

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Simpson, Chair
Senator Thompson, Vice Chair

MEETING DATE: Thursday, February 21, 2013

TIME: 8:00 —10:30 a.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Simpson, Chair; Senator Thompson, Vice Chair; Senators Bradley, Hukill, Latvala, Smith, Soto, Stargel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 98 Richter (Identical H 515)	New Markets Development Program; Revising limits on tax credits that may be claimed by qualified community development entities under the New Markets Development Program, etc. CM 02/05/2013 Favorable CA 02/21/2013 Favorable AFT AP	Favorable Yeas 8 Nays 0
2	SB 290 Galvano (Identical H 435)	Taxes on Prepaid Calling Arrangements; Revising the definition of "prepaid calling arrangement" to clarify and update which services are included under that definition; providing for retroactive application, etc. CU 02/05/2013 Favorable CA 02/21/2013 Favorable AFT AP	Favorable Yeas 8 Nays 0
3	SB 364 Hays (Similar H 109)	Consumptive Use Permits for Development of Alternative Water Supplies; Revising conditions for issuance of permits; providing for the issuance, extension, and review of permits approved on or after a certain date, etc. EP 02/06/2013 Favorable CA 02/21/2013 Fav/CS AGG AP	Fav/CS Yeas 8 Nays 0
4	SB 482 Dean (Identical H 551)	Other-personal-services Employment; Defining the term "other-personal-services employee"; authorizing the governing body of a county to employ other-personal-services employees, etc. CA 02/21/2013 Favorable GO AP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Thursday, February 21, 2013, 8:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 342 Thrasher (Identical H 279)	Rental of Homestead Property; Revising criteria under which rental of homestead property is allowed for tax exemption purposes and not considered abandoned, etc. CA 02/21/2013 Favorable AFT AP	Favorable Yeas 9 Nays 0
6	SB 354 Thrasher (Identical H 531)	Ad Valorem Tax Exemptions; Providing that certain leasehold interests and improvements to land owned by the United States, a branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States are exempt from ad valorem taxation under specified circumstances; providing that such leasehold interests and improvements are entitled to an exemption from ad valorem taxation without an application being filed for the exemption or the property appraiser approving the exemption, etc. CA 02/21/2013 Favorable MS AFT AP	Favorable Yeas 9 Nays 0
7	CS/SB 336 Commerce and Tourism / Latvala (Similar H 555, Compare S 306)	Tourist Development Tax; Clarifying that the proceeds of the tax may be used for the benefit of certain museums or aquariums; clarifying that the tax automatically expires upon the retirement of all bonds issued by the county for financing certain facilities, etc. CM 02/05/2013 Fav/CS CA 02/21/2013 Fav/CS	Fav/CS Yeas 9 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 98

INTRODUCER: Senators Richter and Abruzzo

SUBJECT: New Markets Development Program

DATE: February 21, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	Favorable
2.	Biehl	Yeatman	CA	Favorable
3.			AFT	
4.			AP	
5.				
6.				

I. Summary:

SB 98 increases the cumulative amount of tax credits that may be awarded to the Florida New Markets Tax Credit Program from \$163.8 million to \$263.8 million. This bill also increases the amount of tax credits that the state may award to the program in a single fiscal year from \$33.6 million to \$53.6 million.

This bill substantially amends section 288.9914 of the Florida Statutes.

II. Present Situation:

Florida New Markets Program

Florida’s New Markets Tax Credits Program was enacted in 2009.¹ The program was “established to encourage capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that make qualified low-income community investments in qualified active low-income community businesses to create and retain jobs.”²

Under this program, federally-certified Community Development Entities (CDE), which have entered into allocation agreements with the U.S. Treasury, have the ability to apply to the Department of Economic Opportunity (DEO) for a certification of Florida tax credits.³ The CDE must show that it is prepared to invest capital into qualified businesses in Florida’s low-income

¹ Florida’s New Markets Development Program Act is codified at ch. 288, part XII, F.S.

² Section 288.9912, F.S.

³ Section 288.9914, F.S.

communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups. DEO is also able to request additional information needed to verify continued certification. DEO certifies qualified applications on a first-come, first-served basis. Once DEO certifies a CDE's qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to DEO information including:

- The entity's audited financial statements;
- The industries for the investments;
- The counties where investments were made;
- The number of jobs created and retained; and
- Verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.⁴

Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.⁵

Tax Credits

The Florida New Markets Tax Credit Program allows a tax credit to be taken against the corporate income tax under s. 220.11, F.S., or the insurance premium tax under s. 624.509, F.S.⁶ This credit may be claimed after the investment has been made and held for a minimum of 2 years. Therefore, no credit can be claimed in the first 2 years. In year 3, the annual credit is equal to 7 percent of the investment, and from the fourth year through the seventh year the annual credit is equal to 8 percent. Over 7 years this credit totals 39 percent of the total investment. Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022.

Additionally, the program has a cap of \$163.8 million on the total tax credits allowed to be allocated to all investments with the caveat that no more than \$33.6 million in tax credits may be claimed in a single state fiscal year. Current law does not allow the transfer or sale of tax credits, but does allow a tax credit to subsequent purchasers of a qualified investment.

Federal New Markets Tax Credit⁷

Florida's New Markets Tax Credit Program was mirrored after the federal program. The Federal New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities.⁸ The CDE must, in turn, invest the qualified equity investments in low-income

⁴ Section 288.9918, F.S.

⁵ Section 288.9920, F.S.

⁶ Section 288.9916, F.S.

⁷ Information on the federal New Markets Tax Credit Program can be found at http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited December 13, 2012).

⁸ 15 U.S.C. sec. 689, *et. seq.*

communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a 7-year period. In each of the first 3 years, the investor receives a credit equal to 5 percent of the total amount paid for the stock or capital interest at the time of purchase. For the final 4 years, the credit is equal to 6 percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the 7-year period. An organization wishing to receive allocations under the federal NMTC Program must be certified as a CDE by the US Department of Treasury. To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on an entity's governing board or advisory board.

As stated above, the federal program and the state program each provide credits totaling 39 percent of the investment over a 7-year period. Therefore, a qualified taxpayer with a qualified investment approved for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over 7 years. In addition to the tax credits that are received, the investor also has the potential to receive benefits from the results of the investment and eventual return of their principal.

III. Effect of Proposed Changes:

Section 1 amends s. 288.9914, F.S., by increasing the cumulative amount of tax credits that may be awarded to the New Markets Tax Credit program from \$163.8 million to \$263.8 million. This bill also increases the amount of tax credits that the state may award in a single fiscal year towards the program from \$33.6 million to \$53.6 million.

Section 2 provides that the bill takes effect July 1, 2013.

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:**

The Revenue Estimating Conference has not yet determined the impact of this bill.

B. Private Sector Impact:

The New Markets Development program is intended to attract private sector investment into low-income rural and urban communities that may not otherwise have occurred.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

By Senator Richter

23-00167-13

201398

1 A bill to be entitled
2 An act relating to the New Markets Development
3 Program; amending s. 288.9914, F.S.; revising limits
4 on tax credits that may be claimed by qualified
5 community development entities under the program;
6 providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Paragraph (c) of subsection (3) of section
11 288.9914, Florida Statutes, is amended to read:

12 288.9914 Certification of qualified investments; investment
13 issuance reporting.—

14 (3) REVIEW.—

15 (c) The department may not approve a cumulative amount of
16 qualified investments that may result in the claim of more than
17 \$263.8 ~~\$163.8~~ million in tax credits during the existence of the
18 program or more than \$53.6 ~~\$33.6~~ million in tax credits in a
19 single state fiscal year. However, the potential for a taxpayer
20 to carry forward an unused tax credit may not be considered in
21 calculating the annual limit.

22 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13
Meeting Date

Topic New Markets

Bill Number S98
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior VP

Address 516 W Adams St
Street
Tallahassee FL 32301
City State Zip

Phone 224-7173

E-mail bbevis@aif.com

Speaking: For Against Information

Representing Associated Industries

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13
Meeting Date

Topic New Markets Development

Bill Number 98
(if applicable)

Name Justin Day

Amendment Barcode _____
(if applicable)

Job Title Director

Address 215 S Monroe St, Ste 602
Street
Tallahassee FL 33606
City State Zip

Phone 222-8900

E-mail jcd@cordenaspartners.com

Speaking: For Against Information

Representing Advantage Capital

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/12
Meeting Date

Topic NEW MARKETS DEVELOPMENT PROGRAM Bill Number SB 98
(if applicable)

Name SLATER BAILLIS Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 Phone 222-8900
Street

City _____ State _____ Zip _____
E-mail swb@cardenaspartners.ca

Speaking: For Against Information

Representing ENHANCED CAPITAL PARTNERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13
Meeting Date

Topic New Markets

Bill Number 98
(if applicable)

Name Sharon Spratt

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs

Address 325 John Knox Rd St 1100
Street
TLH FL 32311
City State Zip

Phone 850-298-6644

E-mail _____

Speaking: For Against Information

Representing Enterprise FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

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 Committee on Community Affairs

BILL: SB 290
 INTRODUCER: Senator Galvano
 SUBJECT: Taxes on Prepaid Calling Arrangements
 DATE: February 13, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Toman	Yeatman	CA	Favorable
3.			AFT	
4.			AP	
5.				
6.				

I. Summary:

Senate Bill 290 revises the definition of the term “prepaid calling arrangement” as provided for in Florida Statutes. Prepaid calling arrangements are excluded from the imposition of the communications services tax and gross receipts tax and are only subject to sales taxes. Under the definition proposed by the bill, certain sales of prepaid calling plans or services that are presently excluded from the definition would be considered “prepaid calling arrangements.” Examples of presently excluded services include prepaid communications services featuring text messaging, multimedia messaging, and webmail. The amendments to Florida Statutes provided in the bill are intended to be remedial in nature and apply retroactively.

This bill substantially amends sections 202.11 and 212.05, Florida Statutes.

II. Present Situation:

Communications Services Tax Simplification Law

Overview and History

Chapter 202, F.S., is the Communications Services Tax Simplification Law. Effective October 1, 2001, the law simplified and restructured numerous state and local taxes and fees imposed on communications services into a single tax centrally administered by the Department of Revenue (DOR). The revenue collected under the Communications Services Tax (CST) is distributed three ways: a portion goes to the General Revenue Fund; a portion goes to the Public Education Capital Outlay (PECO) fund used for improvements for public education; and a portion goes to local governments based upon statutory distributions and established local rates.

