable value.

Review of Late-Filed Property Exemption Applications

Section 196.011(1), F.S., requires every person or organization with legal title to real or personal property entitled to an exemption from taxation to file an application for the exemption with the county property appraiser on or before March 1 of each year.⁷ Any applicant who is qualified to receive a property tax exemption and who fails to file an application by March 1 must file an application with the county property appraiser no later than 25 days after the property appraiser mails the Truth in Millage (TRIM) notice. The applicant must show that she or he was unable to timely apply for the exemption due to extenuating circumstances, at which point the property appraiser has the discretion to grant the exemption.⁸

If the applicant is unable to show extenuating circumstances for his or her untimely application, as judged by the property appraiser, s. 196.011(8), F.S., allows the applicant to file a petition with the Value Adjustment Board (VAB), requesting that the exemption be granted. The petition must be filed no later than 25 days after the property appraiser mails the Truth in Millage notice, and the applicant must pay a nonrefundable \$15 fee upon filing the petition. If the VAB determines that the person is qualified to receive the exemption, and demonstrates extenuating circumstances to warrant granting the petition, then the VAB may grant the property tax exemption for the current year.⁹

Assessment of Nonhomestead Residential and certain Residential and Nonresidential Property

Florida Amendment One, passed by Florida voters in 2008, amended the Save Our Homes property tax cap by, among other things, creating a 10 percent annual cap on nonhomestead property.¹⁰ The assessment of nonhomestead residential property and certain residential and nonresidential property is addressed in sections 193.1554 and 193.1555, F.S., respectively. These sections include provisions for placing property on the tax roll and how combining and dividing a parcel affects just value assessments.

Placed on the Tax Roll

Subsections 193.1554 (2) and (3), F.S., govern nonhomestead residential property placement on tax rolls, requirements for annual reassessments and limits on the amounts that assessed values may increase as a result of reassessments.

- (2) For all levies other than school district levies, nonhomestead residential property shall be assessed at just value as of January 1, 2008. Property placed on the tax roll after

⁷ Section 196.011(1), F.S.

⁸ Section 196.011(8), F.S.

⁹ *Id.*

¹⁰ See FLA. CONST. art. VII, s. 4(d) and (g).

January 1, 2008, shall be assessed at just value as of January 1 of the year in which the property is placed on the tax roll.

(3) Beginning in 2009, or the year following the year the property is placed on the tax roll, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.¹¹

Subsections 193.1555(2) and (3), F.S., apply these same nonhomestead residential parameters to certain residential and nonresidential real property.

The Department of Revenue (DOR) has interpreted “placed on the tax roll” as meaning “became eligible for the 10 percent assessment increase limitation.”¹² In December 2010, the Ninth Judicial Circuit Court in Orange County decided a case where, as of January 1, 2008, a property owner owned and resided in a property as their homestead.¹³ During 2008, the property owner vacated the property, yet retained ownership of it. As of January 1, 2009, the Orange County Property Appraiser reclassified the property as nonhomestead residential and reassessed the property at full market value. The court found that the 10 percent assessment cap on nonhomestead property applied in this instance to the *previous assessment without a reassessment* at just value.

Combining or Dividing Parcels

Subsection 193.1554(7) governs how nonhomestead residential property is assessed when parcels are merged or split.

(7) Any increase in the value of property assessed under this section which is attributable to combining or dividing parcels shall be assessed at just value, and the just value shall be apportioned among the parcels created.¹⁴

Subsection 193.1555(7) applies the same nonhomestead residential consideration to certain residential and nonresidential real property.

Based on the language in s. 193.1554(7), F.S. and s. 193.1555(7), F.S., the DOR has held that parcels created by combining and dividing parcels do not lose their eligibility for the 10 percent assessment increase limitation.¹⁵

¹¹ Section 193.1554(2) and (3), F.S.

¹² Department of Revenue, *Senate Bill 156 Bill Analysis* (Sep. 20, 2011) (on file with the Senate Committee on Community Affairs).

¹³ *Sommers & Sommers v. Orange County Prop. Appraiser & Orange County Tax Collector*, Case No. 2010-CA-012489-O (Fla. 9th Jud. Cir. 2010) *pending appeal*, Case No. 5D11-240 (Fla. 5th DCA).

¹⁴ Section 193.1554(7), F.S.

¹⁵ Department of Revenue, *Senate Bill 156 Bill Analysis* (Sep. 20, 2011) (on file with the Senate Committee on Community Affairs).

Early Efforts at Renewable Energy Source Incentives

Property tax incentives for renewable energy in Florida date back over 30 years. In 1980, Florida voters added the following ad valorem tax exemption authorization to article VII, section 3(d) of the Florida Constitution:

By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, for the period of time fixed by general law not to exceed ten years.¹⁶

During that same year, the Legislature enacted s. 196.175, F.S. to implement the constitutional amendment.¹⁷ The legislation limited the ad valorem exemption to the lesser of:

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

The statute granting the exemption mirrored the 10-year time limit in the constitution. Specifically, the exemption period authorized was from January 1, 1980, through December 31, 1990. Therefore, any exemptions granted in December 1990 became, 10 years later in December 2000, the last exemptions to expire. At this point, the statute was rendered inoperative and article VII, section 3(d) of the Florida Constitution unimplemented.

