

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, April 25, 2011
TIME: 8:30 —9:30 a.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	CS/SB 506 Community Affairs / Bogdanoff (Compare CS/H 287)	Economic Development; Authorizes the board of county commissioners of a charter county to call and hold a referendum to determine whether to grant economic development ad valorem tax exemptions. Revises the language of ballot questions relating to the authority to grant economic development tax exemptions. Provides for application of a provision limiting the calling of another referendum within a certain time period, etc.	CA 02/21/2011 Fav/CS CM 04/25/2011 BC
2	CS/SB 1196 Regulated Industries / Bogdanoff (Similar CS/CS/H 941)	Construction Liens; Specifies that a lessor's interest in property is not subject to a construction lien for improvements made by a lessee if certain documents containing specific information and meeting certain criteria are recorded in the official records of the county before the recording of a notice of commencement. Authorizes certain contractors and lienors to demand that a lessor serve verified copies of a lease prohibiting liability for improvements made by a lessee, etc.	RI 03/29/2011 Fav/CS JU 04/12/2011 Favorable CM 04/25/2011
3	SB 1236 Richter (Compare H 503, S 1222)	State Revenues; Provides for the gradual reduction of the corporate income tax rate and the termination of the tax over a specified time. Provides for the revenue from the cigarette surcharge to be deposited into the General Revenue Fund. Provides for the revenue from the surcharge on tobacco products to be deposited into the General Revenue Fund. Specifies additional taxes against which a taxpayer may claim a credit for an eligible contribution to an eligible nonprofit scholarship-funding organization to include taxes or surcharges on tobacco products, etc.	CM 04/25/2011 BC

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, April 25, 2011, 8:30 —9:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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An electronic copy of the Appearance Request form is now available to download from any Senate Committee page on the Senate's website, www.flsenate.gov.



726842

LEGISLATIVE ACTION

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

Senate Amendment (with directory and title amendments)

Delete lines 171 - 174
and insert:
only once in any 12-month period.

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

And the directory clause is amended as follows:

Delete lines 100 - 101

and insert:

Section 2. Effective July 1, 2011, and applicable only to exemptions from ad valorem taxation granted pursuant to



726842

13 referenda held on or after July 1, 2011, under the provisions of
14 subsection (1) of section 196.1995, Florida Statutes, section
15 196.1995, Florida Statutes, is amended to read:

16
17

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

19 And the title is amended as follows:

20 Delete lines 5 - 13

21 and insert:

22 business; amending s. 196.1995, F.S.; providing for
23 prospective application of new provisions; authorizing
24 the board of county commissioners of a charter county
25 to call and hold a referendum to determine whether to
26 grant economic development ad valorem exemptions;
27 revising the language of ballot questions relating to
28 the authority to grant economic development tax
29 exemptions; specifying additional information

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 506

INTRODUCER: Committee on Community Affairs and Senator Bogdanoff

SUBJECT: Economic Development

DATE: April 22, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/CS
2.	Pugh	Cooper	CM	Pre-meeting
3.			BC	
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:

Pursuant to Art. VII, s. 3(c), of the Florida Constitution, and ch. 196, F.S., a county or municipal government can grant, after a favorable referendum and passage of an ordinance, ad valorem tax relief from its respective levy to new or expanding businesses that meet certain job-creation and other requirements. The tax relief ordinances expire after 10 years, but can be renewed under specific statutory circumstances. Fifteen counties and 33 municipalities have approved economic development exemptions on real and tangible personal property valued at nearly \$903 million.

CS/SB 506 makes a number of changes to the requirements that a new or expanding business must meet in order to be eligible for this local economic development exemption. A major change is redefining the terms “new business” and “expansion of existing business” to remove the current minimum thresholds for the number of jobs that a business must create in order to receive the ad valorem tax relief.

CS/SB 506 also:

- Makes nonprofit entities eligible to receive the economic development exemption;
- Specifies that a charter county governing board can hold a referendum to grant an economic development exemption upon receiving a petition signed by the requisite

- number of electors prescribed in the county charter, including charters that require the signatures of less than 10 percent of the electors;
- Revises the current ballot language required in a referendum to reflect the substantive changes in the amended statutes;
 - Provides economic criteria that the board or governing authority must consider in approving or denying the exemption;
 - Gives counties and municipalities the discretion to determine which businesses should receive an economic development exemption; and
 - Allows counties and municipalities to enter into a written tax exemption agreement after approving an economic development exemption that includes certain criteria and requirements, and which authorizes the board or governing authority to revoke the exemption under certain circumstances.

CS/SB 506 substantially amends ss. 196.012 and 196.1995, F.S.

II. Present Situation:

Property Assessments

Article VII, s. 4, of the Florida Constitution (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.¹ Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property's just valuation.²

This same section of the constitution also provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes – all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.³ The constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.⁴

Article VII, sections 3 and 6, of the constitution permits a number of tax exemptions. These include, but are not limited to, exemptions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. Section 196.195, F.S., outlines the statutory criteria that a property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture.⁵ An application for exemption for the religious, literary, scientific or charitable

¹ 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).

² See s. 193.011(1)-(8), F.S.

³ Section 196.185, F.S.

⁴ See FLA. CONST. art. VII, s. 4(d) & (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.).

⁵ See s. 196.195(2)(a)-(e), F.S., for the list of statutory criteria that the property appraiser must consider.

use of property may not be granted until the property appraiser, or value adjustment board on appeal, determines that the applicant is nonprofit.⁶

The constitution additionally authorizes counties and municipalities to grant economic development ad valorem tax exemptions for new and expanding businesses. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

Economic Development Exemption

Article VII, section 3(c), of the Florida Constitution, allows counties and municipalities to grant economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law.⁷ Section 196.012, F.S., defines the terms “new business” and “expansion of an existing business” as follows:

- (15) “New business” means:
- (a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant;
 2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15 (5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.05 for each year the exemption is claimed; or
 3. An office space in this state owned and used by a corporation newly domiciled in this state; provided such office space houses 50 or more full-time employees of such corporation; provided that such business or office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.
- (b) Any business located in an enterprise zone or brownfield area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.
- (c) A business that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an economic development ad valorem tax exemption from the county under s. 196.1995.⁸
- (16) “Expansion of an existing business” means:
- (a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal

⁶ Section 196.195(4), F.S.

⁷ FLA. CONST. art. VII, s. 3(c).

⁸ Section 196.012(15), F.S.

property at a fixed location and which comprises an industrial or manufacturing plant; or

2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15 (5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.05 for each year the exemption is claimed; provided that such business increases operations on a site colocated with a commercial or industrial operation owned by the same business, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.

(b) Any business located in an enterprise zone or brownfield area that increases operations on a site colocated with a commercial or industrial operation owned by the same business.⁹

The economic development exemption may only be granted through a county or municipal ordinance that is previously approved by the electors of the participating county or municipality.¹⁰ Although charter counties are not specifically mentioned in the statute, the law has been construed to include them because of use of the phrase “any county.”

The exemption applies to improvements to real property made by, or for the use of, a new or expanding existing business as well as to the tangible personal property of such businesses. The amount or limit on the exemption as well as the period of time for which the exemption may be granted is determined by general law. Pursuant to Art. VII, s. 3(c), of the constitution, the authority granting an ad valorem tax exemption shall expire 10 years after it is approved by the electors and may be renewed as provided by general law.

Section 196.1995, F.S., provides the statutory criteria that implement the constitutional tax exemption for economic development. Pursuant to this section, a board of county commissioners or municipal governing authority must “call” (or schedule) a referendum to determine whether to grant an economic development ad valorem tax exemption under the constitution if one of the following occurs:

- The board of county commissioners or municipal governing authority votes to hold the referendum; or
- The board of county commissioners or municipal governing authority receives a petition signed by 10 percent of the registered electors in the respective jurisdiction, calling to hold such referendum.¹¹

A referendum determining whether to grant an economic development ad valorem tax exemption pursuant to the constitution may be called only once in any 12-month period.¹² Subsections (2) and (3) of s. 196.1995, F.S., provide the specific ballot language that must be used in a county or municipal referendum to determine whether its respective jurisdiction may grant a property tax

⁹ Section 196.012(16), F.S.

¹⁰ FLA. CONST. art. VII, s. 3(c).

¹¹ Section 196.1995(1)(a)(b), F.S.

¹² Section 196.1995(4), F.S.

exemption for economic development.¹³ Subsection (3) of s. 196.1196, F.S., also allows counties and municipalities to limit the effect of the referendum to new businesses and expansions of existing businesses that are located in an enterprise zone or brownfield area, as defined in s. 376.79(4), F.S. This subsection provides a separate ballot language format that must be followed should a county or municipality vote to limit the referendum to an enterprise zone or brownfield area.

Amount of the exemption

If a majority of the voters approve the economic development exemption, then the board of county commissioners or municipal governing authority has the discretion to provide the exemption by ordinance. Subsection (5), of s. 196.1995, F.S., permits a county or municipal ordinance to exempt up to:

- 100 percent of the assessed value from ad valorem taxation for all improvements to real property made by or for the use of a new business and for all tangible property of such new business, or
- 100 percent of the assessed value of all added improvements to real property that are made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business.¹⁴

The ad valorem tax exemption only applies to taxes that are levied by the county or municipality granting the exemption. It does not apply to “taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution.”¹⁵

Exemption application

Any person, firm, or corporation may file a written application with the board of county commissioners or municipal governing authority to receive an economic development ad valorem tax exemption.¹⁶ The application shall request the adoption of an ordinance granting the exemption and must include the following information:

- The name and location of the new business or the expanded existing business;
- A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements;
- A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;
- Proof, to the satisfaction of the board of county commissioners or the governing authority of the municipality, that the applicant is a new business or an expanded existing business, as defined in s.196.012(15) or (16), F.S.; and
- Other information deemed necessary by the Department of Revenue (DOR).¹⁷

¹³ See s. 196.1995(2), F.S., for the specific ballot language format.