Prepaid Calling Arrangement

The state CST of 6.65 percent is applied to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.¹ The tax is to be charged when the service is sold at retail, computed on each taxable sale for the purpose of remitting the tax due. However, the definition of the term “sales price” expressly excludes the “sale or recharge of a prepaid calling arrangement,”² so CST is not collected on the sale of a prepaid calling arrangement.

The term “prepaid calling arrangement” is defined to mean “the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount.”³

The governing authority of each county and municipality may, by ordinance, levy a discretionary communications services tax.⁴ The local tax may be up to 7.12 percent, depending on the location of the customer.

Prepaid Calling Arrangement: Tax on Sales, Use and Other Transactions (SUT)

Chapter 212, F.S., provides for sales tax, including a requirement that a sales tax at the rate of 6 percent on charges for prepaid calling arrangements be collected at the time of sale and remitted by the selling dealer.⁵ The definition of the term “prepaid calling arrangement” is almost identical to the definition in ch. 202, F.S.; it is defined to mean “the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount.”⁶

Gross Receipts Tax on Communications Services

Section 203.01, F.S., provides for a gross receipts tax on communications services delivered to a retail consumer in this state. The tax on communications services is applied to the same services and transactions as are subject to the CST and to communications services sold to residential households. The tax is applied to the sales price of communications services when sold at retail, as the terms are defined in s. 202.11, F.S., and is due and payable at the same time as the CST. The rate applied to communications services is 2.37 percent. An additional rate of 0.15 percent is applied to communications services subject to the CST. With such sales, a communications services dealer may collect a combined rate of 6.8 percent comprised of the 6.65 percent for the CST and the 0.15 percent additional gross receipts tax.⁷

¹ Section 202.12, F.S.

² Section 202.11(13)(b)4., F.S.

³ Section 202.11(9), F.S.

⁴ Section 202.19, F.S.

⁵ Section 212.05(1)(e)1., F.S.

⁶ *Id.*

⁷ Section 202.12001, F.S.

DOR Tax Information Publication on Prepaid Communications Services

In March of 2012, DOR issued Tax Information Publication (TIP) No. 12ADM-02 to provide department clarification regarding the application of Florida taxes to sales of certain prepaid communications plans and services.⁸ The document stated that certain prepaid communications plans or services are not "prepaid calling arrangements."

Examples of such plans that do not fall under this definition include, but are not limited to:

- service that includes text messaging, multimedia messaging, web, e-mail, etc.;
- unlimited calling plans that do *not* decline with usage;
- services or plans that are *not* sold in predetermined units or dollars; or
- services or plans that are *not* originated using an access number or authorization code.⁹

The TIP went on to affirm that a "sale of a prepaid card or prepaid arrangement that does not fall under the definition of a "prepaid calling arrangement" is not subject to SUT. Instead, sales of such plans are subject to CST, because Florida's CST law generally applies to services that allow the transmission, conveyance, or routing of voice, data, audio, or video."¹⁰

III. Effect of Proposed Changes:

Section 1 amends ss. 202.11(9), F.S., to define the term "prepaid calling arrangement" to mean "access to communications services which must be paid for in advance of using such services and which is sold in predetermined units or dollars that expire on a predetermined schedule or that are decremented on a predetermined basis in exchange for such access."

This amended definition deletes language that refers to "communications services that consist exclusively of telephone calls" and use of "an access number, authorization code, or other means." Additionally, by substituting "access to communications services" for "communications services that consist exclusively of telephone calls," the new language appears to include text messaging and other communications services.

Section 2 amends ss. 212.05(1), F.S., to define the term prepaid calling arrangement to have the same meaning as provided in s. 202.11, F.S.

Section 3 provides that these amendments are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 4 provides that except as otherwise expressly provided in section 3, the bill takes effect July 1, 2013.

⁸ Florida Department of Revenue, *Prepaid Communications Services*, TIP No. 12ADM-02 (March 27, 2012) available at <http://dor.myflorida.com/dor/tips/tip12adm-02.html>.

⁹ *Id.* Emphasis in the original.

¹⁰ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 (b) of the Florida Constitution, prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.9 million for FY 2012-13¹¹) are exempt.

As is discussed below in the Tax/Fee Issues section, the bill’s effect on revenues is uncertain. The Revenue Estimating Conference (REC) has not met to review the fiscal impact of SB 290, but it is scheduled to discuss the Communications Service and Sales Tax in the future. An REC statement would likely help to clarify the mandate question. If the bill is not exempt as having an insufficient fiscal impact, it may require a two-thirds vote of the membership of each chamber to become law.

B. Public Records/Open Meetings Issues:

Not applicable; this bill does not appear to have any effect on public records or open meetings.

C. Trust Funds Restrictions:

Not applicable; this bill does not appear to have any effect on trust funds.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill’s effect on tax revenues is uncertain. Under current law, for a plan to qualify as a legitimate prepaid calling arrangement, it must have the following characteristics:

- It must require prepayment for services.
- The services or plans must be “sold in predetermined units or dollars whose number declines with use in a known amount,” and thus cannot include unlimited plans, which do not decline with usage, or plans that are otherwise not sold in terms of a predetermined amount of dollars or units, such as minutes.
- The services must “consist exclusively of telephone calls,” and thus cannot include any service other than voice communications, no text messaging, multimedia messaging, webmail, or similar services.

¹¹ Based on the Demographic Estimating Conference’s final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at:

<http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf>.

- The telephone calls must be “originated by using an access number, authorization code, or other means.”

Any arrangement that does not have all these characteristics is not a prepaid calling arrangement as defined by these statutes. It is, therefore, subject to the communications services and gross receipts tax statutes.¹²

The application of these statutes in these circumstances is a matter of disagreement. The DOR concludes that the sale is subject to the CST; providers argue that such a sale may not fit within the remainder of the CST statutes and requirements either and, as such, it would not be subject to the CST. Under the bill, a plan *can* offer texting and still qualify as a prepaid calling arrangement such that the sales tax would be applicable, not the CST.

The disagreement appears to be important, however, in attempting to determine the bill’s impact on state and local CST revenues and state gross receipts tax. Sales tax on a prepaid calling arrangement is 6 percent plus any local discretionary sales surtaxes. The total CST can be as much as 16.29 percent, consisting of the state CST of 6.65 percent, state gross receipts tax of 2.52 percent, and a local CST of up to 7.12 percent. In simply comparing the two rates, it appears that the bill will result in a reduction of tax revenues. However, this assumes that tax payments have been made in the past based on the DOR interpretation. If, in fact, all or most sellers have used the conflicting interpretation and paid sales tax, not the CST, the actual difference in past revenue and projected revenue under the bill will be little to nothing as there would be no change in payments under such circumstances. The fact that at least some sellers have paid sales tax, not CST, is acknowledged in DOR’s TIP No. 12ADM-02, which encourages such sellers to contact DOR.¹³

B. Private Sector Impact:

Communications service providers can continue to offer a prepaid plan consisting of a flat-rate charge for a predetermined number of minutes of access to communications services, including services such as texting, without being subject to the increased complexity and slightly higher rate of the CST. Customers will continue to have this choice.

C. Government Sector Impact:

The Revenue Estimating Conference has not met to review the fiscal impact of SB 290 but it is scheduled to discuss the Communications Service and Sales Tax in the future.

The DOR estimates a \$45,721 non-recurring expenditure to create and mail a TIP to sales tax dealers and communications services providers outlining the provisions of the bill.¹⁴

¹² For the Department of Revenue’s discussion of these characteristics, and for a history of the communications services tax and prepaid calling arrangements, see <http://dor.myflorida.com/dor/tips/tip12adm-02.html>.

¹³ *Id.*

¹⁴ Florida Department of Revenue, *Senate Bill 290 Analysis: Taxes on Prepaid Calling Arrangements* (Feb. 8, 2013) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=507>.

VI. Technical Deficiencies:

A DOR analysis of SB 290 recommended the following possible technical changes for the bill:

- on page 1, line 25, replace “access to” with “the retail sale of”;
- on page 2, line 33, strike “are decremental” and replace with “decline”; and
- on page 2, line 34, replace “such access” with “use of such service.”¹⁵

VII. Related Issues:

The DOR analysis also outlined potential department difficulties in the implementation, administration or enforcement of SB 290.¹⁶ Given the provisions of the bill, “any communication service that is paid for in advance, is sold in predetermined units or dollars, and expires on predetermined schedule could fall under the proposed (prepaid calling arrangement) definition. For example, Video on Demand (VOD), cable television, and direct-to-home satellite service, while not ‘calling services,’ could fall within the definition, because they are communications services that are paid for in advance of use, are sold in predetermined dollars, and expire on a predetermined schedule (i.e., within 24 hours or monthly).” The department opined that consideration might be given “to exclude communications services, such as VOD, that are not primarily calling services from the definition of the term ‘prepaid calling arrangement.’”