2008: Legislative Action and Constitutional Amendment 3

On April 30, 2008, the Legislature enacted ch. 2008-227, Laws of Florida, (HB 7135) to remove the expiration date of the property tax exemption for renewable energy source devices. This allowed property owners to again apply for the exemption effective January 1, 2009, and once more bounded it by a 10-year life span. The bill also revised the means for calculating the exemption limit. The exemption was longer capped at 8 percent of assessed value. Instead it was limited to the original cost of the renewable energy device, including the installation cost, but excluding the cost of replacing previously existing property.¹⁸

In November 2008, Florida voters approved the following constitutional amendment placed on the ballot by the Florida Tax and Budget Reform Commission (TBRC):

¹⁶ FLA. CONST. art. VII, s. 3.

¹⁷ Section 196.175, F.S.

¹⁸ Section 196.175, F.S.

- (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:
- (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
 - (2) The installation of a renewable energy source device.¹⁹

The amendment was permissive and therefore did not require the Legislature to enact implementing legislation. The 2008 amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such a device is installed and operated. Although the constitutional provisions granting the ad valorem tax exemptions were repealed in 2008, the implementing language is still part of the Florida Statutes.²⁰

Since then, bills have been introduced to implement the renewable energy source device changes made to the constitution; however, no legislation has passed.²¹ Currently, there are no statutory provisions in place to execute the constitutional provisions passed by Florida voters in 2008.

Wind Resistance Incentives

Florida Statutes currently do not provide property tax incentives for changes or improvements that seek to improve a structure's ability to withstand wind damage, as permitted by the 2008 Constitutional Amendment.²² Legislation was filed during the 2009, 2010 and 2011 Regular Sessions to implement the changes made to the constitution in 2008 with respect to improvements in a property's resistance to wind damage; however, no legislation was passed.²³

Hurricane Mitigation Discounts and Premium Credits

Section 627.0629(1), F.S., requires insurers to provide premium credits or discounts "to consumers who install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses." To facilitate insurer compliance with the windstorm mitigation discounts required by statute, the Department of Community Affairs (now the Department of Economic Opportunity), in cooperation with the Department of Insurance, contracted with Applied Research Associates, Inc., for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, titled *Development of Loss Relativities for Wind Resistive Features of Residential Structures*, was completed in 2002. The study's mathematical results, termed "wind loss relativities," were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property.²⁴

¹⁹ FLA. CONST. art. VII, s. 4.

²⁰ In 2010, the Florida House of Representatives filed HB 7005 repealing the obsolete language in ss. 196.175 and 196.12(14), F.S. This legislation passed the House on March 10, 2010, but died in messages.

²¹ During the 2009 Regular Session, SB 2454 and HB 7113 were filed; in 2010, SB 1164, HB 151, SB 1410, and SPB 7020; in 2011 SB 434, SB 732 and HB 531. CS/CS/HB 531 passed the House but died in messages.

²² FLA. CONST. art. VII, s. 4(i)(1).

²³ During the 2009 Regular Session, SB 2454 and HB 7113 were filed; in 2010, SB 1164, HB 151, SB 1380, and SPB 7022; in 2011 SB 434, SB 732 and HB 531. CS/CS/HB 531 passed the House but died in messages.

²⁴ The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.²⁵ In 2006, the Legislature amended s. 627.0629(1)(a), F.S., to require the Office of Insurance Regulation (OIR) to reevaluate the mitigation discounts and require insurers to give full actuarial value for them.²⁶ Thereafter, the OIR amended the mitigation discount administrative rule to require insurers to provide mitigation discounts in an amount equal to 100 percent of the mitigation discount amount as determined by the loss relativities in the 2002 study done by Applied Research Associates, Inc.²⁷ In 2008, the OIR obtained a new study evaluating the appropriate mitigation discount amounts; however, the OIR has not changed the mitigation discount amounts or mitigation discount administrative rule due to the results of the 2008 study.

Policyholders are typically responsible for substantiating the existence of loss mitigation features that qualify for a mitigation discount to their insurers. In 2007, the Financial Services Commission adopted a uniform mitigation verification form to be used by all insurers to corroborate a property's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010. The mitigation verification form must be signed by one of the following:

- a hurricane mitigation inspector certified by the My Safe Florida Home Program;
- a building code inspector;
- a general, building, or residential contractor;
- a professional engineer meeting specified criteria;
- a professional architect; or
- any other individual or entity acceptable to the insurance company.

A form that is certified by the Department of Financial Services must also be accepted by the insurer.

2009 Senate Interim Report

In 2009, the Senate Committee on Finance and Tax issued an interim report evaluating the 2008 Constitutional Amendment.²⁸ The report reviewed proposed legislation that was filed during the 2009 Regular Session to implement the constitutional amendment. It also discussed property tax

²⁵ In an Informational Memorandum, issued on January 23, 2003, the Office of Insurance notified insurance companies of its suggested mitigation credits for new and existing construction based on its analysis of a 2002 study completed by Applied Research Associates. However, the OIR tempered the mitigation credits derived from the study by 50 percent. As stated by the OIR in the memorandum, the 50 percent tempering of the credits was due to the large rate decreases that could result from application of the credits, the approximations needed to produce practical results, and the potential for differences in results using different hurricane models. The OIR cautioned in the memorandum that the tempering implemented would be curtailed in the future.

²⁶ Section 14, Chapter 2006-12, L.O.F.

²⁷ The rule allowed insurance companies to modify the mitigation discounts if the insurer provided detailed alternate studies supporting the modification and allowed the OIR to review all assumptions used in the studies supporting the modification. To date, no insurer has used an alternate wind mitigation discount study to set mitigation discounts.