¹⁴ See s. 196.1995(5), F.S. Note, that “[p]roperty acquired to replace existing property shall not be considered to facilitate a business expansion.” *Id.*

¹⁵ Section 196.1995(5), F.S.

¹⁶ Section 196.1995(8), F.S.

¹⁷ Section 196.1995(8)(a)-(e), F.S.

The board of county commissioners or municipal governing authority must deliver a copy of the application to the county property appraiser, who must review the application and report the following information:

- The total revenue available to the county or municipality for the current fiscal year from ad valorem tax sources, or an estimate of such revenue if the actual amount cannot be determined;
- Any revenue lost to the county or municipality for the current fiscal year by virtue of exemptions previously granted under this section, or an estimate if the actual amount of lost revenue cannot be determined;
- An estimate of the revenue that would be lost to the county or municipality during the current fiscal year if the exemption applied for were granted and the property for which the exemption is requested otherwise had been subject to taxation; and
- A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in s. 196.012 (15) or (16), F.S., or into neither, which the property appraiser must attach to the front of the application. If requested by the property appraiser, DOR must provide available information to assist him or her in making this determination.¹⁸

The ordinance

A county or municipal ordinance granting an economic development ad valorem tax exemption must be adopted in the same manner that the local government adopts other ordinances, and must include the following information:

- The name and address of the new business or expansion of an existing business to which the exemption is granted;
- 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 municipality for the current fiscal year by virtue of economic development ad valorem tax exemptions currently in effect, and the estimated revenue loss to the county or municipality for the current fiscal year attributable to the exemption of the business named in the ordinance;
- The period of time for which the exemption will remain in effect and the expiration date of the exemption; and
- A finding that the business named in the ordinance meets the requirements of s. 196.012 (15) or (16), F.S.¹⁹

Charter Counties

Article VII, section 1(g), of the Florida Constitution provides that:

Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter

¹⁸ Section 196.1995(9)(a)-(d), F.S.

¹⁹ Section 196.1995(10)(a)-(d), F.S.

shall provide which shall prevail in the event of conflict between county and municipal ordinances.²⁰

Although a non-charter county can be established through general law, a county charter can only be adopted, amended, or repealed through a special election by the electors in that county. Unless otherwise provided in a county charter or special law, the electors of each county must elect the following constitutional officers for a 4-year term: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of circuit court.²¹

Florida has 20 charter counties.²² Three of them – Brevard, Miami-Dade, and Palm Beach – offer the ad valorem economic development exemption.

Enterprise zones and brownfields

Florida has created two designations for communities that encounter hurdles when attempting to attract economic development, either because they are in blighted, poverty-stricken areas; because their soil and groundwater have been contaminated by chemicals from industrial activities; or a combination of both.

Florida's *enterprise zone program*, ss. 290.001-290.016, F.S., was created by the Legislature in 1982 to provide tax incentives to induce private development in blighted, poor, or economically distressed communities. Businesses are eligible for seven state incentives, some of which require the businesses to hire persons who live within the zone. Residential property owners also access one of the incentives, a sales tax credit for building materials, when repairing their homes within an enterprise zone.²³

In 1997, the Legislature enacted the *Brownfields Redevelopment Act*, to provide various incentives to the private sector to encourage cleanup and reuse of abandoned or underused properties, the development of which was complicated by real or perceived environmental contamination.²⁴ As of June 2010, there were 252 designated brownfield areas in 96 communities across the state. A variety of state tax refunds and federal funds are available to eligible businesses or property owners who try to restore brownfield areas.

III. Effect of Proposed Changes:

CS/SB 506 makes a number of significant changes to the county and municipal economic development exemption in s. 196.1995, F.S., where new businesses or expanding existing businesses can receive breaks on their ad valorem tax liabilities from the local governments' respective levies if they meet certain criteria. The changes give local government officials more discretion in selecting which businesses may be offered the incentives, and potentially makes it

²⁰ FLA. CONST. art. VIII, s. 1(g).

²¹ FLA. CONST. art. VIII, s. 1(d).

²² For a list, see http://www.fl-counties.com/pages/About_Floridas_Counties/Charter_County_Information.aspx.

²³ The "Florida Enterprise Zone Program Annual Report," dated October 1, 2009-September 30, 2010, and published by the Governor's Office of Tourism, Trade, and Economic Development, includes the history and usage of the program. A copy is on file with the Senate Commerce and Tourism Committee.

²⁴ More information about the brownfields program can be found in a recent annual report, prepared by the state http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/AnnualReport/2009/2009_FDEP.pdf. Last visited Feb. 20, 2011.

easier for more businesses to qualify. But it also gives local governments the clear authority to revoke an exemption if the recipient business is not complying with the terms of its agreement. The legislation also clearly specifies a process for charter counties to have referenda for public support of awarding these incentives.

Section 1 amends s. 196.012, F.S., to redefine the terms “new business” and “expansion of an existing business.” Specifically, CS/SB 506 removes the minimum job-creation requirements in the current definitions for new or expanding businesses that are not located within enterprise zones or brownfields, specifying only that the businesses which are being considered for the exemptions must create new, full-time jobs. Also, nonprofit organizations are added to the definitions, making them eligible for the exemptions.

Section 2 amends s. 196.1995, F.S., to substantially amend the current statutory criteria administering the economic development ad valorem tax exemption.

CS/SB 506 directs the board of a charter county to call a referendum determining whether to grant an ad valorem tax exemption for economic development if the board receives a petition or initiative signed by the required percentage of registered electors as provided in the procedures established in the county’s charter for the enactment of ordinances or for approval of charter amendments. This new provision also applies to any charter county whose charter requires signatures from less than 10 percent of its registered electors, whose or initiative calls for the holding of a referendum.

Also amended is the statutorily required ballot question that must be used in such referendums to apply to new businesses and expansions of existing businesses, to add the phrase “that are expected to create new, full-time jobs and have been evaluated as being of economic interest to the community.”

Additionally, CS/SB 506 specifies that the changes proposed to s. 196.1995, F.S., do not require a county commission that has held or called a referendum for a local-economic development tax exemption to schedule a new one if this legislation becomes law.

The CS revises the information that must be included in an application for an economic development tax exemption to include:

- The number of jobs the applicant expects to create;
- The average and median wage of the jobs;
- Whether the jobs are full-time or part-time; and
- The expected time schedule for creating the jobs.

The local government board or governing authority must consider the following criteria, at a minimum, when deciding whether to grant an economic development tax exemption:

- Total number of new jobs to be created by the applicant;
- Average wage and median wage of the new jobs;
- Capital investment to be made by the applicant;
- Whether the business or operation qualifies as an industry that the board or governing authority may target;

- Environmental impact of the proposed business or operation; and the
- Extent to which the applicant intends to purchase its supplies and materials within the applicable jurisdiction.

CS/SB 506 expresses legislative intent to vest counties and municipalities with as much discretion as legally permissible to determine which new jobs should be incentivized through the granting of these exemptions, and clarifies that an exemption may not exceed 10 years, as provided in the Florida Constitution.

CS/SB 506 also allows the county or city to enter into a written tax exemption agreement with an applicant upon approval of an exemption application. It specifies that the written tax-exemption agreement may include performance criteria and that it must be consistent with the requirements elsewhere in s. 196.1995, F.S., and other applicable laws. The written agreement must require the applicant to report the actual number of new, full-time jobs created and their actual average and median wage, at a specific time before the exemption expires. The written agreement may also grant the county or city with the power to revoke, in whole or in part, the tax exemption, if the applicant fails to meet the expectations and representations described in subsection (8), of s. 196.1995, F.S.

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:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Counties and municipalities will be provided more discretion in granting economic development ad valorem tax exemptions. Local governments also will be authorized to enter into written tax exemption agreements with approved applicants, and may revoke an exemption if the recipient business fails to meet the expectations and representations provided in s. 196.1995 (8), F.S.

At its Feb. 25, 2011, meeting, the state Revenue Estimating Conference adopted by consensus an indeterminate negative impact on local governments.

B. Private Sector Impact:

Non-profit organizations will be able to apply for the economic development ad valorem tax exemption provided in Article VII, section 3(c), of the Florida Constitution.

Also, applicants for an economic development tax exemption will be required to include additional information in their tax exemption applications, related to the number of jobs expected to be created, their average and median wages, whether the jobs will be full-time or part-time, and a timetable on when the jobs will be created.

C. Government Sector Impact:

The Florida Department of Revenue will need to amend Form DR-418 (Economic Development Ad Valorem Property Tax Exemption), to include the new information requirements in s. 196.1995, F.S., if CS/SB 506 becomes law.

VI. Technical Deficiencies:

Lines 171-174 state that:

“If a referendum is called or held on or before the effective date of any amendment to this section, the board of county commissioners does not need to call or hold another referendum.”

It is unclear what this sentence means. The sentence could be interpreted to allow local governments to modify a previously adopted ad valorem economic development ordinance to incorporate the program changes resulting from enactment of this or future legislation without having to seek voter approval, which may raise legal issues. A clarifying amendment may be necessary to clearly express the sponsor’s intent.

VII. Related Issues:

According to the Department of Revenue, 15 counties in the State of Florida offer the economic development exemption on properties valued at approximately \$747.7 million. The department further indicated that 33 cities throughout the state offer the economic development exemption on properties valued at approximately \$154.9 million.²⁵ Both sets of property values are as reported on county and municipal tax rolls in January 2010. The charts below offer the details.