In addition the DOR analysis highlights potential issues with the “advance payment” provision of the bill. Although advance payment is required, current language “does not specify whether the communications service must be discontinued at the expiration of the predetermined schedule or at a point where the decrement at a predetermined basis is exhausted or complete to meet the requirements of a ‘prepaid calling arrangement.’”¹⁷

Finally, the DOR analysis draws attention to the bill’s replacement of the phrase “retail sale” with the term “access.” According to the department, “this creates an ambiguity and leaves room for different interpretations of the meaning. As currently proposed, a prepaid calling arrangement is access to the transmission, routing or conveyance of voice, data, audio, video . . .”¹⁸

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.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

By Senator Galvano

26-00383A-13

2013290__

1 A bill to be entitled
2 An act relating to taxes on prepaid calling
3 arrangements; amending ss. 202.11 and 212.05, F.S.;
4 revising the definition of "prepaid calling
5 arrangement" to clarify and update which services are
6 included under that definition; providing for
7 retroactive application; providing an effective date.
8

9 WHEREAS, it is the intent of the Legislature to clarify
10 that certain communication services that are paid for in advance
11 are considered prepaid calling arrangements, subject to the
12 state retail sales tax and are, therefore, excluded from a
13 communications services tax, and

14 WHEREAS, it is further the intent of the Legislature that
15 the provisions of this act are remedial in nature, should be
16 interpreted broadly, as appropriate for a tax exclusion
17 provision that defines the tax base, and not strictly, as would
18 be appropriate for a tax exemption provision, NOW, THEREFORE,
19

20 Be It Enacted by the Legislature of the State of Florida:
21

22 Section 1. Subsection (9) of section 202.11, Florida
23 Statutes, is amended to read:

24 202.11 Definitions.—As used in this chapter, the term:

25 (9) "Prepaid calling arrangement" means access to the
26 ~~separately stated retail sale by advance payment of~~
27 communications services which must be paid for in advance of
28 using such services and which is that consist exclusively of
29 ~~telephone calls originated by using an access number,~~

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2013290__

30 ~~authorization code, or other means that may be manually,~~
31 ~~electronically, or otherwise entered and that are sold in~~
32 ~~predetermined units or dollars~~ that expire on a predetermined
33 schedule or that are decremented on a predetermined basis in
34 exchange for such access ~~of which the number declines with use~~
35 ~~in a known amount.~~

36 Section 2. Paragraph (e) of subsection (1) of section
37 212.05, Florida Statutes, is amended to read:

38 212.05 Sales, storage, use tax.—It is hereby declared to be
39 the legislative intent that every person is exercising a taxable
40 privilege who engages in the business of selling tangible
41 personal property at retail in this state, including the
42 business of making mail order sales, or who rents or furnishes
43 any of the things or services taxable under this chapter, or who
44 stores for use or consumption in this state any item or article
45 of tangible personal property as defined herein and who leases
46 or rents such property within the state.

47 (1) For the exercise of such privilege, a tax is levied on
48 each taxable transaction or incident, which tax is due and
49 payable as follows:

50 (e)1. At the rate of 6 percent on charges for:

51 a. Prepaid calling arrangements. The tax on charges for
52 prepaid calling arrangements shall be collected at the time of
53 sale and remitted by the selling dealer.

54 (I) "Prepaid calling arrangement" has the same meaning as
55 provided in s. 202.11 ~~means the separately stated retail sale by~~
56 ~~advance payment of communications services that consist~~
57 ~~exclusively of telephone calls originated by using an access~~
58 ~~number, authorization code, or other means that may be manually,~~

26-00383A-13

2013290__

59 ~~electronically, or otherwise entered and that are sold in~~
60 ~~predetermined units or dollars whose number declines with use in~~
61 ~~a known amount.~~

62 (II) If the sale or recharge of the prepaid calling
63 arrangement does not take place at the dealer's place of
64 business, it shall be deemed to have taken ~~take~~ place at the
65 customer's shipping address or, if no item is shipped, at the
66 customer's address or the location associated with the
67 customer's mobile telephone number.

68 (III) The sale or recharge of a prepaid calling arrangement
69 shall be treated as a sale of tangible personal property for
70 purposes of this chapter, whether or not a tangible item
71 evidencing such arrangement is furnished to the purchaser, and
72 such sale within this state subjects the selling dealer to the
73 jurisdiction of this state for purposes of this subsection.

74 b. The installation of telecommunication and telegraphic
75 equipment.

76 c. Electrical power or energy, except that the tax rate for
77 charges for electrical power or energy is 7 percent.

78 2. The provisions of s. 212.17(3), regarding credit for tax
79 paid on charges subsequently found to be worthless, is ~~shall be~~
80 equally applicable to any tax paid under ~~the provisions of~~ this
81 section on charges for prepaid calling arrangements,
82 telecommunication or telegraph services, or electric power
83 subsequently found to be uncollectible. The term ~~word~~ "charges"
84 under ~~in~~ this paragraph does not include any excise or similar
85 tax levied by the Federal Government, any political subdivision
86 of this ~~the~~ state, or any municipality upon the purchase, sale,
87 or recharge of prepaid calling arrangements or upon the purchase

26-00383A-13

2013290__

88 or sale of telecommunication, television system program, or
89 telegraph service or electric power, which tax is collected by
90 the seller from the purchaser.

91 Section 3. The amendments made by this act are intended to
92 be remedial in nature and apply retroactively, but do not
93 provide a basis for an assessment of any tax not paid or create
94 a right to a refund or credit of any tax paid before the
95 effective date of this act.

96 Section 4. Except as otherwise expressly provided in
97 section 3 of this act, this act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO

26th District

January 22, 2013

The Honorable Wilton Simpson
322 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simpson:

I respectfully request that SB 290, Taxes on Prepaid Calling Arrangements, be scheduled for a hearing in the Committee on Community Affairs at your earliest convenience. SB 290, was received favorably in the Communications, Energy, and Public Utilities Committee.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Galvano

cc: Tom Yeatman
Ann Whittaker

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2013

Meeting Date

Topic Prepaid Calling Arrangements

Bill Number 290
(if applicable)

Name Jorge Chamizo

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 108 S. Monroe St

Phone (850) 681-0024

Street
Tallahassee, FL

E-mail jorge@flapartners.com

City Tallahassee, FL *State* 32301 *Zip*

Speaking: For Against Information

Representing TracFone Wireless

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2013

Meeting Date

Topic Prepaid - CST

Bill Number SB 290 (if applicable)

Name Woody Simmons

Amendment Barcode (if applicable)

Job Title VP Govt Affairs

Address 106 East College Suite 710

Phone 850-222-6300

Street

Tally

FL

32301

City

State

Zip

E-mail Woodrow.Simmons@verizon.com

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

Representing Verizon

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13
Meeting Date

Topic Pre-paid calling services

Bill Number S 290
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior VP

Address 516 W Adams St
Street
Tallahassee FL 32301
City State Zip

Phone 724-7173

E-mail bbevis@aifc.org

Speaking: For Against Information

Representing Associated Industries

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Committee on Community Affairs

BILL: CS/SB 364

INTRODUCER: Community Affairs Committee and Senator Hays

SUBJECT: Consumptive Use Permits for Development of Alternative Water Supplies

DATE: February 21, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	Favorable
2.	Biehl	Yeatman	CA	Fav/CS
3.			AGG	
4.			AP	
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:

CS/SB 364 directs that alternative water supply (AWS) development projects are eligible for consumptive use permits (CUPs) of at least 30 years. The permits are subject to compliance reports and water management district (WMD) water shortage orders. The bill provides that AWS permits may be reduced to prevent harm to water resources or existing legal uses. The bill also specifies an AWS CUP may not be issued for nonbrackish groundwater supplies or nonalternative water supplies. Lastly, the bill clarifies that entities have the option to apply for either at least 20-year permits or at least 30-year permits.

This bill substantially amends section 373.236 of the Florida Statutes.

II. Present Situation:

Consumptive Use Permitting

Section 373.236(5), F.S., authorizes CUPs for the development of AWS projects. A CUP establishes the duration and type of water use as well as the maximum amount that may be withdrawn. A WMD or the DEP may impose reasonable conditions as are necessary to assure

that such use is consistent with the overall objectives of the issuing WMD or the DEP and is not harmful to the water resources of the area.¹

To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use must:

- be a “reasonable-beneficial use” as defined in s. 373.019(16), F.S.;
- not interfere with any presently existing legal use of water; and
- be consistent with the public interest.²

The Three-Prong Test

“Reasonable-beneficial use,” the first prong of the test, is defined as “the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.”³ The Legislature has declared water a public resource. Therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other demands.

To that end, the DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and water management needs.⁴ These criteria include consideration of the quantity of water requested; the need, purpose, and value of the use; and the suitability of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources.⁵

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.⁶ New CUPs cannot be issued if they would conflict with an existing legal use. This criterion is only protective of water users that actually withdraw water, not passive users of water resources.⁷

The final element of the three-prong test requires water use to be consistent with the “public interest.” While the DEP’s Water Resource Implementation Rule provides criteria for determining the “public interest,” determination of a public interest is made on a case-by-case

¹ Section 373.219, F.S.

² Section 373.223(1)(a-c), F.S.

³ Section 373.019(16), F.S.

⁴ See Rule 62-40, F.A.C.

⁵ *Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001) (upholding the WMD’s use of criteria for implementing the reasonable-beneficial use standard).

⁶ Section 373.223(1)(b), F.S.

⁷ See *Harloff v. City of Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991) (holding a municipal wellfield was an existing legal user and should be afforded protection). In contrast, see *West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, Aug. 30, 1989) (holding a farmer who passively relied on a higher water table to grow nonirrigated crops and standing surface water bodies to water cattle was not an existing legal user).

basis during the permitting process.⁸ However, the WMDs and the DEP have broad authority to determine which uses best serve the public interest if there are not sufficient resources to fulfill all applicants' CUPs. In the event that two or more competing applications are deemed to be equally in the public interest, the particular WMD or the DEP gives preference to renewal applications.⁹

Duration of Permits and Compliance Reviews

Pursuant to s. 373.236(1), F.S., CUPs must be granted for 20 years if requested by the applicant and there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The WMDs and the DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, the type of use, or both.

Pursuant to s. 373.236(4), F.S., when necessary to maintain "reasonable assurance" that initial conditions for issuance of a 20-year CUP can continue to be met, a WMD or the DEP may require a permittee to produce a compliance report every 10 years.¹⁰ A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met, including original demand projections. After reviewing a compliance report, a WMD or the DEP may modify the permit, including reductions or changes in the initial allocations of water to ensure the water use comports with initial conditions for issuance of the CUP. Permit modifications made by a WMD or the DEP during a compliance review cannot be subject to competing applications for water use if the permittee is not seeking additional water allocations or changes in water sources.

Consumptive Use Permits for the Development of Alternative Water Supplies

Section 373.019(1), F.S., defines "alternative water supplies" as:

[S]alt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan.

CUPs issued pursuant to s. 373.236(5), F.S., for the development of AWS must be issued for at least 20 years. If the permittee issues bonds to finance construction of the AWS project, the permit must be extended to expire upon retirement of the bonds if the permittee requests an extension during the term of the permit and the issuing WMD's governing board determines the

⁸ *Supra* note 4.

⁹ *See* s. 373.233, F.S.