²⁸ Comm. on Finance and Tax, The Florida Senate, *Assessment of Renewable Energy Devices and Improvements That Increase Resistance to Wind Damage – Implementation of Constitutional Amendment Approved in November 2008*, (Interim Report 2010-116) (Oct. 2009).

incentives that are provided in other states for installing renewable energy equipment or improving disaster resistance.²⁹

According to the interim report, the following states have enacted property tax incentives for renewable energy equipment³⁰:

- California does not include construction or addition of an active solar energy system as new construction (through 2015-16);
- Colorado has a local option sales or property tax credit or rebate for a residential or commercial property owner who installs a renewable energy fixture on his or her property;
- Connecticut municipalities may exempt the value added by a solar heating or cooling system for 15 years after construction or the value of a renewable energy source installed for electricity for private residential use or the addition of a passive solar hybrid system to a new or existing building;
- Illinois provides for special valuation for realty improvements equipped with solar energy heating or cooling systems;
- Louisiana exempts equipment attached to any owner-occupied residential building or swimming pool as part of a solar energy system;
- Maryland exempts solar energy property, defined as equipment installed to use solar energy to heat or cool a structure, generate electricity, or provide hot water for use in the structure;
- Massachusetts provides a 20-year exemption for solar or wind-powered devices used to heat or supply energy for taxable property;
- Minnesota exempts solar panels used to produce or store electricity;
- Nevada exempts the value added by a solar energy system or facility for production of electricity from recycled material or wind or geothermal devices;
- New Hampshire municipalities may exempt, with voter approval, realty with wind, solar, or wood-heating energy systems;
- New York provides a 15-year exemption for realty containing solar or wind energy systems constructed before January 1, 2011, but only to the extent of any increase in value due to the system;
- North Carolina exempts up to 80 percent of the appraised value of a solar energy electric system. Buildings equipped with solar heating or cooling systems are assessed as if they had conventional systems;
- North Dakota exempts solar, wind, and geothermal energy systems in locally assessed property;
- South Dakota provides property tax credits for a commercial or residential property owner who attaches or includes a renewable energy resource system, valued at no less than the cost of the system for residential property and 50 percent of the cost for commercial property. The credit applies for 6 years, decreasing in value for the last 3 years, and it may not be transferred to a new owner;

²⁹ *Id. citing State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

³⁰ This list does not include incentives for public utilities.

- Texas exempts the value of assessed property arising from the construction or installation of any solar or wind-powered energy device on the property primarily for onsite use;
- Virginia allows a local option exemption or partial exemption for solar energy equipment; and
- Wisconsin exempts solar and wind energy systems.³¹

Although the interim report noted that tax incentives for improvements relating to disaster preparedness are less common, the report articulated that the following states have enacted property tax incentives for improvements dealing with disaster preparedness:

- California does not consider the construction or installation of seismic retrofitting improvements or earthquake hazard mitigation technology in existing buildings as new construction, contingent upon the property owner filing required documents; California also provides that improvement or installation of a fire sprinkler system may not trigger a property tax increase;
- Oklahoma exempts a qualified storm shelter (tornado protection) that is installed or added as an improvement to real property; and
- Washington exempts the increase in value attributable to the installation of automatic sprinkler systems in nightclubs installed by December 31, 2009.³²

III. Effect of Proposed Changes:

Section 1 creates s. 193.624, F.S., to provide that, when determining the assessed value of real property used for residential purposes for both new and existing construction, the property appraiser may not consider the just value of the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which may include any of the following:
 - Improving the strength of the roof-deck attachment;
 - Creating a secondary water barrier to prevent water intrusion;
 - Installing wind-resistant shingles;
 - Installing gable-end bracing;
 - Reinforcing roof-to-wall connections;
 - Installing storm shutters; or
 - Installing opening protections.
- The installation and operation of a renewable energy source device, which means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy or energy derived from geothermal deposits:
 - Solar energy collectors, photovoltaic modules, and inverters;
 - Storage tanks and other storage systems, excluding swimming pools used as storage tanks;
 - Rockbeds;

³¹ Comm. on Finance and Tax, *supra* note 21, at 4.

³² *Id.*

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

The section provides that a parcel of residential property may not be assessed pursuant to this section unless an application is filed on or before March 1 of the first year the property owner claims the assessment reduction for renewable energy source devices or changes or improvements made for the purpose of improving the property's resistance to wind damage.

The section allows the property appraiser to require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish the just value of the renewable energy source devices, or changes or improvements made for the purpose of improving the property's resistance to wind damage.

Consistent with current law, the section provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the TRIM notice. If the property appraiser denies the exemption, the applicant may file a petition with the VAB, pursuant to s. 194.011(3), F.S. Upon filing the petition, the applicant must pay a non-refundable fee of \$15.00. Upon reviewing the petition, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances judged by the property appraiser or the VAB to warrant granting assessment under this section, the property appraiser shall calculate the assessment in accordance with the new section created by this CS (s. 193.624, F.S.).

Section 2 amends cross-references in s. 193.155, F.S., relating to homestead assessments to incorporate changes made within the CS.

Section 3 amends s. 193.1554, F.S., to define "placed on the tax roll" as the year any property, as of January 1, becomes eligible for assessment under this section and either becomes a nonhomestead property or a property that has been combined or divided.

The section also provides that any property that is combined or divided after January 1 and included as a combined or divided parcel on the tax notice shall receive any current assessment limitation on the newly combined parcel or parcels or have any current assessment limitation apportioned among the newly created parcel or parcels, and the property may not be considered

combined or divided for purposes of this section until the following January 1, when the parcel or parcels shall be considered placed on the tax roll as a combined or divided parcel or parcels.

The section deletes language which states that an increase in the value of property which is attributable to combining or dividing parcels shall be assessed at just value and amends cross references to incorporate changes made within the CS.

Section 4 amends s. 193.1555, F.S., in the same manner as **Section 3** amends s. 193.1554, F.S.