²⁵ Email from Lynne Moeller of the Florida Department of Revenue, to Dana Gizzi of the Senate Committee on Community Affairs (Feb. 18, 2011) (on file with the Senate Committee on Community Affairs).

2010	
County Name	ECON DEV EXEMPTION 196.1995
Bay	\$ 232,133,541.00
Brevard	\$ 28,762,380.00
Calhoun	\$ 517,421.00
Dade	\$ 67,568,325.00
Escambia	\$ 279,392,755.00
Gulf	\$ 362,894.00
Hardee	\$ 27,542,457.00
Hendry	\$ 2,246,960.00
Jackson	\$ 49,419,465.00
Liberty	\$ 30,932,427.00
Madison	\$ 598,608.00
Palm Beach	\$ 7,424,114.00
Saint Lucie	\$ 17,756,979.00
Santa Rosa	\$ 2,613,424.00
Washington	\$ 441,581.00
Statewide	\$ 747,713,331.00

2010		
County Name	City Name	ECON DEV EXEMPTION 196.1995 & LIC CHILD CARE FACILITY 196.095
BAY	LYNN HAVEN	\$ 3,807,978.00
	PANAMA CITY	\$ 43,122,287.00
BREVARD	COCOA	\$ 308,770.00
	MELBOURNE	\$ 14,238,900.00
	PALM BAY	\$ 1,580,720.00
	ROCKLEDGE	\$ 1,024,310.00
	TITUSVILLE	\$ 227,960.00
DADE	HIALEAH	\$ 4,694,901.00
	MIAMI	\$ 31,283,502.00
	MIAMI BEACH	\$ 7,284,508.00
	MIAMI GARDENS	\$ 3,609,474.00
	MIAMI SPRINGS	\$ 1,184,696.00
	PALMETTO BAY	\$ 146,580.00
ESCAMBIA	PENSACOLA	\$ 8,091,198.00
HENDRY	CLEWISTON	\$ 503,640.00
	LA BELLE	\$ 193,900.00
HERNANDO	BROOKSVILLE	\$ 4,552,157.00
HOLMES	BONIFAY	\$ 277,180.00
LEE	FORT MYERS	\$ 1,293,033.00
LEON	TALLAHASSEE	\$ 2,221,482.00
OSCEOLA	KISSIMMEE	\$ 333,600.00
PALM BEACH	PAHOKEE	\$ 103,870.00
SAINT LUCIE	FORT PIERCE	\$ 820,100.00
	PORT ST. LUCIE	\$ 9,432,416.00
SARASOTA	SARASOTA	\$ 252,400.00
TAYLOR	PERRY	\$ 287,880.00
VOLUSIA	DAYTONA BEACH	\$ 9,279,779.00
	DELAND	\$ 680,296.00
	HOLY HILL	\$ 778,086.00
	ORANGE CITY	\$ 1,492,211.00
	ORMOND BEACH	\$ 1,525,775.00
	SOUTH DAYTONA	\$ 293,751.00
WASHINGTON	SUNNY HILLS	\$ 16,000.00
Statewide		\$ 154,943,340.00

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 Committee on February 21, 2011:

Amends the definitions for “new business” and “expansion of an existing business” to re-insert businesses in an enterprise zone or brownfield area in order to make the definitions consistent with Section 2 of the CS.

- B. **Amendments:**

None.



522702

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Between lines 69 and 70
insert:

3. The lessee is a mobile home owner who is leasing a
mobile home lot in a mobile home park from the lessor.



610390

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete line 119
and insert:
713.01(23) and must be listed as the owner together with a
statement that the ownership interest is a leasehold interest.



273614

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 145 - 212

and insert:

3. Owner information or Lessee information if the Lessee contracted for the improvement:

a. Name and address:.....

b. Interest in property:.....

c. Name and address of fee simple titleholder (if different from Owner listed above ~~other than Owner~~):.....

4.a. Contractor: ...(name and address)....

b. Contractor's phone number:.....



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13 5. Surety (if applicable, a copy of the payment bond is
14 attached):

15 a. Name and address:.....

16 b. Phone number:.....

17 c. Amount of bond: \$.....

18 6.a. Lender: ... (name and address)....

19 b. Lender's phone number:.....

20 7. ~~a~~ Persons within the State of Florida designated by
21 Owner upon whom notices or other documents may be served as
22 provided by Section 713.13(1)(a)7., Florida Statutes:

23 a. Name and address:...(name and address)....

24 b. Phone numbers of designated persons:.....

25 8.a. In addition to himself or herself, Owner designates
26 of to receive a copy of the Lienor's
27 Notice as provided in Section 713.13(1)(b), Florida Statutes.

28 b. Phone number of person or entity designated by
29 Owner:.....

30 9. Expiration date of notice of commencement (the
31 expiration date may not be before the completion of construction
32 and final payment to the contractor, but will be is 1 year from
33 the date of recording unless a different date is specified).....

34
35 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
36 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
37 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
38 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
39 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
40 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
41 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN



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42 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
43 COMMENCEMENT.

44
45 Under penalty of perjury, I declare that I have read the
46 foregoing notice of commencement and that the facts stated
47 therein are true to the best of my knowledge and belief.

48
49 ... (Signature of Owner or Lessee, or Owner's or Lessee's
50 Authorized Officer/Director/Partner/Manager)...

51
52 ... (Signatory's Title/Office)...

53
54 The foregoing instrument was acknowledged before me this
55 day of, ... (year) ..., by ... (name of person) ... as ... (type
56 of authority, . . . e.g. officer, trustee, attorney in fact) ...
57 for ... (name of party on behalf of whom instrument was
58 executed)

59
60 ... (Signature of Notary Public - State of Florida)...

61
62 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

63
64 Personally Known OR Produced Identification

65
66 Type of Identification Produced.....

67
68 ~~Verification pursuant to Section 92.525, Florida Statutes.~~

69
70 ~~Under penalties of perjury, I declare that I have read the~~



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71 ~~foregoing and that the facts stated in it are true to the best~~
72 ~~of my knowledge and belief.~~

73

74 ~~...(Signature of Natural Person Signing Above)...~~

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1196

INTRODUCER: Regulated Industries Committee and Senator Bogdanoff

SUBJECT: Construction Liens on Leased Premises

DATE: April 22, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.	Munroe	Maclure	JU	Favorable
3.	McCarthy	Cooper	CM	Pre-meeting
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:

The construction lien law allows persons who are enhancing an owner's property to file a lien for the value of the improvement. In certain circumstances, a construction lien may be placed against the property of a lessor (he [or she] who grants a lease)¹ for work done on behalf of a lessee. However, a lessor may limit or prohibit such liens provided the lessor includes a prohibition in the lease and records notice thereof in the public records. The bill revises the procedures for protecting a leased premise from a construction lien when the improvement is contracted for by a lessee (tenant) of the property.

The CS/SB 1196 (the bill) provides that a lessor may file a memorandum of the lease, in lieu of a copy of the lease or short form of the lease, in the official records of the county where the leased premises are located. In the alternative, a lessor may file a notice advising that leases for the rental of premises on a parcel of land prohibit liens in the official records of the county where the land is located. The notice must contain the name of the lessor, legal description of the parcel of land, specific language contained in the various leases, and a statement that all or a majority of

¹ Black's Law Dictionary, 5th Abridged Ed.

the leases on the parcel of land expressly prohibit liability. The bill requires the notice or copy of the lease to be filed prior to the filing of a Notice for Commencement.

The bill deletes the provision that specified that the interest of a lessor shall not be subject to a lien when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park.

The bill provides that a contractor may serve a demand on the lessor for a verified copy of the provision in the lease. Failure of the lessor to comply with the demand may result in the contractor being able to attach a lien on the property.

The bill also provides that the lessee who contracts for an improvement must be listed on a Notice of Commencement as the owner of the property.

This bill amends sections 713.10 and 713.13, Florida Statutes.

II. Present Situation:

Overview

A construction lien is an equitable device designed to protect subcontractors, sub-subcontractors, laborers, and suppliers of material, who remain unpaid after the owner has paid the contractor directly.² The lien law protects subcontractors, sub-subcontractors, laborers, and suppliers of materials, by allowing them to place a lien to ensure payment on the property receiving their services. Another purpose of the lien law is to protect owners by requiring subcontractors to provide a notice of possible liens, thereby preventing double payments to contractors and subcontractors, material suppliers, or laborers for the same services or materials.

Construction lien statutes set forth a right of action that did not exist at common law, and thus construction liens are purely statutory.

Part I of ch. 713, F.S., requires various notices, demands, and requests to be provided in writing to the homeowner, contractor, subcontractor, lender, and building officials. It requires that the notices, demands, and requests be in a statutory form. The following notices are complicated but important for the homeowner to understand during this process: Notice of Commencement, Notice to Owner, Claim of Lien, Notice of Termination, Waiver and Release of Lien, Notice of Contest of Lien, Contractor's Final Payment Affidavit, and Demands of Written Statement of Account. The procedure that a homeowner follows in paying for improvements under part I of ch. 713, F.S., determines whether a payment is proper or improper.³ An improper payment could result in the homeowner paying twice for the same improvement.⁴

² *Stunkel v. Gazebo Landscaping Design, Inc.*, 660 So. 2d 623 (Fla. 1995).

³ An improper payment is a payment made by a homeowner to a contractor that does not fall within the proper payment defense to a lien under s. 713.06(3), F.S. Improper payments can occur if the homeowner fails to file a Notice of Commencement or fails to obtain a release or waiver of lien after receiving a notice to owner and paying the subcontractor.