¹⁰ In limited instances, the statute authorizes more frequent "look backs." For example, the Suwannee River WMD may require a compliance report every 5 years through July 1, 2015, after which the "look-back" period returns to 10 years.

use will continue to meet the CUP's conditions. Compliance reports may also be required every 10 years for CUPs issued for AWS projects. WMDs generally issue CUPs with a maximum term of 20 years for the development of AWS, although some 30-year CUPs for AWS projects have been issued.

III. Effect of Proposed Changes:

Section 1 amends s. 373.236, F.S., clarifying that AWS permits issued for at least 20 years are subject to the reasonable assurance provisions currently required by the DEP and WMDs.

It directs the DEP or the WMDs to issue permits for the development of AWS projects for at least 30 years for permits issued on or after July 1, 2013, if the proper reasonable assurance is provided. If, within seven years from the issuance of the permit, the permittee issues bonds to finance the project, completes the project, and requests an extension of the CUP duration, the CUP must be extended for a maximum of seven years. This will allow the entity that develops the AWS project to operate the AWS project for 30 years after construction in order to repay 30-year bonds.

CUPs issued pursuant to this bill are subject to compliance reports; however, the quantity of alternative water allocated under the permit cannot be reduced during the compliance review if bonds that financed the project are outstanding. This provision does not apply to adopted districtwide water shortage orders or when an AWS permit results in harm to water resources or existing legal uses.

The bill clarifies that CUPs cannot be issued for AWS projects for nonbrackish groundwater supplies (i.e., fresh water) or nonalternative water supplies. It also clarifies that entities may apply for an AWS permit under either s. 373.236(5)(a) or (b), F.S.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Most bonds issued to fund the capital construction costs of an AWS project are 30-year bonds; however, most AWS CUPs are only issued for 20 years. This discrepancy may affect the interest rate the AWS developer has to pay to launch the bonds. The impact of this is indeterminate but may be significant if the uncertainty in renewing a 20-year CUP for a 30-year bond has significant weight in the rating agencies' models. For example, an A-rated \$100 million bond may cost \$7-10 million more over the life of the bond as compared to an AAA-rated bond. Also, by allowing an up to seven-year extension under certain circumstances, AWS developers will be able to operate the AWS project without having to reapply for a CUP at the end of the initial 30-year duration. This will ensure operation of the AWS project for a full 30-year term.

C. Government Sector Impact:

The bill may have a negative but indeterminate effect on permit revenues for the DEP or the WMDs; however, any impacts are expected to be met by existing staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

By the Legislature's amending this section to explicitly require reasonable assurance for both the 20-year and 30-year AWS CUP, a court may find the Legislature implicitly excluded the necessity to provide reasonable assurance for a 50-year permit for certain public or government works. It would be the only permit category excluded from statutorily required reasonable assurance requirements of s. 373.236, F.S. Currently, the requirement is implicit and the WMDs require reasonable assurance for the up to 50-year permit.

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

CS by Community Affairs on February 21, 2013.
Makes clarifying change.

B. Amendments:

None.

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



207372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 46
and insert:
unless a reduction is needed to address harm to

By Senator Hays

11-00038A-13

2013364

1 A bill to be entitled
2 An act relating to consumptive use permits for
3 development of alternative water supplies; amending s.
4 373.236, F.S.; revising conditions for issuance of
5 permits; providing for the issuance, extension, and
6 review of permits approved on or after a certain date;
7 providing for applicability; providing an effective
8 date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (5) of section 373.236, Florida
13 Statutes, is amended to read:

14 373.236 Duration of permits; compliance reports.-

15 (5) (a) A permit ~~Permits~~ approved for the development of
16 alternative water supplies shall be granted for a term of at
17 least 20 years if there is sufficient data to provide reasonable
18 assurance that the conditions for permit issuance will be met
19 for the duration of the permit. However, if the permittee issues
20 bonds for the construction of the project, upon request of the
21 permittee before ~~prior to~~ the expiration of the permit, the ~~that~~
22 permit shall be extended for such additional time as is required
23 for the retirement of bonds, not including any refunding or
24 refinancing of such bonds, if ~~provided that~~ the governing board
25 determines that the use will continue to meet the conditions for
26 the issuance of the permit. The ~~Such a~~ permit is subject to
27 compliance reports under subsection (4).

28 (b)1. A permit approved on or after July 1, 2013, for the
29 development of alternative water supplies shall be granted for a

11-00038A-13

2013364

30 term of at least 30 years if there is sufficient data to provide
31 reasonable assurance that the conditions for permit issuance
32 will be met for the duration of the permit. If, within 7 years
33 after a permit is granted, the permittee issues bonds to finance
34 the project, completes construction of the project, and requests
35 an extension of the permit duration, the permit shall be
36 extended to expire upon the retirement of such bonds or 30 years
37 after the date that construction of the project is complete,
38 whichever occurs later. However, a permit's duration may not be
39 extended by more than 7 years beyond the permit's original
40 expiration date.

41 2. A permit issued under this paragraph is subject to
42 compliance reports under subsection (4). If the permittee
43 demonstrates that bonds issued to finance the project are
44 outstanding, the quantity of alternative water allocated in the
45 permit may not be reduced during a compliance report review
46 unless a reduction is needed to address unanticipated harm to
47 water resources or to existing legal uses present when the
48 permit was issued. A reduction required by an applicable water
49 shortage order applies to a permit issued under this paragraph.

50 3. A permit issued under this paragraph may not authorize
51 the use of nonbrackish groundwater supplies or nonalternative
52 water supplies.

53 (c) An entity that wishes to develop alternative water
54 supplies may apply for a permit under paragraph (a) or paragraph
55 (b).

56 Section 2. This act shall take effect July 1, 2013.



The Florida Senate
Committee Agenda Request

To: Senator Wilton Simpson, Chair
Community Affairs

CC: Tom Yeatman, Staff Director
Ann Whittaker, Administrative Assistant

Subject: Committee Agenda Request

Date: February 6, 2013

I respectfully request that **Senate Bill #364**, relating to Consumptive Use Permits for Development of Alternative Water Supplies, be placed on the:

- committee agenda at your earliest possible convenience.
 next committee agenda.

A handwritten signature in black ink that reads "Alan Hays".

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13

Meeting Date

Topic Consumptive Use Permits for Alternative H₂O

Bill Number 364
(if applicable)

Name Ryan Matthews

Amendment Barcode _____
(if applicable)

Job Title leg. Advocate

Address PO Box 1757

Phone 222-9684

Tallahassee FL 32302
City State Zip

E-mail rmatthews@flcities.com

Speaking: For Against Information

Representing FL League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13

Meeting Date

Topic CUPS FOR ALTERNATIVE WATER

Bill Number 364
(if applicable)

Name STEPHEN JAMES

Amendment Barcode _____
(if applicable)

Job Title _____

Address 100 S. MONROE

Phone 850-822-4300

Street
TALLAHASSEE, FL 32301

E-mail _____

City State Zip

Speaking: For Against Information

Representing FLA. ASSOC. OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

Waive in Support

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic 30-yr Water Permits

Bill Number 364
(if applicable)

Name Diane Salz

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address _____

Phone 850.339.8550

Street Talla

E-mail _____

City _____ State _____ Zip _____

Speaking: For Against Information

Representing Peace River Water Authority

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

Waive in Support

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 21 2013

Meeting Date

Topic CUP

Bill Number 364
(if applicable)

Name David Childs

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 119 S. Monroe St.

Phone 222-7500

Tallahassee FL 32307
City State Zip

E-mail DAVIDC@HGSLLAW.COM

Speaking: For Against Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-21-13

Meeting Date

Topic Alternative Water Supply

Bill Number HB 364
(if applicable)

Name Lee Killinger

Amendment Barcode _____
(if applicable)

Job Title _____

Address 324 E. Virginia St

Phone 850-322-8907

Street

Tallahassee

FL

32308

City

State

Zip

E-mail lee@anfieldflorida.com

Speaking: For Against Information

Representing Florida Section, American Water Works Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13
Meeting Date

Topic Consumptive Use Permits

Bill Number SB 364
(if applicable)

Name Mary Jean Yan

Amendment Barcode _____
(if applicable)

Job Title Legislative Director

Address 3324 Charleston Road

Phone 850/519-7339

114 FL 32309
Street City State Zip

E-mail maryjeanyan@concast.net

Speaking: For Against Information

Representing Audubon Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

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 Committee on Community Affairs

BILL: SB 482

INTRODUCER: Senator Dean

SUBJECT: Other-personal-services Employment

DATE: February 21, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Favorable
2.			GO	
3.			AP	
4.				
5.				
6.				

I. Summary:

This bill authorizes the governing body of a county to employ a qualified individual in other-personal-services employment. The bill provides a definition for the term “other-personal-services employee.” The bill also provides conditions that the county must follow for each other-personal-services employee.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Other Personal Services Employment (OPS)

Other Personal Services (OPS) employment is a temporary employer/employee relationship used solely for accomplishing short term or intermittent tasks. OPS employees do not fill established positions and may not be assigned the duties of any vacant authorized position. OPS employees are at-will employees and are subject to actions such as pay changes, changes to work assignment, and terminations at the pleasure of the agency head or designee.¹

Each OPS employee shall have their name, social security number, employment category, employment start date, number of hours worked, and amount of compensation maintained by the agency in the human resource information system, in accordance with s. 110.131(2) (a), F.S.²

¹ Department of Management Services, *Other Personal Services Employment*, found at http://www.dms.myflorida.com/human_resource_support/human_resource_management/other_personal_services_employment_ops (last accessed February 5, 2013)

² *Id.*

OPS employees are paid for the actual number of hours they work. All work hours over 40 within a workweek are paid at one and one-half times the employee's hourly rate of pay when the position is designated as "included" or "nonexempt" under the federal Fair Labor Standards Act (FLSA). However, even though physicians, lawyers, teachers and certain highly paid (minimum \$27.63 per hour) computer-related occupations are paid on an hourly basis, such OPS employees maintain exempt status and are not subject to the FLSA overtime provisions.³

Other-personal-services employees are not eligible for any form of paid leave, paid holidays, a paid personal day, participation in state group insurance or retirement benefits, or any other state employee benefit. Other-personal-services employees may be included in that part of an agency's recognition and reward program that recognizes and rewards employees who submit innovative ideas that increase productivity, eliminate or reduce state expenditures, improve operations, or generate additional revenue or who meet or exceed the agency's established criteria for a project or goal.⁴

Local Government Powers and Legislative Preemption

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁵ Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.⁶ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.⁷ Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

III. Effect of Proposed Changes:

Section 1 creates an unnumbered section of law. This section authorizes the governing body of a county to employ a qualified individual in other-personal-services employment. The bill provides a definition for the term "other-personal-services employee." The bill also provides conditions that the county must follow for each other-personal-services employee. The county must maintain employee records identifying, at a minimum, the person employed, the hire date, the type of other-personal services employment, and the number of hours worked per week. Also, the county must determine the appropriate rate of pay and ensure that all payments are in compliance with the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. ss. 201 et seq., and applicable state law.