Section 5 amends s. 196.012, F.S., to delete the existing definition for renewable energy source devices provided in subsection (14).

Section 6 amends cross-references in s. 196.121, F.S., relating to homestead exemption forms to incorporate changes made within the CS.

Section 7 amends cross-references in s. 196.1995, F.S., relating to economic development ad valorem tax exemptions to incorporate changes made within the CS.

Section 8 repeals the obsolete provisions in s. 196.175, F.S., which implemented the constitutional tax exemption for renewable energy source devices that was removed from the Florida Constitution by the voters in 2008.

Section 9 provides that this act shall take effect on July 1, 2012, and shall apply to assessments beginning January 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. By reducing the tax base upon which counties and municipalities raise ad valorem revenue, this CS reduces their revenue-raising authority and may require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

B. Private Sector Impact:

This CS may provide incentives for residential property owners and home builders to add renewable energy source devices to their property or make changes and improvements to increase the property's wind resistance, since such devices and improvements will not increase the assessed value of the property.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) has not yet determined the fiscal impact of this CS though it is scheduled to do so. For similar legislation filed in 2011 (CS/SB 434, HB 531), the REC estimated that renewable energy devices and wind damage improvements would reduce total local revenue by \$4.1 million in FY 2012-13 with the school impact representing \$1.7 million of that figure. The estimate for recurring local revenue reduction totaled \$11.6 million with a school impact of \$4.8 million.³³

Property appraisers may incur additional costs relating to implementing the provisions of this CS.

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.)

CS by Community Affairs on October 19, 2011:

- Deletes language limiting a review of changes to the assessed or taxable value of real property resulting from informal conferences to a review by the DOR.
- Provides a technical amendment to include a conforming cross reference.

³³ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference for 2011 Regular Session – Wind Damage Improvements; Renewable Energy Source Devices* (March 4, 2011) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2011/pdf/page104-107.pdf> last visited October 13, 2011).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



790938

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/19/2011	.	
	.	
	.	
	.	

The Committee on Community Affairs (Norman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 36 - 58.

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

And the title is amended as follows:

Delete lines 3 - 7

and insert:

nonhomestead real property; creating s. 193.624, F.S.;

providing



673992

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/19/2011	.	
	.	
	.	
	.	

The Committee on Community Affairs (Norman) recommended the following:

Senate Amendment (with directory amendment)

Between lines 378 and 379
insert:

(11) An ordinance granting an exemption under this section shall be adopted in the same manner as any other ordinance of the county or municipality and shall include the following:

(a) The name and address of the new business or expansion of an existing business to which the exemption is granted;

(b) The total amount of revenue available to the county or municipality from ad valorem tax sources for the current fiscal year, the total amount of revenue lost to the county or



673992

13 municipality for the current fiscal year by virtue of economic
14 development ad valorem tax exemptions currently in effect, and
15 the estimated revenue loss to the county or municipality for the
16 current fiscal year attributable to the exemption of the
17 business named in the ordinance;

18 (c) The period of time for which the exemption will remain
19 in effect and the expiration date of the exemption, which may be
20 any period of time up to 10 years; and

21 (d) A finding that the business named in the ordinance
22 meets the requirements of s. 196.012 (14) ~~(15)~~ or (15) ~~(16)~~.

23

24

25 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

26 And the directory clause is amended as follows:

27 Delete lines 323 - 324

28 and insert:

29 Section 8. Subsections (6) and (8), paragraph (d) of
30 subsection (9), and subsection (11) of section 196.1995, Florida
31 Statutes, are
32



SENATOR JACK LATVALA
16th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Environmental Preservation and Conservation
Governmental Oversight and Accountability
Health Regulation
Reapportionment

JOINT COMMITTEE:
Public Counsel Oversight, *Alternating Chair*

September 12, 2011

The Honorable Mike Bennett
Senate Community Affairs Committee
404 S. Monroe St., 315 Knott Building
Tallahassee, FL 32399-1100

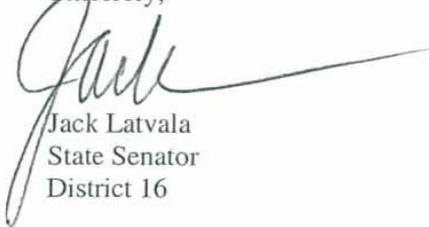
Dear Chairman Bennett:

I respectfully request that my bill, SB 156/Assessment of Residential Real Property, be placed on the agenda of the Senate Committee on Community Affairs at the earliest possible time.

This bill implements the 2008 Constitutional Amendment which prohibits the consideration of any improvement for making residential property resistant to wind damage or the installation of a renewable energy source device in assessing the value of real property. The bill also clarifies ambiguities in the law that were inadvertent and serves to resolve tax administration issues.

Please contact me if you have any questions. I appreciate your consideration.

Sincerely,



Jack Latvala
State Senator
District 16

JL:tc

CC: Tom Yeatman

REPLY TO:

- 12425 28th Street North, Suite 102, St. Petersburg, Florida 33716 (727) 556-6500
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5075

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

OCT 19, 11
Date

156
Bill Number

Barcode

Name DAVID CULLEN
Address 1674 UNIVERSITY PKWY #296
SARASOTA FL 34243
City State Zip

Phone 844-323-2404
E-mail cullemd5e@gsi.com
Job Title

Speaking: For Against Information Appearing at request of Chair

Subject ASSESSMENT OF PROPERTY

Representing SIERRA CLUB FLORIDA

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from .m. to .m.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver to Senator or Senate Professional Staff conducting the meeting)

10/19/2011
Meeting Date

156
Bill Number (if applicable)

Topic Assess of residential

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title TRUSTEE

Address 1119 NEWTON AVE SOUTH

Phone 727/897-9291

Street

Saint Petersburg

florida

33705

City

State

Zip

E-mail justice2jesus@yahoo.com

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

For officially noticed committee meetings, pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee:
Time: from _____ to _____

This form is part of the public record for this meeting.