⁴ The procedure that a homeowner follows in paying for improvements under part I of ch. 713, F.S., determines whether a payment is proper or improper. Making a payment that is improper could result in the homeowner paying twice for the same improvement because the payment is not credited against the owners' potential liability for payment of liens. See Fred R. Dudley, *Florida Construction Liens: Representing the Residential Owner*, 79 Fla. Bar J. 34 (Dec. 2005). See also *Review of*

Notice of Commencement

Section 713.13, F.S., provides that the recording of a Notice of Commencement gives constructive notice that claims of lien may be recorded and will have priority over any conveyance, encumbrance, or demand not recorded against the real property prior to the time the notice is recorded. However, any conveyance, encumbrance, or demand recorded prior to the time the notice is recorded and any proceeds thereof, regardless of when disbursed, shall have priority over liens.

The Notice of Commencement must be recorded with the clerk of the court where the property is located⁵ by the owner or the owner's agent before a contractor actually begins an improvement to real property or recommences completion of any improvement after default or abandonment.⁶ A certified copy of the recorded notice or a notarized statement of filing and a copy must be posted at the jobsite.⁷ The Notice of Commencement must include the legal description of the property, the street address, and the tax folio number, if available.⁸ It must also include a general description of the improvement, the name and address of the owner, the name and address of the contractor, the name and address of any person designated to receive notices, the anticipated expiration date if different from 1 year, and other specified information.⁹ The form for the Notice of Commencement is provided in s. 713.13(1)(d), F.S.

For contracts greater than \$2,500, the applicant for the building permit must file a certified copy of the recorded notice or a notarized statement of filing, and a copy with the building permit authority. The notice must be filed before the first inspection, or the property will not be inspected.¹⁰

A Notice of Commencement is specifically not required prior to issuing a building permit.¹¹ The building permit must include a "14-point, capitalized, boldfaced type" warning regarding the necessity of filing a Notice of Commencement.¹² All liens from persons who do work to improve a property relate back to the filing of the Notice of Commencement.¹³

The Notice of Commencement is valid for 1 year, unless otherwise stated in the notice. Any payments made by the owner after the expiration of the Notice of Commencement are considered to be improper payments.¹⁴ If the improvement described in the Notice of Commencement is not

the Florida Construction Lien Law, Interim Report No. 2009-124, Florida Senate Committee on Regulated Industries, October 2008.

⁵ Section 713.01(4), F.S., defines "clerk's office" to mean the office of the clerk of the circuit court of the county in which the real property is located.

⁶ Section 713.13(1)(a), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 713.13(1)(a)-(d), F.S.

¹⁰ Section 713.135(1)(d), F.S. However, the requirement to file a certified copy of the recorded notice or a notarized statement of filing and a copy with the building permit authority does not apply to a direct contract to repair or replace an existing heating or air conditioning system, unless the contract is for an amount equal to or greater than \$7,500.

¹¹ Section 713.135(1)(d) and (e), F.S.

¹² Section 713.135(1)(a), F.S.

¹³ Section 713.07(2), F.S.

¹⁴ Section 713.13(1)(c), F.S.

commenced within 90 days of the recording of the notice, then the notice is void, and any payments made by the owner after that time are improper.¹⁵

Liens on Leased Premises

Section 713.10, F.S., provides that a lien extends only to the right, title, and interest of the person who contracts for the improvement as such right, title, and interest exists at the commencement of the improvement or is later acquired in the property. If a lessee contracts for improvements to the real property, in agreement with the lessor, any resulting liens shall also extend to the interest of the lessor.¹⁶ If the lease provides that the lessor is not subject to any resulting liens from contracts of the lessee, the lessee must disclose the terms of the lease to the contractor so that the contractor can act accordingly. If the lessee knowingly or willfully fails to notify the contractor of such a term in the lease, the contract is voidable at the option of the contractor.¹⁷

Section 713.10, F.S., provides two alternatives for lessors to avoid liens. The section provides that the interest of the lessor shall not be subject to liens when:

- The lease or a short form of the lease is recorded in the clerk's office and the terms of the lease expressly prohibit liability for liens;¹⁸ or
- All of the leases entered into by a lessor for the rental of premises on a parcel of land prohibit such liability and a notice that sets forth the following is recorded by the lessor in the public records of the county in which the parcel of land is located:
 - The name of the lessor.
 - The legal description of the parcel of land to which the notice applies.
 - The specific language contained in the various leases prohibiting the liability.
 - A statement that all leases entered into for premises on the parcel of land contain the language identified above.¹⁹

In addition, the interest of the lessor shall not be subject to liens when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.²⁰

Court Interpretation

In 2010, the Fourth District Court of Appeal held that a lessor who attempted to avail himself of the protection against liens resulting from contracts of tenants filed a defective notice.²¹ The lessor posted a notice that all of the leases on his property contained language prohibiting liens and the court held that the notice was defective because the notice did not contain the specific language prohibiting the liens from every contract.²² In this case, every lease for the property contained a prohibition against liens, although with variation in terms, but the notice that was

¹⁵ Section 713.13(1)(c) and (2), F.S.

¹⁶ Section 713.10, F.S.

¹⁷ *Id.*

¹⁸ Section 713.10(1), F.S.

¹⁹ Section 713.10(2), F.S.

²⁰ Section 713.10(3), F.S.

²¹ *Everglades Electric Supply, Inc. v. Paraiso Granite, LLC*, 28 So. 3d 235 (Fla. 4th DCA 2010).

²² *Id.* at 237-38.

filed contained language different from the language in the lease.²³ Even though all leases and notices contained a prohibition against liens, and even though it was not in dispute that the notices were filed in the public records prior to the lessee contracting for the project, the court held that, because the plain language of s. 713.10(2), F.S., requires the notice to contain the “specific language” contained in the various leases, the notice was defective because it contained different language.²⁴

Because of this interpretation, when a lessor seeks to prohibit liens from attaching to his property, a lessor must use the same language in every contract and must use that language in his notice. Otherwise, lessors of properties on a parcel of land cannot avail themselves of s. 713.10(2), F.S., and must instead file a copy of every lease or short form with the clerk’s office in the county where the property is located.

III. Effect of Proposed Changes:

CS/SB 1196 (the bill) revises the procedures for protecting a leased premise from a construction lien when the improvement is contracted for by a tenant of the property.

The bill amends s. 713.10(1), F.S., to add that a lessor may record a memorandum of the lease that contains the specific language in the lease that prohibits the imposition of a lien in the official records of the county where the leased premise is located, in lieu of filing a copy or short form of the actual lease. The bill also requires that the recording of the lease or memorandum of the lease must be recorded prior to the recording of a Notice of Commencement to be effective. The bill clarifies that the recording be done in the official records of the county where the leased premise is located.

The bill amends s. 713.10(2), F.S., to provide that a lessor who leases more than one premise on a parcel of land, when some of the leases expressly prohibit the imposition of a lien, may record a notice in the official records of the county where the leased premises are located which includes:

- The name of the lessor.
- The legal description of the parcel of land to which the notice applies.
- The specific language contained in the various leases prohibiting such liability.
- A statement that all or a majority of the leases of premises on the parcel expressly prohibit the imposition of a lien.

The bill requires that the recording of the notice in the official records must be complete prior to the recording of a Notice of Commencement to be effective.

The bill deletes provisions in current s. 713.10(3), F.S., that provide that the interest of a lessor shall not be subject to a lien when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park.

²³ *Id.*

²⁴ *Id.*

The bill amends s. 713.10(3), F.S., to provide that a contractor or lienor may serve written demand on a lessor for a copy of the provision in the lease between such lessee and lessor which prohibits the imposition of a lien for an improvement made by the lessee. The copy must be verified under s. 92.525, F.S.²⁵ A demand for a copy of the pertinent portion of the lease must contain a warning to the lessor in conspicuous type and be in substantially the following form:

YOUR FAILURE TO SERVE THE REQUESTED VERIFIED COPY WITHIN 30 DAYS OR THE SERVICE OF A FALSE COPY MAY RESULT IN YOUR PROPERTY BEING SUBJECT TO THE CLAIM OF LIEN OF THE PERSON REQUESTING THE VERIFIED COPY.

The bill provides that the lessor must serve a copy of the provision of the lease, which must be verified, on the contractor or lienor within 30 days after receipt of the demand. If the lessor fails to comply, the lessor's property is subject to a lien if the party demanding the verified copy is otherwise entitled to a lien and did not have actual notice that the interest of the lessor is not subject to liens for improvements made by the lessee.

The bill amends s. 713.13(1)(a), F.S., to provide that a lessee who contracts for the improvement is an owner for purposes of the Notice of Commencement and must be listed as owner on the Notice of Commencement form.

The bill provides an effective date of October 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.

²⁵ See s. 92.525, F.S., which specifies requirements for the verification of documents.

B. Private Sector Impact:

The bill amends the current procedures for a lessor to protect his property against liens. The bill appears to make it easier for a lessor to protect his property from contracts of his or her lessees.

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.)

CS by Regulated Industries on March 29, 2011:

The committee substitute amends the types of notice that a lessor must file in the official records where the lessor's property is located. The committee substitute provides only two methods, instead of three, for the lessor to prohibit liens on his leased property. First, the lessor may file a copy of the lease, memorandum, or short form of the lease that contains the prohibition against liens in the official records of the county. Second, the lessor may file a notice that provides that some of the liens on a parcel of land contain a prohibition against liens. The notice must contain a statement that all or a majority of the leases on the parcel of land expressly prohibit liens. The committee substitute removes the prohibition against liens for leased mobile home property. The committee substitute requires the lease, memorandum, short form, or notice to be filed in the official records prior to the filing of a notice of commencement. The committee substitute amends the warning for the written demand that may be served on a lessor by a contractor. The committee substitute changes the effective date to October 1, 2011.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 220.11, Florida Statutes, is amended to
read:

220.11 Tax imposed.—

(1) A tax measured by net income is hereby imposed on every
taxpayer for each taxable year commencing on or after January 1,
1972, and for each taxable year which begins before and ends
after January 1, 1972, for the privilege of conducting business,



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13 earning or receiving income in this state, or being a resident
14 or citizen of this state. Such tax shall be in addition to all
15 other occupation, excise, privilege, and property taxes imposed
16 by this state or by any political subdivision thereof, including
17 any municipality or other district, jurisdiction, or authority
18 of this state.