Section 2 provides an effective date of July 1, 2013.

³ *Id.*

⁴ Section 110.131(3), F.S.

⁵ FLA. CONST. art. VIII, s. 1(f).

⁶ FLA. CONST. art. VIII, s. 1(g).

⁷ FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may provide for more employment opportunities with the governing body of a county.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By Senator Dean

5-00644-13

2013482

1 A bill to be entitled

2 An act relating to other-personal-services employment;
3 defining the term "other-personal-services employee";
4 authorizing the governing body of a county to employ
5 other-personal-services employees; providing
6 conditions; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Other-personal-services employment; counties.-

11 (1) As used in this section, the term "other-personal-
12 services employee" means a temporary employee of the governing
13 body of a county.

14 (2) The governing body of a county may employ a qualified
15 individual in other-personal-services employment. For each
16 other-personal-services employee, the governing body of a county
17 shall:

18 (a) Maintain employee records identifying, at a minimum,
19 the person employed, the hire date, the type of other-personal-
20 services employment, and the number of hours worked per week.

21 (b) Determine the appropriate rate of pay and ensure that
22 all payments are in compliance with the federal Fair Labor
23 Standards Act of 1938, as amended, 29 U.S.C. ss. 201 et seq.,
24 and applicable state law.

25 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.

5th District

February 5, 2013

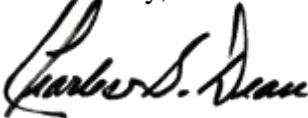
The Honorable Wilton Simpson
322 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simpson:

I respectfully request you place Senate Bill 482, relating to Other-Personal-Services Employment, on your Community Affairs Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,



Charles S. Dean
State Senator District 5

cc: Tom Yeatman, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.

5th District

COMMITTEES:

Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

February 18, 2013

The Honorable Wilton Simpson
322 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

Dear Chairman Simpson:

Thank you for allowing Senate Bill 482, relating to Other Personal Services Employment, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Chase Daniels, to present this bill in my place.

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

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean
State Senator, District 5

Cc: Tom Yeatman, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Committee on Community Affairs

BILL: SB 342
 INTRODUCER: Senator Thrasher
 SUBJECT: Rental of Homestead Property
 DATE: February 5, 2013 REVISED: _____

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

I. Summary:

SB 342 provides that a homestead property may be rented for up to 30 days per calendar year without being considered abandoned or affecting the homestead status of the property. If the homestead is rented for more than 30 days, the current provisions of section 196.061, F.S., apply which can include the loss of the property’s homestead exemption.

This bill substantially amends section 196.061, Florida Statutes.

II. Present Situation:

Exemptions and Property Classifications

Sections 3, 4, and 6, Article VII of the Florida Constitution, provide for exemptions and property classifications. Generally, after the property appraiser has considered the just value of a property and produced an assessed value, the assessed value is then reduced by any exemptions to produce the taxable value.¹

“Property Classification” or “Classification” means a classification of property for assessment purposes according to applicable statutory criteria, including those in ch. 193, Part II, F.S., and an assessment of the property at its classified use value.

¹ See s. 196.031, F.S.

“Classified use value” means the value of a property that is based solely on the property’s character or use and based on the applicable statutory criteria, without regard to the property’s highest and best use.²

Homestead Assessment Limitation: Save Our Homes

In 1992, Florida voters approved an amendment to s. 4, Art.VII of the State Constitution which is popularly known as the Save Our Homes amendment. This amendment limited the increase in assessment of homestead property to the Consumer Price Index or 3 percent, whichever is lower.

Changes Affecting Save Our Homes

After any change in ownership, as provided by general law, homestead property must be assessed at just value as of January 1 of the following year. Thereafter, the property is subject to the Save Our Homes assessment limitation. New homestead property must be assessed at the just value as of January 1 of the first year the property owner establishes homestead. Thereafter, the property is subject to the Save Our Homes assessment limitation. Changes, additions, reductions, and improvements to homestead property are assessed as provided by general law, but after its initial assessment this property is subject to Save Our Homes assessment limitation. If the homestead is terminated the property is assessed at just value.

Homestead Exemption

Article VII, section 6 of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate, and who maintains thereon the permanent residence³ of the owner, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by schools.

Loss of Homestead Through Rental

A 2010 Florida Bar Journal article summarizes many of the issues related to homesteads and rentals.⁴ The authors trace the historical understanding that property owners who rent their entire dwelling for long periods of time forfeit the benefit of homestead.

The underlying rationale for the termination of homestead due to long-term rentals is that the owner’s long-term rental activity, coupled with his or her implied absence from the property, signifies the owner’s intent to reside elsewhere. Therefore, the owner’s

² See s. 192.001(2), F.S.

³ Pursuant to s. 196.012(18), F.S., “permanent residence” means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. Intention to establish a permanent residence in Florida is a factual determination to be made, in the first instance, by the property appraiser.

⁴ Mark A. Rothberg and Kara L. Cannizzaro, *The Loss of Homestead Through Rental*, The Florida Bar Journal (January, 2010, Volume 84, No.1) available at <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/bd15816cc01b9b018525769b00679e0a!OpenDocument>.

departure and residence elsewhere, coupled with the conversion of his or her home into a commercially oriented use (a rental), reveals an “intent” to abandon the homestead.⁵

The Bar Journal article continues on to contemplate an alternative rental circumstance:

By contrast, there are occasions when property owners do not intend to abandon their residence through rental. For example, numerous Floridians rent out their homes for short periods of time and may even remain on the premises during the course of these rentals.⁶

Examples of these types of short term rentals include those associated with annual sporting events, arts festivals, college graduations, or business-related symposiums and conventions.

Rental of Homestead to Constitute Abandonment

Section 196.061, F.S., provides guidance on homestead status, rentals and abandonment as follows:

- Rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes constitutes abandonment of the dwelling as a homestead.⁷
- Abandonment continues until the dwelling is physically occupied by the owner.
- The abandonment of the homestead after January 1 of any year shall not affect the homestead exemption for tax purposes for that particular year so long as this provision is not used for two consecutive years.
- This provision does not apply to a member of the Armed Forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the federal Selective Service Act or who volunteers for service as a member of the Armed Forces of the United States.

Florida courts have traditionally emphasized that a determination of homestead abandonment is made on a case-by-case basis.⁸ In particular, courts conduct a factual inquiry as to whether the owner’s rental activity constituted abandonment of the homestead.⁹

Tax Liens Imposed for Persons Improperly Claiming a Homestead Exemption

Pursuant to s. 196.161(1)(b), F.S., if a property appraiser determines that a person who was not entitled to a homestead exemption was granted the exemption for any year within the prior 10 years, the property appraiser is required to serve a notice of tax lien against property owned by

⁵ *Ibid.* Section 196.012(13), F.S., defines “real estate used and owned as a homestead” to mean real property to the extent provided in s. 6(a), Art. VII of the State Constitution, but less any portion used for commercial purposes. Property rented for more than 6 months is presumed to be used for commercial purposes.

⁶ *Ibid.*

⁷ Ch. 2012-193, s. 18, Laws of Fla., introduced the “all or substantially all of a” dwelling language. Owners sometimes rented the majority of a dwelling but retained possession of a closet or similar limited space in an effort to retain a homestead exemption.

⁸ Mark A. Rothberg and Kara L. Cannizzaro, *The Loss of Homestead Through Rental*, The Florida Bar (January, 2010, Volume 84, No.1) available at

<http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/bd15816cc01b9b018525769b00679e0a!OpenDocument>.

⁹ See generally *Poppell v. Padrick*, 117 So. 2d 435 (Fla. 2d D.C.A. 1959); *Jacksonville v. Bailey*, 30 So. 2d 529 (Fla. 1947).

the person. The tax lien subjects the property to back taxes, a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year. However, if the exemption was granted as the result of a clerical error, the person receiving the exemption is not assessed penalties or interest. Before a lien is filed, the owner is given 30 days to pay the taxes, penalties, and interest.¹⁰

III. Effect of Proposed Changes:

Section 1 amends s. 196.061, F.S., to allow the rental of a homestead property for up to 30 days per calendar year without the property being considered abandoned or affecting the homestead status of the property. If the homestead is rented for more than 30 days, the current provisions of s. 196.061, F.S., would apply. The statute is also bifurcated into subsections.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners who have a homestead exemption will be eligible to rent their dwellings for up to 30 days a year and still retain their homestead status and any Save our Homes assessment limitation. An indeterminate number of additional short term rental opportunities may emerge in the state as a result of homestead owners deciding to rent their properties.

¹⁰ See s. 196.161(1)(b), F.S.

C. Government Sector Impact:

While the Revenue Estimating Conference has not yet met to review the fiscal impact of SB 342, it is possible that schools and local governments may realize an indeterminate reduction in their property tax revenues as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

None.

B. Amendments:

None.