S-001 (04/19/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/19/11
Date

SB 156

Bill Number

Barcode

Name Martha Cleaver

Phone 850 491-1944

Address 403 E Park Avenue

E-mail marthacleaver@fapa.net

Tallahassee, FL 32301
City State Zip

Job Title Exec. Director

Speaking: For Against Information

Appearing at request of Chair

Subject Assessment of Residential Real Property

Representing Florida Assoc. of Property Appraisers

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

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 Community Affairs Committee

BILL: SB 188

INTRODUCER: Senator Flores

SUBJECT: Growth Policy

DATE: October 6, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Favorable
2.	_____	_____	EP	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill eliminates the Urban Infill and Redevelopment Assistance Grant Program. This program was created by the Legislature in 1999 and has not been funded since fiscal year 2000-2001.

This bill repeals section 163.2523 of the Florida Statutes. This bill amends sections 163.065, 163.2511 and 163.2514 of the Florida Statutes to reflect the above-mentioned repeal.

II. Present Situation:

The Legislature passed the “Growth Policy Act”¹ in 1999, establishing a definition for urban infill and redevelopment areas (UIRAs), authorizing local governments to designate UIRAs and provide economic incentives for them, and setting standards for local governments to follow in designating them. The Act, currently found in ss. 163.2511-163.2523, F.S., has the goal of promoting and sustaining urban cores.²

Section 163.2523, F.S., establishes a grant program that includes three types of grants. The largest percentage, sixty percent, is allocated towards fifty-fifty matching grants for implanting urban infill and redevelopment projects. Thirty percent is allocated for planning grants to be used in the development of an urban infill and redevelopment plan. The remaining ten percent is to be used for grants to implement projects which require an expenditure of under \$50,000. The local

¹ Chapter 99-378, s. 1, Laws of Fla.

² Section 163.2511, F.S.

government which receives the grants is specifically allowed to allocate them to special districts and nonprofits.

The program has not been funded since fiscal year 2000-2001 when it was appropriated \$2.5 million which the Department of Community Affairs then awarded to 22 local governments.³

III. Effect of Proposed Changes:

Section 1 repeals s. 163.2523, F.S. This terminates the Urban Infill and Redevelopment Assistance Grant Program. The repeal of s. 163.2523, F.S., will not affect either the authority of local governments to designate UIRAs or use the economic incentives, such as revenue bonds and tax increment financing, currently available for local governments to use in implementing UIRA plans and projects.⁴

Section 2 amends s. 163.065, F.S., to reflect the repeal of s. 163.2523, F.S., by removing a reference to that statute.

Section 3 amends s. 163.2511, F.S., to reflect the repeal of s. 163.2523, F.S., by removing a reference to that statute.

Section 4 amends s. 163.2514, F.S., to reflect the repeal of s. 163.2523, F.S., by removing a reference to that statute.

Section 5 sets an effective date of July 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:

None.

³ Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Status Report: Urban Infill and Redevelopment Areas Have Uncertain Impact But Perceived as Useful*, Report No. 04-14, 1 (Feb. 2004), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0414rpt.pdf> (last visited Mar. 22, 2011).

⁴ Section 163.2520, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES

Majority Whip
38th District

October 10, 2011

The Honorable Michael S. Bennett
Chair of Committee on Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bennett:

Due to my excused absence during October committee weeks, I respectfully request that either Representative Jose Diaz or Maria Chamorro present Senate Bill 188 to the Committee on Community Affairs.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Anitere Flores

CC: Mr. Tom Yeatman, Staff Director, Committee on Community Affairs

REPLY TO:

- 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/19/2011
Date

188
Bill Number

Barcode

Name BRIAN PITTS

Phone 727/897-9291

Address 1119 Newton Ave S.
Street

E-mail

St. Petersburg FL 33705
City State Zip

Job Title Trustee

Speaking: [] For [x] Against [] Information

Appearing at request of Chair []

Subject

Representing Justice-2-Jesus

Lobbyist registered with Legislature: [] Yes [x] No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from .m. to .m.

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 Community Affairs Committee

BILL: SB 192

INTRODUCER: Senator Bennett

SUBJECT: Special Districts

DATE: October 4, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill allows two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to a special act. The bill allows merger proceedings to be initiated either by joint resolution of the governing bodies of each district or by 40 percent or more of the qualified electors in each district. The bill requires independent special districts to adopt a merger plan that outlines the specific components for the proposed merger which shall be subject to a public hearing and a voter referendum.

The bill states that this act shall preempt any special act to the contrary and does not apply to independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district.

The bill also repeals current statutory provisions addressing the merger of independent special fire control districts. In addition, it allows the Department of Economic Opportunity to declare a special district inactive if the district's governing body unanimously adopts a resolution declaring inactivity.

This bill substantially amends sections 189.4042, 191.014, and 189.4044 of the Florida Statutes.