19 (2) The tax imposed by this section shall be an amount
20 equal to 4 1/2 ~~5-1/2~~ percent of the taxpayer's net income for
21 the taxable year.

22 (3) The tax imposed by this section, for taxpayers
23 determining taxable income under s. 220.13(2)(k), shall be an
24 amount equal to 2.7 ~~3.3~~ percent of the taxpayer's net income for
25 the taxable year.

26 (4) In the case of a taxpayer to which s. 55 of the
27 Internal Revenue Code is applied for the taxable year, the
28 amount of tax determined under this section shall be the greater
29 of the tax determined under subsection (2) without the
30 application of s. 55 of the Internal Revenue Code or the tax
31 determined under subsection (3).

32 Section 2. Section 220.63, Florida Statutes, is amended to
33 read:

34 220.63 Franchise tax imposed on banks and savings
35 associations.—

36 (1) A franchise tax measured by net income is hereby
37 imposed on every bank and savings association for each taxable
38 year commencing on or after January 1, 1973, and for each
39 taxable year which begins before and ends after January 1, 1973.
40 The franchise tax base of any bank for a taxable year which
41 begins before and ends after January 1, 1972, shall be prorated



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42 in the manner prescribed for the proration of net income under
43 s. 220.12(2).

44 (2) The tax imposed by this section shall be an amount
45 equal to 4 1/2 ~~5-1/2~~ percent of the franchise tax base of the
46 bank or savings association for the taxable year.

47 (3) For purposes of this part, the franchise tax base shall
48 be adjusted federal income, as defined in s. 220.13, apportioned
49 to this state, plus nonbusiness income allocated to this state
50 pursuant to s. 220.16, less the deduction allowed in subsection
51 (5) and less \$5,000.

52 (4) Nothing contained in this part shall be construed to
53 prohibit a savings association, in computing its franchise tax
54 base, from claiming the maximum deduction allowed under s. 593
55 of the Internal Revenue Code.

56 (5) There shall be allowed as a deduction from adjusted
57 federal income, to the extent not deductible in determining
58 federal taxable income or subtracted pursuant to s.
59 220.13(1)(b)2., the eligible net income of an international
60 banking facility determined as follows:

61 (a) The "eligible net income of an international banking
62 facility" is the amount remaining after subtracting from the
63 eligible gross income the applicable expenses.

64 (b) The "eligible gross income" is the gross income derived
65 by an international banking facility from:

66 1. Making, arranging for, placing, or servicing loans to
67 foreign persons, provided, however, that in the case of a
68 foreign person which is an individual, a foreign branch of a
69 domestic corporation (other than a bank or savings association),
70 or a foreign corporation or a foreign partnership which is 80



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71 percent or more owned or controlled, either directly or
72 indirectly, by one or more domestic corporations (other than
73 banks or savings associations), domestic partnerships, or
74 resident individuals, substantially all the proceeds of the loan
75 are for use outside the United States;

76 2. Making or placing deposits with foreign persons which
77 are banks or savings associations or foreign branches of banks
78 or savings associations, including foreign subsidiaries or
79 foreign branches of the taxpayer, or with other international
80 banking facilities; or

81 3. Entering into foreign exchange trading or hedging
82 transactions in connection with the activities described in this
83 paragraph.

84
85 However, the term "eligible gross income" does not include any
86 amount derived by an international banking facility from making,
87 arranging for, placing, or servicing loans or making or placing
88 deposits if the loans or deposits of funds are secured by
89 mortgages, deeds of trust, or other liens upon real property
90 located in this state.

91 (c) The "applicable expenses" are any expenses or other
92 deductions attributable, directly or indirectly, to the eligible
93 gross income described in paragraph (b).

94 Section 3. Reduction of corporate income tax and franchise
95 tax rates.—

96 (1) As used in this section, the term "real growth in sales
97 tax revenues" means collections in excess of the prior year's
98 collections adjusted for changes in population and price level
99 calculated as the percentage change in sales tax collections



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100 less:

101 (a) The annual percentage change in the Consumer Price
102 Index - All Urban Consumers issued by the United State
103 Department of Labor for the most recent 12-month period ending
104 June 30; and

105 (b) The annual percentage change in the official estimate
106 of the Florida resident population reported by the Office of
107 Economic and Demographic Research on April 1.

108 (2) When the real growth in sales tax revenues distributed
109 in any fiscal year pursuant to s. 212.20, Florida Statutes, to
110 the General Revenue Fund exceeds the rate of 1.2 percent in per
111 capita sales tax revenues over the previous fiscal year, for
112 every 0.005 percent of excess, the tax rates in ss. 220.11(2)
113 and 220.63(2), Florida Statutes, shall be reduced by 0.25
114 percent and the tax rate in s. 220.11(3), Florida Statutes,
115 shall be reduced 0.15 percent. The reduced rates shall apply to
116 tax years beginning on or after January 1 following the fiscal
117 years having the increase in sales tax revenues.

118 Section 4. Paragraph (u) of subsection (8) of section
119 213.053, Florida Statutes, as amended by section 3 of chapter
120 2010-280, Laws of Florida, is amended to read:

121 213.053 Confidentiality and information sharing.-

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

124 (u) Information relative to section 6 of this act and ss.
125 211.0251, 212.1831, 220.1875, 561.1211, 624.51055, and 1002.395
126 to the Department of Education and the Division of Alcoholic
127 Beverages and Tobacco in the conduct of official business.

128 Section 5. Paragraphs (b) and (c) of subsection (5),



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129 paragraphs (b) and (c) of subsection (13), and subsection (15)
130 of section 1002.395, Florida Statutes, are amended to read:

131 1002.395 Florida Tax Credit Scholarship Program.—

132 (5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

133 (b) A taxpayer may submit an application to the department
134 for a tax credit or credits under one or more of section 6 of
135 this act, s. 211.0251, s. 212.1831, s. 220.1875, s. 561.1211, or
136 s. 624.51055. The taxpayer shall specify in the application each
137 tax for which the taxpayer requests a credit and the applicable
138 taxable year for a credit under s. 220.1875 or s. 624.51055 or
139 the applicable state fiscal year for a credit under section 6 of
140 this act, s. 211.0251, s. 212.1831, or s. 561.1211. The
141 department shall approve tax credits on a first-come, first-
142 served basis and must obtain the division's approval prior to
143 approving a tax credit under section 6 of this act or s.
144 561.1211.

145 (c) If a tax credit approved under paragraph (b) is not
146 fully used within the specified state fiscal year for credits
147 under section 6 of this act, s. 211.0251, s. 212.1831, or s.
148 561.1211 or against taxes due for the specified taxable year for
149 credits under s. 220.1875 or s. 624.51055 because of
150 insufficient tax liability on the part of the taxpayer, the
151 unused amount may be carried forward for a period not to exceed
152 3 years. However, any taxpayer that seeks to carry forward an
153 unused amount of tax credit must submit an application to the
154 department for approval of the carryforward tax credit in the
155 year that the taxpayer intends to use the carryforward. The
156 department must obtain the division's approval prior to
157 approving the carryforward of a tax credit under s. 561.1211.



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158 (13) ADMINISTRATION; RULES.—

159 (b) The department shall adopt rules necessary to
160 administer this section, section 6 of this act, and ss.
161 211.0251, 212.1831, 220.1875, 561.1211, and 624.51055, including
162 rules establishing application forms, procedures governing the
163 approval of tax credits and carryforward tax credits under
164 subsection (5), and procedures to be followed by taxpayers when
165 claiming approved tax credits on their returns.

166 (c) The division shall adopt rules necessary to administer
167 its responsibilities under this section, section 6 of this act,
168 and s. 561.1211.

169 (15) PRESERVATION OF CREDIT.—If any provision or portion of
170 this section, section 6 of this act, s. 211.0251, s. 212.1831,
171 s. 220.1875, s. 561.1211, or s. 624.51055 or the application
172 thereof to any person or circumstance is held unconstitutional
173 by any court or is otherwise declared invalid, the
174 unconstitutionality or invalidity shall not affect any credit
175 earned under section 6 of this act, s. 211.0251, s. 212.1831, s.
176 220.1875, s. 561.1211, or s. 624.51055 by any taxpayer with
177 respect to any contribution paid to an eligible nonprofit
178 scholarship-funding organization before the date of a
179 determination of unconstitutionality or invalidity. Such credit
180 shall be allowed at such time and in such a manner as if a
181 determination of unconstitutionality or invalidity had not been
182 made, provided that nothing in this subsection by itself or in
183 combination with any other provision of law shall result in the
184 allowance of any credit to any taxpayer in excess of one dollar
185 of credit for each dollar paid to an eligible nonprofit
186 scholarship-funding organization.