By Senator Thrasher

6-00301C-13

2013342

1 A bill to be entitled
 2 An act relating to the rental of homestead property;
 3 amending s. 196.061, F.S.; revising criteria under
 4 which rental of such property is allowed for tax
 5 exemption purposes and not considered abandoned;
 6 providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Section 196.061, Florida Statutes, is amended to
 11 read:

12 196.061 Rental of homestead to constitute abandonment.—

13 (1) The rental of all or substantially all of a dwelling
 14 previously claimed to be a homestead for tax purposes shall
 15 constitute the abandonment of such dwelling as a homestead, and
 16 the abandonment continues ~~shall continue~~ until the ~~such~~ dwelling
 17 is physically occupied by the owner. However, such abandonment
 18 of the ~~such~~ homestead after January 1 of any year does not
 19 affect the homestead exemption for tax purposes for that
 20 particular year unless the property is rented for more than 30
 21 days per calendar year ~~if this provision is not used~~ for 2
 22 consecutive years. ~~The provisions of~~

23 (2) This section does ~~de~~ not apply to a member of the Armed
 24 Forces of the United States whose service ~~in such forces~~ is the
 25 result of a mandatory obligation imposed by the federal
 26 Selective Service Act or who volunteers for service as a member
 27 of the Armed Forces of the United States. Moreover, valid
 28 military orders transferring such member are sufficient to
 29 maintain permanent residence~~7~~ for the purpose of s. 196.015~~7~~ for

6-00301C-13

2013342__

30 the member and his or her spouse.

31 Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JOHN THRASHER
6th District

COMMITTEES:
Rules, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Community Affairs
Ethics and Elections
Gaming
Judiciary
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Budget Commission

February 5, 2013

MEMORANDUM

To: Senator Wilton Simpson, Chairman
Senate Committee on Community Affairs

Fm: Senator John Thrasher

Re: Senate Bill 342 and Senate Bill 354

It will be appreciated if you will agenda my Senate Bill 342 relating to rental use of homestead and Senate Bill 354 relating to ad valorem tax exemptions for a hearing by the Senate Community Affairs Committee.

Thank you for your consideration of this request.

REPLY TO:

- 113 Nature Walk Parkway, Suite 106, St. Augustine, Florida 32092 (904) 287-4222 FAX: 1-888-263-3475
- 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Committee on Community Affairs

BILL: SB 354

INTRODUCER: Senator Thrasher

SUBJECT: Ad Valorem Tax Exemptions

DATE: February 15, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Favorable
2.	_____	_____	MS	_____
3.	_____	_____	AFT	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 354 revises and clarifies parameters for an ad valorem tax exemption of United States government owned property pursuant to the U.S. Military Housing Privatization Initiative of 1996. The tax exemption would apply to leasehold interests and improvements to land owned by the United States and various branches and agencies of the federal government. "Improvements" include, but are not limited to, actual housing units and related facilities under the federal initiative. Any leasehold interest or improvement shall be considered owned by the United States and the ad valorem tax exemption requires neither an exemption application, nor approval from the property appraiser.

This bill substantially amends section 196.199, Florida Statutes.

II. Present Situation:

Military Housing Privatization Initiative

The U.S. Military Housing Privatization Initiative (MHPI) was enacted as part of the National Defense Authorization Act for fiscal year 1996 in an effort to address the poor condition of Department of Defense (DoD) owned housing and the shortage of affordable private sector housing for military families.¹ At the beginning of the program, DoD owned approximately 257,000 family housing units worldwide both on and off-base with over 50 percent of the units deemed in need of renovation or replacement.² Under MHPI authorities, the DoD works with the

¹ National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, §§ 2801-2841 (1996).

² The Office of the Deputy Under Secretary of Defense Installations and Environment, *Military Housing Privatization*, available at <http://www.acq.osd.mil/housing/overview.htm> (last visited Feb.15, 2013).

private sector to revitalize military family housing by employing a variety of financial tools including: direct loans, loan guarantees, equity investments, and conveyance or leasing of property or facilities.³

In standard MHPI projects, a branch of the armed forces enters into a long term (fifty years) ground lease of the land under the housing areas with a private developer. Title to the housing units is conveyed to the developer by quitclaim deed. Within a time schedule set by contract, the developer rehabilitates or constructs a target level of housing units and is responsible for the leasing, management and maintenance of the units. At the end of the long term lease, the federal government may negotiate an extension of the lease or elect to acquire the improvements from the developer or its successor at no charge.

There are currently MHPI developments at the following military installations in Florida:

- Tyndall Air Force Base,
- MacDill Air Force Base,
- Patrick Air Force Base,
- Navy Southeast: Duval,
- Navy Southeast: Monroe,
- Navy Southeast: Duval(2),
- Navy Southeast: Escambia, and
- Navy Southeast: Santa Rosa.

Property Valuation in Florida

Section 4, Article VII of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Sections 3, 4, and 6, Article VII of the Florida Constitution, provide for specified assessment limitations, property classifications and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁴ Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.⁵

Government Property Exemption in Florida

Florida law generally exempts government property from ad valorem taxation.⁶ Subject to certain conditions, property of the United States, property of Florida and property of political subdivisions and municipalities of the state are exempt from ad valorem taxation. Portions of governmental property may be leased to private parties. In instances where the government

³ *Id.*

⁴ See s. 196.031, F.S.

⁵ Fla. Const. art. VII, ss. 3 and 6.

⁶ See s. 196.199, F.S..

leases property to a private party, the lease is called a “governmental leasehold” and is subject to tax as “intangible personal property.”⁷

Taxation of Federal Property

Generally, the federal government and property owned by the federal government are immune from state and local taxation.⁸ The federal government’s immunity from taxation extends to its agents and its instrumentalities.⁹ Congress has the exclusive authority to determine whether and to what extent its instrumentalities are immune from state and local taxes.¹⁰

Ad valorem taxes that Congress *has* authorized for leasehold property on federal land under 10 U.S.C. § 2667, are expressly *not* authorized under the MHPI. Specifically, 10 U.S.C. § 2878(e)(1) of the MHPI states that “[t]he conveyance or lease of property or facilities under this section shall not be subject to . . . Section 2667 of this title.” In other words, the Housing Initiative expressly exempts such leaseholds and improvements from state or local ad valorem taxation.

In addition, certain sections of the MHPI specifically repealed prior Congressional consent to ad valorem state taxation as well as consent to taxation of intangible personal property.¹¹

Southeast Housing LLC v. Borglum in Monroe County

Until recently, all eight of the MHPI projects in Florida have not been subject to ad valorem tax. In 2012, the Monroe County property appraiser subjected the project at Naval Air Station Key West to tax retroactive to 2008. A legal case is currently pending on this matter in the Sixteenth Judicial Circuit.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 196.199, F.S., to revise the definition of property of the United States for the purposes of an exemption from ad valorem taxation. The revision includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States. The exemption applies if the leasehold interest and improvements are used to provide housing pursuant to the Military Housing Privatization Initiative of 1996. The term “improvements” includes, but is not limited to, actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. Any leasehold interest or improvement shall be construed as owned by the United States and the

⁷ See s. 196.199(2)(b), F.S. Section 192.001 (11)(b) defines “intangible personal property” as money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

⁸ *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

⁹ *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110 (1954).

¹⁰ *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).

¹¹ 10 U.S.C. §§ 2781-2885 and §2878.

¹² See *Southeast Housing LLC, v. Borglum*, No. 2012-CA-000831-K (Fla. 16th Cir. Ct. 2012).

ad valorem exemption requires neither an exemption application, nor approval from the property appraiser.

Section 2 provides an effective date upon becoming law which shall apply retroactively to January 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Clarifying ad valorem tax exemption eligibility standards for United States property may ensure that private entities operating pursuant to the Housing Initiative will continue to be eligible for such exemptions.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) recently met to determine the fiscal impact of SB 354 and its House companion, HB 531.¹³ In its analysis, the REC cited a Department of Revenue belief that there is sufficient evidence present for a property appraiser to determine that the United States government has equitable ownership of the improvements at MHPI developments; therefore the provisions of SB 354 would not alter the current administration of the law. Because of this, the REC determined the bill would have no fiscal impact on local governments.¹⁴

VI. Technical Deficiencies:

None.

¹³ Revenue Estimating Conference, *Military Housing Ad Valorem Tax HB531/SB354* (Feb. 04, 2013) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2013/pdf/page11-13.pdf>.

¹⁴ According to the REC, the total amount in dispute in the Monroe County litigation is \$11.5 million including penalty and interest. The 2012 value of the property in question is \$167,851,781.

VII. Related Issues:

It is the position of the Department of Revenue that the federal government has equitable ownership of the improvements constructed pursuant to the MHPI and therefore such improvements are not taxable under the current law, however, no Florida court has ruled on the taxability of MHPI projects under this state law principle.¹⁵

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.

¹⁵ Florida Department of Revenue, Senate Bill 354 Analysis (Feb. 7, 2013) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=504> Also see *Leon County Education Facilities Authority v. Hartsfield*, 698 So.2d 526 (Fla. 1997); *First Union National Bank of Florida v. Ford*, 636 So.2d 523 (Fla. 5th DCA 1993).

By Senator Thrasher

6-00543B-13

2013354

1 A bill to be entitled
2 An act relating to ad valorem tax exemptions; amending
3 s. 196.199, F.S.; providing that certain leasehold
4 interests and improvements to land owned by the United
5 States, a branch of the United States Armed Forces, or
6 any agency or quasi-governmental agency of the United
7 States are exempt from ad valorem taxation under
8 specified circumstances; providing that such leasehold
9 interests and improvements are entitled to an
10 exemption from ad valorem taxation without an
11 application being filed for the exemption or the
12 property appraiser approving the exemption; providing
13 for retroactive application; providing an effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (a) of subsection (1) of section
19 196.199, Florida Statutes, is amended to read:

20 196.199 Government property exemption.—

21 (1) Property owned and used by the following governmental
22 units shall be exempt from taxation under the following
23 conditions:

24 (a) 1. All property of the United States ~~is shall be~~ exempt
25 from ad valorem taxation, except such property as is subject to
26 tax by this state or any political subdivision thereof or any
27 municipality under any law of the United States.

28 2. Notwithstanding any other provision of law, for purposes
29 of the exemption from ad valorem taxation provided in

6-00543B-13

2013354

30 subparagraph 1., property of the United States includes any
31 leasehold interest of and improvements affixed to land owned by
32 the United States, any branch of the United States Armed Forces,
33 or any agency or quasi-governmental agency of the United States
34 if the leasehold interest and improvements are acquired or
35 constructed and used pursuant to the federal Military Housing
36 Privatization Initiative of 1996, 10 U.S.C. ss. 2871 et seq. As
37 used in this subparagraph, the term "improvements" includes, but
38 is not limited to, actual housing units and any facilities that
39 are directly related to such housing units, including any
40 housing maintenance facilities, housing rental and management
41 offices, parks and community centers, and recreational
42 facilities. Any leasehold interest and improvements described in
43 this subparagraph shall be construed as being owned by the
44 United States, the applicable branch of the United States Armed
45 Forces, or the applicable agency or quasi-governmental agency of
46 the United States and are exempt from ad valorem taxation
47 without the necessity of an application for exemption being
48 filed or approved by the property appraiser.