II. Present Situation:

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.¹ Section 189.403(1), F.S., defines a “special district” as a confined local government unit established for a special purpose.² A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.³ A special district does not include:

- A school district,
- A community college district,
- A special improvement district (Seminole and Miccosukee Tribes under s. 285.17, F.S.),
- A municipal service taxing or benefit unit (MSTU/MSBU), or
- A political subdivision board of a municipality providing electrical service.⁴

Special districts have similar governing powers and restrictions as counties and municipalities.⁵ Like other forms of local government, special districts operate through a governing board and can “enter contracts, employ workers . . . issue debt, impose taxes, levy assessments and . . . charge fees for their services.”⁶ Special districts are held accountable to the public and are therefore subject to public sunshine laws and financial reporting requirements.⁷

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following characteristics:

- The membership of its governing body is identical to the governing body of a single county or municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district’s governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.⁸

Section 189.403(3), F.S., defines an independent special district as a district that does not meet the statutory classifications of a dependent special district.⁹ Independent special districts may

¹ Ch. 189, F.S., *see* s. 189.401, F.S.

² Section 189.403(1), F.S.

³ *Id.*

⁴ *Id.*

⁵ Mizany, Kimia and April Manatt, WHAT’S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).

⁶ *Id.* (alteration to original) (citation omitted).

⁷ Presentation by Jack Gaskins Jr., from the Division of Community Development in the Department of Economic Opportunity, SPECIAL DISTRICT BASICS PRESENTATION (October 4, 2011) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.

⁸ Section 189.403(2)(a)-(d), F.S.

⁹ Section 189.403(3), F.S.

encompass more than one county.¹⁰ The public policy behind special districts is to provide an alternative governing method to “manage, own, operate, construct and finance basic capital infrastructure, facilities and services.”¹¹

The Special District Information Program

The Special District Information Program (SDIP), administered by the Division of Community Development in the Department of Economic Opportunity (DEO or Department), is designed to collect, update, and share detailed information on Florida’s special districts with state and local agencies.¹² The Department also maintains an official master list of the individual functions and status of all the dependent and independent special districts throughout the state.¹³ As of October 2011, there were 1,633 special districts in the state of Florida: 627 dependent districts and 1,006 independent districts.¹⁴ Examples of special districts in Florida include but are not limited to water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.¹⁵

Current Merger and Dissolution Procedures

Section 189.4042, F.S., specifies the requirements for the merger or dissolution of a special district. Pursuant to this section, the merger or dissolution of a special district “created and operating pursuant to a special act may only be effectuated by the Legislature unless otherwise provided by general law.”¹⁶ Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act.

An independent special district that is created by a county or municipality can be merged or dissolved by the county or municipality that created the special district pursuant to the same procedures in which the special district was created. “However, for any independent special district that has ad valorem taxation powers, the same procedure required to grant such independent special district ad valorem taxation powers shall also be required to dissolve or merge the district.”¹⁷

An independent special district created by a county or municipality through a referendum that has been declared inactive, may be dissolved by the creating county or municipality after publishing notice pursuant to s. 189.4044, F.S.¹⁸

¹⁰ *Id.*

¹¹ Section 189.402(3)-(4), F.S.

¹² Florida Department of Economic Opportunity, *Special Districts Information Program* (available online at <http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-information-program.html>) (last visited on Oct. 13, 2011).

¹³ Sections 189.412(2) and 189.4035, F.S. See also Florida Department of Economic Opportunity, *Official List of Special Districts Online*, (available online at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/index.cfm>) (last visited on October 3, 2011).

¹⁴ Florida Department of Economic Opportunity, *Special Districts Information Program* (available online at <http://www.floridaspecialdistricts.org/OfficialList/StateTotals.cfm>) (last visited on March 10, 2011).

¹⁵ *Id.*

¹⁶ Section 189.4042(2), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

Inactive Special Districts

Section 189.4044, F.S., outlines special procedures for inactive special districts. Paragraph (1)(a), of this section requires the DEO to declare a special district to be inactive if it meets at least one of the following four criteria:

- 1) The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has taken no action for 2 or more years;
- 2) Following an inquiry from the department, the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for 2 or more years or the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government fails to respond to the department's inquiry within 21 days;
- 3) The department determines, pursuant to s. 189.421, F.S., that the district has failed to file any of the reports listed in s. 189.419, F.S.; or
- 4) The district has not had a registered office and agent on file with the department for 1 or more years.¹⁹

After proposing a special district to be inactive, the Department, special district, or local general-purpose government must publish a notice of the proposed declaration of inactive status in a newspaper of general circulation in the county or municipality where the territory of the special district is located.²⁰ The entity must allow 21 days from the date of publication for administrative appeals to be filed.²¹ Thereafter, the entity that created the special district declared to be inactive must dissolve the special district by repealing its enabling laws or by other appropriate means.²²

If the inactive special district was created by a special act of the Legislature, then the Department must send a notice of declaration of inactive status to the Speaker of the House of Representatives and the President of the Senate. This notice shall constitute as sufficient notice under Article III, section 10, of the Florida Constitution, of which the Legislature shall be authorized to repeal any special laws so reported in the notice of declaration of inactive status.²³

Oversight Review Process

Although Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act, s. 189.428, F.S., does offer an oversight review process. The oversight review process is performed in conjunction with the special district's public facilities report and the local governmental evaluation and appraisal report prescribed in ss. 189.415(2) and 163.3191, F.S.²⁴ Depending upon whether the independent special district is a single- or multi-county district, the oversight review may be conducted by the

¹⁹ Section 189.4044(1)(a), F.S.

²⁰ Section 189.4044(1)(b), F.S.

²¹ Section 189.4044(1)(c), F.S.

²² Section 189.4044(4), F.S.

²³ Section 189.4044(3), F.S.