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187 Section 6. Credit for contributions to eligible nonprofit
188 scholarship-funding organizations.—There is allowed a credit of
189 100 percent of an eligible contribution made to an eligible
190 nonprofit scholarship-funding organization under s. 1002.395,
191 Florida Statutes, against any tax or surcharge due under chapter
192 210, Florida Statutes. However, a credit allowed under this
193 section may not exceed 90 percent of the tax due on the return
194 on which the credit is taken. For purposes of determining the
195 distribution of tax revenue under chapter 210, Florida Statutes,
196 the Division of Alcoholic Beverages and Tobacco of the
197 Department of Business and Professional Regulation shall
198 disregard any tax credits allowed under this section to ensure
199 that the distribution of tax revenues to the General Revenue
200 Fund is the only distribution that is reduced as a result of the
201 tax credits. The provisions of s. 1002.395, Florida Statutes,
202 apply to the credits authorized under this section.

203 Section 7. (1) Notwithstanding the limitations in s.
204 1002.395(5)(d), Florida Statutes, a taxpayer who has an unused
205 amount of corporate income tax credits or franchise tax credits
206 which will not be used by the taxpayer as a result of this act
207 is entitled to:

208 (a) Exchange the unused amount of corporate income tax
209 credits or franchise tax credits for credits against other taxes
210 which were allowed by the statute allowing the credit against
211 the corporate income tax; or

212 (b) Sell or transfer the unused amount of corporate income
213 tax credits or franchise tax credits to one or more taxpayers
214 who may then use or exchange the credits.

215 (2) This act does not alter the tax credit cap amount that



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216 would otherwise apply in a state fiscal year.

217 (3) The Department of Revenue is authorized, and all
218 conditions are deemed met, to adopt emergency rules under ss.
219 120.536(1) and 120.54(4), Florida Statutes, to administer this
220 section. The emergency rules shall remain in effect for 6 months
221 after adoption and may be renewed during the pendency of
222 procedures to adopt rules addressing the subject of the
223 emergency rules. Such rules may include, but are not limited to,
224 rules establishing the process for exchanging, selling, or
225 transferring unused credit amounts, including notice and
226 tracking requirements.

227 Section 8. The Department of Revenue is authorized, and all
228 conditions are deemed met, to adopt emergency rules pursuant to
229 ss. 120.536(1) and 120.54, Florida Statutes, to administer this
230 act. The emergency rules shall remain in effect for 6 months
231 after adoption and may be renewed during the pendency of
232 procedures to adopt permanent rules addressing the subject of
233 the emergency rules.

234 Section 9. This act shall take effect January 1, 2012, and
235 shall apply to tax years beginning on or after that date.

236
237 ===== T I T L E A M E N D M E N T =====

238 And the title is amended as follows:

239 Delete everything before the enacting clause
240 and insert:

241 A bill to be entitled

242 An act relating to state revenues; amending s. 220.11,
243 F.S.; reducing the corporate income tax rate; amending
244 s. 220.63, F.S.; reducing the franchise tax rate;



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245 providing for additional reductions in the corporate
246 income tax rate and franchise tax rate contingent upon
247 increases in the rate of growth of sales tax revenues;
248 amending s. 213.053, F.S.; authorizing the Department
249 of Revenue to provide the Department of Education and
250 the Division of Alcoholic Beverages and Tobacco of the
251 Department of Business and Professional Regulation
252 with information relative to tax credits against taxes
253 or surcharges on tobacco products for contributions to
254 eligible nonprofit scholarship-funding organizations;
255 amending s. 1002.395, F.S.; specifying additional
256 taxes against which a taxpayer may claim a credit for
257 an eligible contribution to an eligible nonprofit
258 scholarship-funding organization to include taxes or
259 surcharges on tobacco products; authorizing a taxpayer
260 to receive a tax credit against taxes or surcharges on
261 tobacco products for an eligible contribution to an
262 eligible nonprofit scholarship-funding organization;
263 limiting the amount of the tax credit to 90 percent of
264 the taxpayer's tax liability for taxes or surcharges
265 on tobacco products; providing that the distribution
266 of tax revenues to the General Revenue Fund is the
267 only distribution that is reduced as a result of the
268 tax credits; authorizing a taxpayer to exchange unused
269 corporate income tax credits or franchise tax credits
270 for other tax credits under certain circumstances;
271 authorizing a taxpayer to sell or transfer unused
272 corporate income tax credits or franchise tax credits
273 under certain circumstances; authorizing the



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274 Department of Revenue to adopt emergency rules
275 relating to the exchange, sale, or transfer of
276 corporate income tax credits or franchise tax credits;
277 authorizing the Department of Revenue to adopt
278 emergency rules to administer the act; providing for
279 application of the act; 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 1236

INTRODUCER: Senator Richter

SUBJECT: State Revenues/Corporate Income Tax

DATE: April 22, 2011

REVISED: _____

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

I. Summary:

The state of Florida levies a corporate income tax (CIT) rate of 5.5 percent on the earnings of eligible corporations. Florida banks and savings institutions, as defined in s. 220.62, F.S., pay what is called a “franchise tax” that is identical to the corporate income tax levy. Additionally, Florida levies an alternative minimum tax (AMT) of 3.3 percent against the net income of corporations who have elected to use that system for their federal tax computations. Florida offers 19 corporate income tax credits, including tax credits in exchange for business contributions to the Florida Tax Credit Scholarship Program, designed to assist low-income students who attend private schools. This program is capped at \$140 million for FY 10-11.

Florida also collects various taxes and surcharges on tobacco-based products, with the revenues distributed among the Health Care Trust Fund, the General Revenue Fund, and other trust funds, for specified uses.

SB 1236 gradually repeals Florida’s corporate income, franchise, and AMT taxes, over a period of 7 years. The repeal is effective December 31, 2018. The bill also:

- Transfers deposition of revenues from the surcharges on sales of cigarettes and other tobacco products from the Health Care Trust Fund to the General Revenue Fund;
- Allows any entity with any ch. 210, F.S., tax liability, related to tobacco-based products, to take a credit against its liabilities equal to 100 percent of its contribution to the Florida Tax Credit Scholarship Program, under certain conditions;
- Provides for exchange or transferability of unused corporate income or franchise tax credits for those taxpayers impacted by this legislation;

- Authorizes the Department of Revenue (DOR) to provide confidential taxpayer information to the Department of Education and the Division of Alcoholic Beverages and Tobacco related to the new tax credits for the scholarship program; and
- Authorizes DOR to adopt emergency rules to implement the various provisions of the legislation.

SB 1236 substantially amends ss. 220.11, 210.011, 210.276, 213.053, 220.63, and 1002.395, F.S., and creates three unnumbered sections of law.

II. Present Situation:

Florida's Corporate Income and Franchise Taxes

In response to a constitutional amendment that authorized the levy of a state corporate income tax, the 1971 Legislature adopted a 5-percent corporate income tax, which became effective on corporate incomes earned after January 1972. In 1984, the Legislature raised the state's corporate income tax rate to 5.5 percent.

Florida banks and savings institutions, as defined in s. 220.62, F.S., pay what is called a "franchise tax" that is identical to the corporate income tax.

Florida also levies an alternative minimum tax (AMT) of 3.3 percent against the net income of corporations who have elected to use that system for their federal tax computations.¹ The tax due is whichever amount is greater: the regular Florida corporate income tax or the Florida AMT.

Florida corporate income tax liability is computed using federal taxable income, modified by certain Florida adjustments, to determine adjusted federal income. A corporation doing business outside Florida may apportion its adjusted federal income for Florida tax purposes, using a three-factor formula. The formula is a weighted average, designating 25 percent each to factors for property and payroll, and 50 percent to sales.²

Entities Subject to the Tax

Chapter 220, F.S., is very specific about what types of businesses must file corporate income tax forms. Briefly:³

- Corporations and artificial entities that conduct business, or earn or receive income in Florida, including out-of-state corporations, must file a Florida corporate income tax return unless exempt. They must file a return, even if no tax is due.

¹ More information about the AMT for corporations is available from many sources, but one of the most concise yet understandable explanations was prepared by the nonpartisan Tax Policy Center, an affiliate of The Brookings Institute. The article is available at <http://www.taxpolicycenter.org/publications/url.cfm?ID=1000515>. Last visited April 20, 2010.

² Section 220.15, F.S., details the apportionment formulas for most corporations. Section 220.151, F.S., details the apportionment for entities that pay the premium insurance tax and for transportation entities. Finally, s. 220.152, F.S., sets out a process for how DOR would apportion the Florida corporate income tax liability for businesses that don't fit into the other categories; in such cases, the taxpayer is required to petition DOR to compute its apportionment and must agree to provide the agency additional documentation.

³ The source for this is a primer prepared by the Florida Department of Revenue. Available at <http://dor.myflorida.com/dor/taxes/corporate.html>. Last visited March 26, 2011.

- Corporations and other artificial entities, including those located in other states, that are partners in a partnership or members of a joint venture doing business in Florida must file.
- Limited liability companies (LLCs) may or may not have to file a Florida corporate income tax return, depending on certain factors:
 - An LLC classified as a corporation for Florida and federal income tax purposes, is subject to the Florida Income Tax Code and must file a Florida corporate income tax return.
 - An LLC classified as a partnership for Florida and federal income tax purposes, must file Form F-1065 if one or more of its owners is a corporation. In addition, the corporate owner of an LLC that is classified as a partnership for Florida and federal income tax purposes must file a Florida corporate income tax return.
 - A single-member LLC, disregarded for Florida and federal income tax purposes, does not have to file a separate Florida corporate income tax return. However, the income of the company is not exempt from tax if a corporation owns the company, whether directly or indirectly. In this case, the corporation must file Form F-1120 reporting its own income, and the income of the single member LLC.
- Sole proprietorships, individuals, estates of decedents, and testamentary trusts are exempted and do not have to file a return.
- “S” corporations and tax-exempt organizations usually do not have to file a Florida corporate income tax return if they do not have federal taxable income. If they have federal taxable income, however, they must then file a Florida corporate income tax return and pay any tax due.