49 Section 2. This act shall take effect upon becoming a law
50 and shall apply retroactively to January 1, 2007.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JOHN THRASHER
6th District

COMMITTEES:

Rules, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Community Affairs
Ethics and Elections
Gaming
Judiciary
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Budget Commission

February 5, 2013

MEMORANDUM

To: Senator Wilton Simpson, Chairman
Senate Committee on Community Affairs

Fm: Senator John Thrasher

Re: Senate Bill 342 and Senate Bill 354

It will be appreciated if you will agenda my Senate Bill 342 relating to rental use of homestead and Senate Bill 354 relating to ad valorem tax exemptions for a hearing by the Senate Community Affairs Committee.

Thank you for your consideration of this request.

REPLY TO:

- 113 Nature Walk Parkway, Suite 106, St. Augustine, Florida 32092 (904) 287-4222 FAX: 1-888-263-3475
- 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

- The tourist development tax may be levied at the rate of 1 or 2 percent.² Currently, 62 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.³ Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.
- An additional tourist development tax of 1 percent may be levied.⁴ Currently 45 counties levy this tax and only 57 counties are currently eligible to levy this tax. Revenue from this tax may be bonded to finance certain facilities and projects, but may not be used for certain debt service or refinancing unless approved by an extraordinary vote of the governing board. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.
- A professional sports franchise facility tax may be levied up to an additional 1 percent.⁵ Currently 36 counties levy this additional tax and all 67 counties are eligible to levy this tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers and to promote and advertise tourism.
- A high tourism impact tax may be levied at an additional 1 percent.⁶ Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds.
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.⁷ Out of 65 counties that levy a professional sports facility tax, 20 levy an additional professional sports franchise facility tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities and spring training facilities of professional sports franchises and to promote and advertise tourism.

“Local option tourist taxes are significant revenue sources to Florida’s county governments and represent important funding mechanisms for a variety of tourism-related expenditures such as beach and shoreline maintenance, construction of convention centers and professional sports franchise facilities, and tourism promotion.”⁸ Generally, the revenues from these levies may be used for capital construction, maintenance, and promotion of tourist-related facilities, tourism promotion, and beach and shoreline maintenance. Tourist-related facilities include convention centers, sports stadiums and arenas, coliseums, auditoriums, aquariums, and museums that are

² Section 125.0104(3)(c), F.S.

³ Information related to the number of counties levying the taxes is from the Office of Economic and Demographic Research, “2013 Local Option Tourist/Food and Beverage/Tax Rates in Florida’s Counties,” <http://edr.state.fl.us/Content/local-government/data/county-municipal/2013LOTTates.pdf> (last visited 1/24/2013).

⁴ Section 125.0104(3)(d), F.S.

⁵ Section 125.0104(3)(l), F.S.

⁶ Section 125.0104(3)(m), F.S.

⁷ Section 125.0104(3)(n), F.S.

⁸ Florida Legislative Committee on Intergovernmental Relations, Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10 (December 2009), available at <http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf> (last visited 1/24/2013).

publically owned and operated within the area that the tax is levied. Tax revenues may also be used to promote zoos.

The local taxes on rental charges are required to be remitted to the Department of Revenue, unless a county has adopted an ordinance providing for local collection and administration of the tax.⁹

In counties that have plans for tourist development that include the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, or aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, the ordinance levying the tourist development tax automatically expires upon the later of two circumstances:

- The retirement of all bonds issued by the county for financing the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, or aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization; or
- The expiration of any agreement by the county for the operation or maintenance, or both, of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, or museum.

Florida Aquariums

Visit Florida’s website lists over 25 attractions in the category of “aquarium,” including the Key West Aquarium, the Miami Seaquarium, the Mote Marine Laboratory and Aquarium in Sarasota, the Florida Aquarium in Tampa, and the Gulfarium Marine Adventure Park in Fort Walton Beach. Some of these aquariums, such as the Florida Aquarium, are owned and operated by not-for-profit organizations.

III. Effect of Proposed Changes:

Section 1 amends s. 125.0104, F.S., related to tourist development taxes.

Use of Tourist Development Taxes

The bill permits counties to use the tax revenues from the tourist development tax for purposes related to aquariums owned and operated by not-for-profit organizations, including the acquisition, construction, maintenance, or promotion of such aquariums. This authorization does not apply to the tax levied for sports franchise facilities.

Automatic Expiration of Ordinances Levying Tourist Development Taxes

The bill clarifies when a county’s tourist development tax automatically expires. Under the bill, a county’s tourist development tax would automatically expire after the later of:

⁹ Also known as “self-administering.”

- The expiration of any agreement for the operation or maintenance, or both, of a publicly owned and operated facility (current law); and
- The retirement of all bonds issued by the county for financing the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, auditoriums, or museums or aquariums that are publicly owned and operated or owned and operated by a not-for-profit organization.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Community Affairs on February 21, 2013:

Made technical and clarifying changes.

CS by Commerce and Tourism on February 5, 2013:

The committee substitute clarifies when a county's tourist development tax automatically expires. Under the original bill as filed, if a county had bonds for financing museums or aquariums that were owned and operated by not-for-profit organizations when the bonds for the other facilities expired, the tourist development tax would have expired despite the existence of those bonds.

- B. **Amendments:**

None.



173182

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 12 - 61
and insert:

Section 1. Paragraphs (a) and (c) of subsection (5) and subsection (7) of section 125.0104, Florida Statutes, are amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by



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13 that county for the following purposes only:

14 1. To acquire, construct, extend, enlarge, remodel, repair,
15 improve, maintain, operate, or promote one or more:

16 a. Publicly owned and operated convention centers, sports
17 stadiums, sports arenas, coliseums, or auditoriums within the
18 boundaries of the county or subcounty special taxing district in
19 which the tax is levied; or

20 b. Aquariums, ~~or~~ museums that are publicly owned and
21 operated or owned and operated by not-for-profit organizations
22 and open to the public, within the boundaries of the county or
23 subcounty special taxing district in which the tax is levied.

24 2. Tax revenues received pursuant to this section may also
25 be used for promotion of zoological parks that are publicly
26 owned and operated or owned and operated by not-for-profit
27 organizations and open to the public. However, these purposes
28 may be implemented through service contracts and leases with
29 lessees that have ~~with~~ sufficient expertise or financial
30 capability to operate such facilities;

31 ~~3.2.~~ To promote and advertise tourism in this state ~~the~~
32 ~~State of Florida~~ and nationally and internationally; however, if
33 tax revenues are expended for an activity, service, venue, or
34 event, the activity, service, venue, or event must ~~shall~~ have as
35 one of its main purposes the attraction of tourists as evidenced
36 by the promotion of the activity, service, venue, or event to
37 tourists;

38 ~~4.3.~~ To fund convention bureaus, tourist bureaus, tourist
39 information centers, and news bureaus as county agencies or by
40 contract with the chambers of commerce or similar associations
41 in the county, which may include any indirect administrative



42 costs for services performed by the county on behalf of the
43 promotion agency; or

44 ~~5.4.~~ To finance beach park facilities or beach improvement,
45 maintenance, renourishment, restoration, and erosion control,
46 including shoreline protection, enhancement, cleanup, or
47 restoration of inland lakes and rivers to which there is public
48 access as those uses relate to the physical preservation of the
49 beach, shoreline, or inland lake or river. However, any funds
50 identified by a county as the local matching source for beach
51 renourishment, restoration, or erosion control projects included
52 in the long-range budget plan of the state's Beach Management
53 Plan, pursuant to s. 161.091, or funds contractually obligated
54 by a county in the financial plan for a federally authorized
55 shore protection project may not be used or loaned for any other
56 purpose. In counties of fewer ~~less~~ than 100,000 population, up
57 to ~~no more than~~ 10 percent of the revenues from the tourist
58 development tax may be used for beach park facilities.

59 (c) The revenues to be derived from the tourist development
60 tax may be pledged to secure and liquidate revenue bonds issued
61 by the county for the purposes set forth in subparagraphs (a)1.,
62 2., and 5. ~~4.~~ or for the purpose of refunding bonds previously
63 issued for such purposes, or both; however, no more than 50
64 percent of the revenues from the tourist development tax may be
65 pledged to secure and liquidate revenue bonds or revenue
66 refunding bonds issued for the purposes set forth in
67 subparagraph (a)5. ~~(a)4.~~ Such revenue bonds and revenue
68 refunding bonds may be authorized and issued in such principal
69 amounts, with such interest rates and maturity dates, and
70 subject to such other terms, conditions, and covenants as the



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71 governing board of the county shall provide. The Legislature
72 intends that this paragraph ~~shall~~ be full and complete authority
73 for accomplishing such purposes, but such authority is ~~shall be~~
74 supplemental and additional to, and not in derogation of, any
75 powers now existing or later conferred under law.