²⁴ Section 189.428(2), F.S.

county or municipality where the special district is located, or by the government that created the special district.²⁵

During the oversight review process, the reviewing authority must consider certain criteria, including, but not limited to:

- The degree to which current services are essential or contribute to the well-being of the community;
- The extent of continuing need for current services;
- Current or possible municipal annexation or incorporation and its impact on the delivery of district services;
- Whether there is a less costly alternative method of delivering the services that would adequately provide district services to district residents; and
- Whether the transfer of services would jeopardize the district's existing contracts.²⁶

The reviewing authority's final oversight report must be filed with the government that created the district, and shall serve as a basis for any modification, dissolution or merger of the district.²⁷ If a legislative dissolution or merger is proposed in the final report, subsection (8) of s. 189.428, F.S., further provides that:

- (8) . . . the reviewing government shall also propose a plan for the merger or dissolution, and the plan shall address the following factors in evaluating the proposed merger or dissolution:
- a) Whether, in light of independent fiscal analysis, level-of-service implications, and other public policy considerations, the proposed merger or dissolution is the best alternative for delivering services and facilities to the affected area.
 - b) Whether the services and facilities to be provided pursuant to the merger or dissolution will be compatible with the capacity and uses of existing local services and facilities.
 - c) Whether the merger or dissolution is consistent with applicable provisions of the state comprehensive plan, the strategic regional policy plan, and the local government comprehensive plans of the affected area.
 - d) Whether the proposed merger adequately provides for the assumption of all indebtedness.²⁸

The final report must also be considered at a public hearing in the affected jurisdiction and adopted by the governing board. Thereafter, the adopted plan for merger or dissolution can be filed as an attachment to the economic impact statement regarding the proposed special act or general act of local application dissolving a district.²⁹ This section does not apply to deepwater

²⁵ Section 189.428(3), F.S. Note: dependent special districts are reviewed by the local government entity that they are dependent upon, *see* s. 189.428(3) (a), F.S.

²⁶ *See* s. 189.428(5) (a)-(i), F.S., for a full list of the statutory criteria that is evaluated during the oversight review process.

²⁷ Section 189.428(7), F.S.

²⁸ Section 189.428(8), F.S.

²⁹ *Id.*

ports, airport authorities, or healthcare districts operating in compliance with other master plan requirements under Florida Statutes.³⁰

Senate Interim Project, *Interim Report 2011-210*

The Senate Committee on Community Affairs conducted an interim report on the merger of independent special districts in 2010.³¹ The purpose of this interim report was to explore potential statutory guidelines for voluntary independent special district mergers and consolidations. The report reviewed current Florida law and existing merger and consolidation laws in three other states and discussed previous merger attempts that have failed in Florida. Senate staff provided criteria for the Legislature to consider should it choose to adopt statutory guidelines that would allow independent special districts formed under special law to voluntarily merge prior to a Legislative Act.

Staff recommended that any adopted statutory criteria should:

- Discuss how mergers can be initiated, i.e. by resolution, voters, etc.;
- State the required statutory thresholds to approve or petition a merger;
- Require special districts to adopt a merger plan that evaluates how personnel and governing board changes will be made, how assets and liabilities will be apportioned, and how to standardize varying pay levels and benefits;
- Only apply to voluntary special district mergers; and
- Preclude special districts from exceeding the powers granted to them in their existing special acts until a unified charter is adopted by the Legislature.³²

III. Effect of Proposed Changes:

Section 1 amends s. 189.4042, F.S., to define voluntary and involuntary dissolutions and mergers of independent special districts and allows inactive districts to be dissolved by special act without referenda.

It also creates a new subsection (5) for voluntary independent special district mergers in order to:

- Allow two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to a special act.
- Allow merger proceedings to be initiated either by joint resolution of the governing bodies of each district or by qualified elector initiative.
- Provide definitions.
- Require independent special districts to adopt a merger plan that outlines the specific components for the proposed merger.
- Require the proposed merger plan to be subject to a public hearing and voter referendum, consistent with certain notice requirements under Florida Statutes.

³⁰ Section 189.428(9), F.S. (Discussing deepwater ports operating in compliance with a port master plan under s. 163.3178(2)(k), airport authorities operating in compliance with the Federal Aviation Administration approved master plan, and special districts organized to provide health systems and facilities licensed under chapters 395, 400, and 429, F.S.).

³¹ Comm. on Community Affairs, The Florida Senate, *The Merger of Independent Special Districts* (Interim Report 2011-210) (Oct. 2010).

³² *Id.*

- Provide election procedures and require a proposed merger to be approved by the majority of votes cast in each independent special district in order for merger to take effect.
- Treat each component independent special district of the merger as a subunit of the merged independent special district until such time as the Legislature formally approves the unified charter of the new merged district pursuant to special act.
 - During such time, the individual subunits shall be limited to the powers and financing capabilities of each subunit as they previously existed prior to merger.³³
- Provide for the transfer of assets, debts and liabilities of each component independent special district to the merged independent special district.
- Provide that in any action or proceeding pending on the effective date of merger to which a component independent special district is a party, the merged independent special district shall be substituted in its place.
- Provide that ch. 171, F.S., shall continue to apply to all annexations by a city within the component independent special district's boundaries after merger occurs.
- Outline the effect of merger on current employees and governing bodies of each component independent special district participating in the merger proposal.

The bill states that this act shall preempt any special act to the contrary.

The provisions in subsection (5) addressing voluntary independent special district mergers does not apply to independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district.

This section also makes clarifying amendments to current law.

Section 2 amends s. 191.014, F.S., to delete current subsection (3), which provides specific merger procedures for independent special fire control districts.

Section 3 amends s. 189.4044, F.S., to allow the DEO to declare a special district inactive if the district's governing body unanimously adopts a resolution declaring inactivity. The district may then be dissolved without a referendum.