Florida has adopted the federal definition of taxable income. A Florida corporate taxpayer’s net income is its adjusted federal income, or the share of its adjusted federal income for the year that is apportioned to Florida, plus non-business income allocated to Florida, less the \$5,000 exemption. Also, a Florida corporation that pays federal AMT must compute its Florida taxes under the AMT system that same tax year.⁴

CIT Revenues Collected

In FY 2009-2010, the state collected a net \$1.79 billion in corporate and franchise taxes, which were deposited into the General Fund.⁵ An estimated \$1.9 billion is the latest estimated net collections for FY 2010-2011.⁶

Information provided by the Governor’s Office indicated that in tax year 2008, nearly 31,000 Florida businesses paid the CIT, franchise tax, or AMT; the average tax payment for about 92 percent of taxpayers was \$4,432.22.⁷ More information is in the chart below.

⁴ Taxpayers that chose to use the AMT system are allowed, in later years, to take a credit equal to the amount of Florida AMT paid over the amount of Florida “regular” tax that would have otherwise been due.

⁵ Information available from the Florida Office of Economic and Demographic Analysis website. Report available at: <http://edr.state.fl.us/Content/conferences/generalrevenue/grchng.pdf>. Last visited March 25, 2011.

⁶ Ibid.

⁷ Information prepared by the Executive Office of the Governor. On file with the Senate Commerce and Tourism Committee.

Composition of Chapter 220, F.S. Taxpayers, in 2008

Business Sector (Total)	Firms	Tax Due	Firms Pct	Tax Due Pct
(11) Agriculture, Forestry, Fishing, and Hunting	345	\$29.0	1.1%	1.9%
(21) Mining, Quarrying, and Oil and Gas Extraction	44	\$17.0	0.1%	1.1%
(22) Utilities	28	\$12.6	0.1%	0.8%
(23) Construction	1,212	\$39.4	3.9%	2.6%
(31-33) Manufacturing	1,528	\$177.8	4.9%	11.6%
(42) Wholesale Trade	2,316	\$122.3	7.5%	8.0%
(44-45) Retail Trade	2,794	\$226.3	9.0%	14.7%
(48-49) Warehousing	438	\$19.8	1.4%	1.3%
(51) Information	327	\$125.2	1.1%	8.1%
(52) Finance	1,415	\$351.9	4.6%	22.9%
(53) Real Estate and Rental and leasing	1,838	\$63.3	5.9%	4.1%
(54) Professional, Scientific and Technical Services	1,387	\$44.0	4.5%	2.9%
(55) Management of Companies and Enterprises	416	\$143.5	1.3%	9.3%
(56) Administrative and Support and Waste Management and Remediation Services	716	\$41.0	2.3%	2.7%
(61) Educational Services	118	\$7.5	0.4%	0.5%
(62) Health Care and Social Assistant	671	\$23.1	2.2%	1.5%
(71) Arts, Entertainment and Recreation	849	\$20.3	2.7%	1.3%
(72) Accommodation and Food Services	244	\$15.2	0.8%	1.0%
(81) Other Services (except Public Administration)	1,093	\$17.6	3.5%	1.1%
Other	13,137	\$40.9	42.5%	2.7%
Totals	30,916	\$1,537.7	100.0%	100.0%

Information provided by EOG

Corporate Income Tax Credits

Florida offers 19 statutorily created CIT or franchise credits:

- Membership plan assessments against HMOs, pursuant to s. 631.828, F.S.;
- The Capital Investment Tax Credit, pursuant to s. 220.19, F.S.;
- The Enterprise Zone Jobs Tax Credit, pursuant to s. 220.181, F.S.;
- The Community Contribution Tax Credit, pursuant to s. 220.183, F.S.;
- The Enterprise Zone Property Tax Credit, pursuant to s. 220.182, F.S.;
- The Rural Job Tax Credit, pursuant to s. 220.1895, F.S.;
- The Urban High-Crime Area Job Tax Credit, also in s. 220.1895, F.S.;
- The Emergency Excise Tax Credit, pursuant to s. 221.02, F.S.;
- The Hazardous Waste Facility Tax Credit, pursuant to s. 220.184, F.S.;
- Credit for the Alternative Minimum Tax, as explained above, pursuant to s. 220.186, F.S.;
- The Contaminated Site Rehabilitation Tax Credit, pursuant to s. 220.1845, F.S.;
- Child Care Tax Credits, pursuant to s. 220.19, F.S.;
- The State Housing Tax Credit, pursuant to s. 220.185, F.S.;

- The credit for contributions to eligible nonprofit scholarship-funding organizations, pursuant to ss. 220.1875 and 1002.395, F.S.;
- The Renewable Energy Technology Tax Credit, pursuant to s. 220.192, F.S.;
- The Florida Renewable Energy Production Tax Credit, pursuant to s. 220.193, F.S.;
- The New Markets Tax Credit, pursuant to s. 288.9916, F.S.;
- The Entertainment Industry Tax Credit, pursuant to s. 220.1899, F.S.; and
- The Jobs for the Unemployed tax Credit, pursuant to s. 220.1896, F.S.

Each tax credit has different criteria; have carry-forward periods ranging from 1 to 5 years; and have limited transferability, if allowed at all.

The Corporate Income Tax Credit Scholarships for K-12 Students

The Legislature established the Corporate Income Tax Credit Scholarship Program in 2001⁸ to expand educational opportunities for low-income students.⁹ The program enables these students to attend private schools using scholarships financed with contributions from businesses, in exchange for those businesses receiving 100 percent of their contributions as a credit against their corporate income¹⁰ or insurance premium tax¹¹ liabilities, as a credit against businesses eligible for direct payment of sales and use taxes,¹² the excise taxes owed on oil or natural gas production,¹³ on malt beverages, and on other alcoholic beverages.¹⁴

Businesses participating in the scholarship program make contributions to non-profit scholarship funding organizations (SFOs), and receive tax credits equal to the amount of these contributions, not to exceed 75 percent of their corporate or premium insurance tax liabilities. The maximum amount of tax credits that may be granted annually under the program was capped originally at \$50 million, but over the years that cap has increased so that for FY 10-11, the cap is \$140 million.¹⁵

As of November 2010, there were 1,073 private schools in 60 counties serving 32,320 students who received scholarships under this program.¹⁶ More information is available on the 2009-2010 school year; according to a report compiled by the Florida Department of Education's school choice website:¹⁷

⁸ Originally s. 220.187, F.S. (ch. 2000-225, L.O.F.); however, this section was transferred in 2010 to s. 1002.395, F.S. (ch. 2010-24, L.O.F.)

⁹ Information in this section about the Corporate Income Tax Credit Scholarship Program was taken from Report No. 08-68 "The Corporate Income Tax Credit Scholarship Program Saves State Dollars," prepared by the Office of Program Policy Analysis & Government Accountability. Published in December 2008.

¹⁰ Section 220.1875, F.S.

¹¹ Section 624.51055, F.S.

¹² Section 212.1831, F.S. Eligible companies are those whose operations do not collect sales taxes nor lend themselves to immediate computation of sales taxes owed. The best example is an interstate trucking company that leases its vehicles. Because the trucks may drive through multiple states as they deliver goods, the lessee must wait until the end of each month to calculate, for Florida tax purposes, how many miles were driven in Florida to compute the state sales tax owed on the lease.

¹³ Section 211.0251, F.S.

¹⁴ Section 561.1211, F.S.

¹⁵ Section 1002.395(5)(a)1., F.S. Subsequent subparagraphs describe how the cap is calculated in subsequent fiscal years.

¹⁶ See http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2010.pdf.

¹⁷ See http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.

- 28,927 students received scholarships;
- 1,033 private schools – of which 79 percent were described as “religious” and 21 percent as “non-religious – participated in the program;
- Each scholarship was valued at \$3,950;
- A total of \$106 million in contributions were made by businesses, who later received tax credits; and
- Four SFOs participated in the 2009-2010 school year – Step Up For Students, based in Jacksonville; The Carrie Meek Foundation, based in Tampa; Lightbearers, Inc., based in Daytona Beach; and Educate Today, based in Tampa.

Scholarship Tax Credit Information

Because the amount of tax credits is capped, corporations must apply, and DOR must approve, the tax credits prior to the companies, which made eligible contributions, claiming the credits on their tax returns.

According to information provided by DOR, for the state’s 2010-11 fiscal year, where the credit allocation process for this scholarship program began on January 1, 2010, the following credit allocations were made to 104 different taxpayers:

- \$70.79 million for corporate income tax liability;
- \$21.90 million for insurance premium tax liability;
- \$38.9 million for the malt beverage excise tax liability; and
- \$8.14 million for the liquor and other alcoholic beverage excise tax liability.

DOR says most of the taxpayers have not yet filed their tax returns, because of the difference in tax year and fiscal year for corporations and because of the longer filing period for corporations.

Tobacco-related Tax Revenues

Chapter 210, F.S., governs the assessment of taxes and surcharges on cigarettes and other tobacco products produced or imported in Florida. These taxes and surcharges are paid by the wholesale dealer at the time of the first sale in this state.¹⁸ Currently, a basic pack of cigarettes is taxed in Florida at a rate of \$1.339 cents per pack of 20 standard cigarettes; the rate varies proportionately for non-standard cigarettes or packs.¹⁹ All other tobacco products, except cigars, are taxed at 85 percent of their wholesale cost.²⁰

Included in the abovementioned tax rates are surcharges, enacted by the Legislature in 2009; for example, the \$1.339 total tax on a basic pack of cigarettes includes a \$1 surcharge.²¹ The revenues from the surcharges on cigarettes and other tobacco products are distributed the following way:

- 8 percent to the General Revenue Fund, to cover the cost of the GR Service Charge, and
- 92 percent to the Health Care Trust Fund within the Agency for Health Care Administration (AHCA).