By the Committee on Commerce and Tourism; and Senator Latvala

577-01550-13

2013336c1

1 A bill to be entitled

2 An act relating to the tourist development tax;
3 amending s. 125.0104, F.S.; clarifying that the
4 proceeds of the tax may be used for the benefit of
5 certain museums or aquariums; clarifying that the tax
6 automatically expires upon the retirement of all bonds
7 issued by the county for financing certain facilities;
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Paragraph (a) of subsection (5) and subsection
13 (7) of section 125.0104, Florida Statutes, are amended to read:

14 125.0104 Tourist development tax; procedure for levying;
15 authorized uses; referendum; enforcement.-

16 (5) AUTHORIZED USES OF REVENUE.-

17 (a) All tax revenues received pursuant to this section by a
18 county imposing the tourist development tax shall be used by
19 that county for the following purposes only:

20 1. To acquire, construct, extend, enlarge, remodel, repair,
21 improve, maintain, operate, or promote one or more publicly
22 owned and operated convention centers, sports stadiums, sports
23 arenas, coliseums, or auditoriums, or museums or aquariums,~~or~~
24 ~~museums~~ that are publicly owned and operated or owned and
25 operated by not-for-profit organizations and open to the public,
26 within the boundaries of the county or subcounty special taxing
27 district in which the tax is levied. Tax revenues received
28 pursuant to this section may also be used for promotion of
29 zoological parks that are publicly owned and operated or owned

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2013336c1

30 and operated by not-for-profit organizations and open to the
31 public. However, these purposes may be implemented through
32 service contracts and leases with lessees that have ~~with~~
33 sufficient expertise or financial capability to operate such
34 facilities;

35 2. To promote and advertise tourism in this state ~~the State~~
36 ~~of Florida~~ and nationally and internationally; however, if tax
37 revenues are expended for an activity, service, venue, or event,
38 the activity, service, venue, or event must ~~shall~~ have as one of
39 its main purposes the attraction of tourists as evidenced by the
40 promotion of the activity, service, venue, or event to tourists;

41 3. To fund convention bureaus, tourist bureaus, tourist
42 information centers, and news bureaus as county agencies or by
43 contract with the chambers of commerce or similar associations
44 in the county, which may include any indirect administrative
45 costs for services performed by the county on behalf of the
46 promotion agency; or

47 4. To finance beach park facilities or beach improvement,
48 maintenance, renourishment, restoration, and erosion control,
49 including shoreline protection, enhancement, cleanup, or
50 restoration of inland lakes and rivers to which there is public
51 access as those uses relate to the physical preservation of the
52 beach, shoreline, or inland lake or river. However, any funds
53 identified by a county as the local matching source for beach
54 renourishment, restoration, or erosion control projects included
55 in the long-range budget plan of the state's Beach Management
56 Plan, pursuant to s. 161.091, or funds contractually obligated
57 by a county in the financial plan for a federally authorized
58 shore protection project may not be used or loaned for any other

577-01550-13

2013336c1

59 purpose. In counties of fewer ~~less~~ than 100,000 population, up
60 to no more than 10 percent of the revenues from the tourist
61 development tax may be used for beach park facilities.

62 (7) AUTOMATIC EXPIRATION ON RETIREMENT OF BONDS. ~~Anything~~
63 ~~in this section to the contrary~~ Notwithstanding any other
64 provision of this section, if the plan for tourist development
65 approved by the governing board of the county, as amended ~~from~~
66 ~~time to time~~ pursuant to paragraph (4) (d), includes the
67 acquisition, construction, extension, enlargement, remodeling,
68 repair, or improvement of a publicly owned and operated
69 convention center, sports stadium, sports arena, coliseum, or
70 auditorium, or museum or aquarium, ~~or museum~~ that is publicly
71 owned and operated or owned and operated by a not-for-profit
72 organization, the county ordinance levying and imposing the tax
73 ~~shall~~ automatically expires ~~expire~~ upon the later of:

74 (a) The retirement of all bonds issued by the county for
75 financing the acquisition, construction, extension, enlargement,
76 remodeling, repair, or improvement of a publicly owned and
77 operated convention center, sports stadium, sports arena,
78 coliseum, or auditorium, or museum or aquarium that is publicly
79 owned and operated or owned and operated by a not-for-profit
80 organization ~~the same~~; or

81 (b) The expiration of any agreement by the county for the
82 operation or maintenance, or both, of a publicly owned and
83 operated convention center, sports stadium, sports arena,
84 coliseum, auditorium, aquarium, or museum. However, this does
85 not ~~nothing herein shall~~ preclude that county from amending the
86 ordinance extending the tax to the extent that the board of the
87 county determines to be necessary to provide funds ~~with which~~ to

577-01550-13

2013336c1

88 operate, maintain, repair, or renew and replace a publicly owned
89 and operated convention center, sports stadium, sports arena,
90 coliseum, auditorium, aquarium, or museum or from enacting an
91 ordinance that takes ~~which shall take~~ effect without referendum
92 approval, unless the original referendum required ordinance
93 expiration, pursuant to the provisions of this section
94 reimposing a tourist development tax, upon or following the
95 expiration of the previous ordinance.

96 Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA

20th District

February 7, 2013

The Honorable Senator Wilton Simpson, Chair
Senate Committee on Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

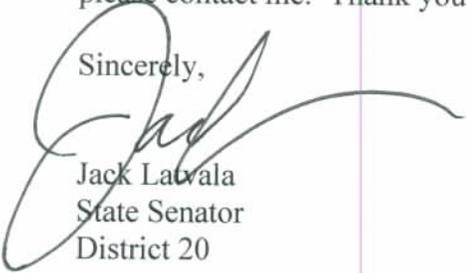
Dear Chairman Simpson:

I respectfully request consideration of Senate Bill 336 regarding the Tourist Development Tax at your earliest convenience. This bill has been filed in order to clarify that not-for-profit aquariums are eligible receive a portion of the funds generated from the tourist development tax in the same manner as other facilities, such as museums, convention centers, and sports arenas.

Last year, the Legislature passed a bill I sponsored that was aimed at this very same goal, but the legal opinion of Pinellas County's chief assistant attorney is that a grammatical error rendered the bill ineffective. His recommendations as to what language would clarify their eligibility been filed this year as Senate Bill 336.

I would greatly appreciate the opportunity to present this legislation to the Committee on Community Affairs as soon as possible. If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,



Jack Latvala
State Senator
District 20

cc: Tom Yeatman, Staff Director; Ann Whitaker, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

CourtSmart Tag Report

Room: SB 301

Case:

Type:

Caption: Senate Community Affairs Committee Judge:

Started: 2/21/2013 8:01:17 AM

Ends: 2/21/2013 8:20:22 AM

Length: 00:19:06

8:01:22 AM Chair Simpson calls the meeting to order
8:01:26 AM CAA calls roll
8:02:06 AM Senator Simpson asks everyone to stand for pledge
8:02:16 AM Tab 2 - SB 290 Taxes on Prepaid Calling Arrangements by Sen. Galvano
8:02:32 AM Sen. Galvano presents SB 290
8:03:19 AM Sen. Soto with question
8:03:29 AM Sen. Galvano with response
8:03:59 AM Chair Simpson remarks
8:04:06 AM Jorge Chamizo, TracFone Wireless waives in support
8:04:09 AM Woody Simmons, Verizon waives in support
8:04:14 AM Brewster Bevis, AIF waives in support
8:04:22 AM Sen. Galvano waives close
8:04:26 AM CAA calls roll on SB 290
8:04:47 AM SB 290 passes favorably
8:04:56 AM Tab 4 - SB 482 OPS Employment by Sen. Dean
8:05:07 AM Chase Daniels, Legislative Assistant presents SB 482
8:05:31 AM CAA calls roll on SB 482
8:05:48 AM SB 482 passes favorably
8:05:58 AM Tab 3 - SB 364 Consumptive Use Permits for Development of Alternative Water Supplies by Sen. Hays
8:06:06 AM Nanci Cornwell, Legislative Assistant presents SB 364
8:06:59 AM Chair Simpson recognizes Sen. Thrasher to explain Amend. 1 Barcode #207372
8:07:09 AM Mrs. Cornwell explains Amend. 1 Barcode #207372
8:07:28 AM Chair Simpson shows Amend. 1 Barcode #207372 adopted favorably
8:07:42 AM Stephen James, Fla. Association of Counties waives in support
8:07:57 AM Diane Salz, Peace River Water Authority waives in support
8:08:03 AM David Childs, Florida Chamber of Commerce waives in support
8:08:09 AM Lee Killinger, Florida Section of American Water Works Association waives in support
8:08:21 AM Mary Jean Yon, Audubon Florida waives in support
8:09:00 AM Sen. Thrasher moves that SB 364 be reported as a Committee Substitute
8:09:08 AM CAA calls roll on SB 364
8:09:23 AM SB 364 passes favorably
8:09:32 AM Tab 1 - SB 98 New Markets Development Program by Sen. Richter
8:09:42 AM Michael Nacheff, Legislative Assistant explains SB 98
8:10:09 AM Sen. Soto with question
8:10:30 AM Mr. Nacheff with response
8:10:39 AM Sharon Spratt, Enterprise FL waives in support
8:10:45 AM Slater Bayliss, Enhanced Capital Partners waives in support
8:10:51 AM Justin Day, Advantage Capital waives in support
8:10:58 AM Brewster Bevis, AIF waives in support
8:11:11 AM CAA calls roll on SB 98
8:11:36 AM SB 98 passes favorably
8:11:51 AM Sen. Smith would like to be counted affirmative on SB 290, 482, 364, and 98
8:12:10 AM Sen. Latvala wishes to be recorded favorably for SB 290 and 482
8:12:23 AM Tab 5 - SB 342 Rental of Homestead Property by Sen. Thrasher
8:12:32 AM Sen. Thrasher explains SB 342
8:13:33 AM Sen. Soto with question
8:13:47 AM Sen. Thrasher with response
8:14:07 AM CAA calls roll on SB 342
8:14:25 AM SB 342 passes favorably
8:14:42 AM Tab 6 - SB 354 Ad Valorem Tax Exemptions by Sen. Thrasher
8:14:49 AM Sen. Thrasher explains bill
8:16:45 AM Chair Simpson remarks

8:16:55 AM CAA calls roll on SB 354
8:17:06 AM SB 354 passes favorably
8:17:20 AM Tab 7 - CS/SB 336 Tourist Development Tax by Sen. Latvala
8:17:24 AM Sen. Latvala explains CS/SB 336
8:18:28 AM Sen. Latvala explains Amend. 1 Barcode # 173182
8:18:59 AM Chair Simpson shows Amend. 1 Barcode # 173182 adopted
8:19:05 AM Sen. Smith remarks
8:19:17 AM Mat Forrest, Fla. Association of Destination Marketers waives in support
8:19:23 AM Richard Turner, Fla. Restaurant & Lodging Association waives in support
8:19:35 AM Chair Simpson remarks
8:19:56 AM Sen. Latvala moves that SB 336 be reported as a Committee Substitute
8:20:03 AM CAA calls roll on SB 336
8:20:14 AM CS/SB 336 passes favorably
8:20:17 AM Sen. Thompson moves to rise