Section 4 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³³ Art. VII, section 2 of the Florida Constitution provides that all ad valorem taxation shall be at a uniform rate within each taxing unit. Limiting the powers of subunits to those powers existing prior to a voluntary merger maintains this uniformity.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As a result of this bill, qualified electors residing in an independent special district that is created by a special act of the legislature will be permitted to initiate voluntary merger proceedings with one or more independent special district(s) by filing a petition with the governing body of each independent special district proposing to be merged.

C. Government Sector Impact:

As a result of this bill, the governing body of an independent special district that is created by a special act of the legislature will be authorized to initiate voluntary merger proceedings with one or more independent special district(s) through a joint resolution that is approved by a majority of the governing board members of each independent special district proposing to be merged.

This bill may impact how districts are reported under the Special District Information Program within the DEO.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/19/11
Date

192
Bill Number

Barcode

Name Terry Lewis

Phone 561-640-0820

Address 515 W. Flagler
Street

E-mail TLewis@tlw-law.com

WPB
City State Zip

Job Title _____

Speaking: For Against Information

Appearing at request of Chair

Subject SB 192

Representing FLA. ASSN. of Special Districts

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/19/11

Date

192

Bill Number

Barcode

Name Chris Lyon

Phone 850/222-5702

Address 315 S. Calhoun St., Suite 830

E-mail clyon@llw-law.co

Tallahassee

FL

32301

Job Title Attorney

City

State

Zip

Speaking: For Against Information

Appearing at request of Chair

Subject Special Districts

Representing Florida Assn. of Special Districts

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/19/11
Date

192

Bill Number

Barcode

Name Laura Donaldson

Phone 813-514-4700

Address 1101 W. Swann Ct.

E-mail ldonaldson@

Street

Tampa

City

FL

State

33606

Zip

Job Title Flondan@aw.com

Speaking: For Against Information

Appearing at request of Chair

Subject Special Districts

Representing North Naples Fire Control + Rescue District

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver to Senator or Senate Professional Staff conducting the meeting)

10/19/2011
Meeting Date

192
Bill Number (if applicable)

Topic Special Districts

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title TRUSTEE

Address 1119 NEWTON AVE SOUTH

Phone 727/897-9291

Street

Saint Petersburg

florida

33705

City

State

Zip

E-mail justice2jesus@yahoo.com

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

For officially noticed committee meetings, pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee:
Time: from _____ to _____

This form is part of the public record for this meeting.

S-001 (04/19/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver to Senator or Senate Professional Staff conducting the meeting)

10/19/2011

Meeting Date

192

Bill Number (if applicable)

Topic Special Districts

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title TRUSTEE

Address 1119 NEWTON AVE SOUTH

Phone 727/897-9291

Street

Saint Petersburg

florida

33705

City

State

Zip

E-mail justice2jesus@yahoo.com

Speaking: [X] For [] Against [X] Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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For officially noticed committee meetings, pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes. If designated employee: Time: from _____ to _____



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Community Affairs
Health Regulation

SENATOR JEREMY RING
32nd District

October 10, 2011

President Mike Haridopolos
409 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Approved

Dear President Haridopolos,

I am requesting to be excused from all legislative business scheduled until November 15th due to my continued recuperation from my recent surgery.

Thank you in advance for considering this request to be excused from legislative business until the week of November 15th. Please do not hesitate to contact me if you have any questions.

Sincerely,

Jeremy Ring
Senator District 32

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5094

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: KN 412
Caption: Senate Community Affairs

Case:
Judge:

Type:

Started: 10/19/2011 9:02:00 AM
Ends: 10/19/2011 9:36:00 AM **Length:** 00:34:01

9:02:08 AM Call to order
9:02:51 AM Tab 1
9:05:34 AM Introduction of amendment
9:05:50 AM Paul Jess - Testimony
9:11:33 AM Sheriff Rick Beseler - testimony
9:15:24 AM Senator Storms
9:17:38 AM Chairman
9:18:01 AM Beseler's response
9:19:32 AM Senator Storms
9:21:00 AM Beseler
9:21:11 AM Senator Thrasher
9:22:19 AM Roll
9:22:24 AM Tab 2
9:22:48 AM Tracy Caddell presenting for Sen Latvala
9:25:14 AM Martha Cleaver waive in support
9:25:22 AM Brian Pitts
9:27:02 AM Roll Call
9:27:21 AM Tab 3 - Rep Diaz presenting for Senator Flores
9:28:33 AM Senator Gibson
9:29:12 AM Response
9:29:26 AM Representative Diaz
9:30:18 AM Brian Pitts
9:32:13 AM Senator Gibson question
9:32:26 AM Response
9:32:48 AM Roll Call
9:33:17 AM Tab 4
9:34:14 AM Brian Pitts
9:35:10 AM Roll Call
9:35:46 AM Senator Storms moves we rise.



To: Senator Mike Haridopolos, Senate President
From: Senator Audrey Gibson
Subject: Community Affairs Committee Vote
Date: October 19, 2011

I was unaware that I could have voted this morning in the Community Affairs meeting and would like to record the following votes:

SB 132 by Senator Thrasher - Yes

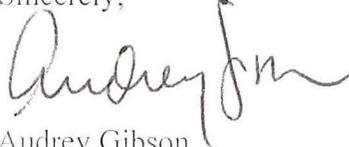
SM 240 by Senator Latvala - Yes

SB 188 by Senator Flores – Yes

SB 192 by Senator Bennett – Yes

Thank you for your kind consideration.

Sincerely,


Audrey Gibson