¹⁸ Section 210.30, F.S.

¹⁹ 2011 Florida tax Handbook, page 50. Handbook available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2011.pdf>.

²⁰ Ibid.

²¹ Section 210.011, F.S., which specifies the surcharges, was enacted by passage of CS/CS/SB 1840 (ch. 2009-79, L.O.F.).

In FY 2009-2010, the cigarette surcharge generated nearly \$935.4 million, and the other tobacco products' surcharged generated \$63 million.²² Similar amounts were projected to be collected in FYs 2010-2011 and 2011-2012.

Pursuant to s. 408.16, F.S., the funds deposited in the Health Care Trust Fund must be used to support HCA's operations as authorized by the Legislature.

III. Effect of Proposed Changes:

SB 1236 gradually repeals the state CIT, franchise tax, and AMT tax rates over a period of 7 years, beginning with the corporate tax year that begins January 1, 2012. It also redistributes the all revenues generated by the cigarette and other tobacco products' surcharges to the General Revenue Fund; provides for exchange or transferability of unused CIT or franchise tax credits; and allows taxpayers with tobacco-related surcharge tax liabilities to obtain tax credits to defray those liabilities by contributing to the Corporate Income Tax Credit Scholarship Program, in s. 1002.395, F.S.

Section 1 amends s. 220.11, F.S., to establish the timeline by which the state's CIT and AMT tax rates on net income are gradually repealed.

For the CIT, the rate reduction will occur as follows:

- For a taxable year beginning on or after January 1, 2012, the rate shall be 3 percent;
- For a taxable year beginning on or after January 1, 2013, the rate shall be 2.5 percent;
- For a taxable year beginning on or after January 1, 2014, the rate shall be 2 percent;
- For a taxable year beginning on or after January 1, 2015, the rate shall be 1.5 percent;
- For a taxable year beginning on or after January 1, 2016, the rate shall be 1 percent; and
- For a taxable year beginning on or after January 1, 2017, the rate shall be 0.5 percent.

For AMT filers, the rate reduction will occur as follows:

- For a taxable year beginning on or after January 1, 2012, the rate shall be 1.8 percent;
- For a taxable year beginning on or after January 1, 2013, the rate shall be 1.5 percent;
- For a taxable year beginning on or after January 1, 2014, the rate shall be 1.2 percent;
- For a taxable year beginning on or after January 1, 2015, the rate shall be 0.9 percent;
- For a taxable year beginning on or after January 1, 2016, the rate shall be 0.6 percent; and
- For a taxable year beginning on or after January 1, 2017, the rate shall be 0.3 percent.

The CIT and AMT are repealed effective for the tax year that begins on or after January 1, 2018. Also, s. 220.11, F.S., is repealed effective December 31, 2018.

Section 2 amends s. 210.011, F.S., to authorize the deposit of the cigarette surcharge revenues into the General Revenue Fund, rather than in AHCA's Health Care Trust Fund.

Section 3 amends s. 210.276, F.S., to authorize the deposit of the surcharge revenues on other tobacco products into the General Revenue Fund, rather than in AHCA's Health Care Trust Fund.

²² FN 18, page 49.

Section 4 amends 213.053, F.S., as previously amended by s. 3 of ch. 2010-280, L.O.F., authorizes DOR to make available certain confidential taxpayer information to the Department of Education and to the state Division of Alcoholic Beverages and Tobacco related to Section 7 of this act, which creates a credit against tobacco-related surcharge tax liability for those businesses that contribute funds to the Corporate Income Tax Credit Scholarship Program.

Section 5 amends s. 220.63, F.S., to establish the timeline by which the state's franchise tax on financial institutions' net income is gradually repealed. The rate reduction will occur as follows:

- For a taxable year beginning on or after January 1, 2012, the rate shall be 3 percent;
- For a taxable year beginning on or after January 1, 2013, the rate shall be 2.5 percent;
- For a taxable year beginning on or after January 1, 2014, the rate shall be 2 percent;
- For a taxable year beginning on or after January 1, 2015, the rate shall be 1.5 percent;
- For a taxable year beginning on or after January 1, 2016, the rate shall be 1 percent; and
- For a taxable year beginning on or after January 1, 2017, the rate shall be 0.5 percent.

As with the CIT and AMT, the franchise tax is zero, effective for the tax year that begins on or after January 1, 2018, and s. 220.63, F.S., is repealed effective December 31, 2018.

Section 6 amends s. 1002.395, F.S., to broaden the eligibility for businesses with tobacco surcharge-related tax liability to earn tax credits for making contributions to the Corporate Income Tax Credit Scholarship Program. All of carry-forward and other tax credit provisions in this program apply to the new category of tax credits created in this legislation.

Section 7 creates an unnumbered section of law allowing a tax credit equal to 100 percent of an eligible contribution to an eligible nonprofit scholarship-funding organization, pursuant to s. 1002.395, F.S., against any tax or surcharge due under ch. 210, F.S., related to tobacco taxes.

However, any such tax credit taken against ch. 210, F.S., liabilities may not exceed 90 percent of the taxes due on the return on which the credits are claimed.

Also, only the stream of tobacco-related tax and surcharge revenues that are to be distributed to the General Revenue Fund will be reduced by the tax credits allowed under this section.

The tax credits allowed under this section must comply with all provisions of s. 1002.395, F.S., the Corporate Income Tax Credit Scholarship Program.

Section 8 creates an unnumbered section of law that provides for the exchange or transferability of tax credits that likely will not be available for use by the companies that hold them, as a result of the provisions of SB 1236.

Notwithstanding the limitations in s. 1002.395(5)(d), F.S.,²³ which limits the transferability of tax credits earned under the Corporate Income Tax Credit Scholarship Program, a taxpayer who has CIT or franchise tax credits which will not be used as a result of this act may either:

²³ Section 1002.395(5)(d), F.S., says: "A taxpayer may not convey, assign, or transfer an approved tax credit or a carryforward tax credit to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction."

- Exchange the unused amount of CIT or franchise tax credits for credits against other taxes that were allowed by the same statute; or
- Sell or transfer the unused amount of CIT or franchise tax credits to one or more taxpayers who may then use or exchange the credits.

This provision does not alter the tax credit cap amount that would otherwise apply in a state fiscal year, presumably referring to the cap in tax credits allowed to be earned for business contributions to the Corporate Income Tax Credit Scholarship Program, in s. 1002.395(5), F.S. As mentioned above, for FY 2010-2011, the cap is \$140 million.

DOR is authorized to adopt emergency rules, pursuant to ss. 120.536(1) and 120.54(4), F.S., to administer this section. The emergency rules shall remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules. Such rules may include, but are not limited to, rules establishing the process for exchanging, selling, or transferring unused credit amounts, including notice and tracking requirements.

Section 9 creates an unnumbered section of law that authorizes DOR to adopt emergency rules, pursuant to ss. 120.536(1) and 120.54(4), F.S., to administer this act. The emergency rules shall remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

Section 10 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:

At two separate meetings this spring, the Revenue Estimating Conference (REC) evaluated the fiscal impacts of SB 1236.

At its March 25, 2011, meeting, the REC reviewed the bill's provisions related to the redistribution of tobacco credit and the Corporate Income Tax Credit Scholarship Program. The REC adopted an FY 2011-2012 cash impact of about \$1 billion to the General Revenue Fund, and a corresponding loss of about \$920 million in revenue to the Health Care Trust Fund and an \$80 million reduction in the no-longer necessary General Revenue surcharge.

Further, the REC concluded that the impact to the scholarship program could not be determined.

At its April 8, 2011, meeting, the REC estimated by consensus that the fiscal impact of the bill's CIT, AMT, and franchise tax phase-out would be \$333.6 million in cash in FY 2011-2012; \$859.3 million in cash in FY 2012-2013; \$1.066 billion in FY 2012-2014; and \$1.3 billion in cash in FY 2014-2015.

B. Private Sector Impact:

Private-sector businesses that currently pay CIT, AMT, or the franchise tax will have reduced tax liabilities beginning with the January 1, 2012, tax year.

C. Government Sector Impact:

It is unclear what impact the redistribution of the tobacco-related surcharge revenues will have on AHCA, because it is unknown whether the Legislature would continue to fund AHCA's operations at the same level from the surcharge revenues in the General Revenue Fund, as it would if such revenues were still in the Health Care Trust Fund.

It also is unclear what appropriations decisions the Legislature would make to manage the reduction in CIT, AMT, and franchise tax revenues.

VI. Technical Deficiencies:

DOR in its analysis of SB 1236 identified a number of technical deficiencies in the language related to implementation of the bill's provisions. A sampling of the key deficiencies noted by DOR includes:

- There is no stated timeframe in Section 8 of the bill for the use of CIT credits that can be exchanged, sold, or transferred.
- It is unclear if the provisions in Section 8 of the bill apply only to CIT and franchise tax credits applicable to the Corporate Income Tax Credit Scholarship Program, or to all 19 CIT and franchise tax credit programs.
- Also, Section 8 does not address how DOR should handle situations where a previously earned CIT tax credit is redeemable in the future, at a lower tax rate.
- Parts of the bill relate only to the surcharges on cigarettes and other tobacco products, but Section 7 allows businesses with any ch. 210, F.S., tax liabilities to participate in the Corporate Income Tax Credit Scholarship Program and earn tax credits – which may create confusion.

- Although the bill eventually repeals the CIT, AMT, and franchise taxes, it does not address the emergency excise tax in ch. 221, F.S., which is collected on corporate income tax returns. Nor does the bill repeal the statutory requirements, effective in 2018, for corporations to file income tax returns.

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.
