Senate Committee On

# FINANCE AND TAXATION

Gwen Margolis, Chair
Burt L. Saunders, Vice Chair

## Meeting Packet

Tuesday, April 20, 2004
3:30 p.m. – 5:30 p.m.
Room 37 LL

***(Please bring this packet to the committee meeting. Duplicate materials will not be available.)***

# E X P A N D E D  A G E N D A

## COMMITTEE ON FINANCE AND TAXATION

Senator Margolis, CHAIR
Senator Saunders, VICE-CHAIR

DATE: Tuesday, April 20, 2004
TIME: 3:30 p.m. -- 5:30 p.m.
PLACE: Room 37 (LL), Senate Office Building

(MEMBERS: Senators Geller, Hill and Posey)

| TAB | BILL NO. AND INTRODUCER | BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 1 | SB 0038<br>Dawson<br>(Similar H 1353) | Relief/Kamel & Dimitri/Palm Beach; provides for relief of Ashraf Kamel & Marguerite Dimitri for wrongful death of their minor child, Jean A. Pierre Kamel, as result of negligence of Palm Beach County School Board; provides for payment of court costs.<br><br>SM 01/12/04 RECOMMENDATION: FAV W/AMEND 1<br>ED 02/04/04 Temporarily postponed<br>ED 03/31/04 Not considered<br>ED 04/13/04 FAVORABLE<br>FT 04/20/04 | |
| 2 | CS/SB 0330<br>Comprehensive Planning /<br>Saunders et al<br>(Identical H 0109) | Community Contribution Tax Credits; deletes provisions providing for tax credit to expire on June 30, 2005. Amends 212.08, 220.03,.183, 624.5105.<br><br>CP 12/08/03 CS<br>CM 03/02/04 FAVORABLE<br>FT 04/20/04 | |
| 3 | SB 1338<br>Campbell<br>(Similar H 0643)<br><br>IF RECEIVED | Enhanced Zip Codes Database/DOR; requires that database of enhanced zip codes be certified by DOR by specified date if dealer of communications services employs such database to determine local taxing jurisdiction in which service address is located. Amends 202.22.<br><br>CP 04/16/04 FAVORABLE WITH AMEND 1<br>FT 04/20/04 | |

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|---|---|---|---|
| 4 | CS/SB 1358<br>Commerce, Economic Opportunities, and Consumer Services / Garcia et al<br>(Compare H 0105, H 0395, H 0843, H 0915, H 0977, H 1437, S 0200, S 1170, S 1432, S 1860, S 2750, S 2806) | Enterprise Zones; authorizes certain counties or municipalities to apply to Tourism, Trade, & Economic Development Office to change enterprise zone boundaries; prescribes conditions & deadlines re boundary changes; authorizes office to approve requests to amend boundaries of enterprise zone in community with specified population; authorizes governing bodies of certain counties to apply to office to change boundaries of enterprise zones, etc. Amends Ch. 290.<br><br>CM 03/30/04 CS<br>GO 03/31/04 WITHDRAWN<br>ATD 03/31/04 WITHDRAWN<br>AP 03/31/04 WITHDRAWN<br>RC 03/31/04 WITHDRAWN<br>CM<br>GO 04/02/04 WITHDRAWN<br>RC 04/02/04 WITHDRAWN<br>FT 04/20/04<br>ATD<br>AP | |
| 5 | CS/SB 1700<br>Ethics and Elections / Cowin et al<br>(Similar H 1743, Compare H 0613) | Constitutional Amendments; requires Secretary of State to submit certain proposed constitutional amendments to Financial Impact Estimating Conference; requires Attorney General to immediately petition Supreme Court for review of certain financial impact statements; requires said conference to produce financial information statement & summary; prescribes placement of financial impact statement on ballot, etc. Amends FS.<br><br>EE 03/17/04 Temporarily postponed<br>EE 03/23/04 CS<br>JU 03/30/04 FAVORABLE<br>FT 04/13/04 Temporarily postponed<br>FT 04/20/04<br>RC | |
| 6 | CS/SB 2060<br>Regulated Industries / Smith<br>(Similar H 1299)<br><br>IF RECEIVED | Non-quota Alcoholic Beverage License; authorizes issuance of said license to certain sporting & recreational lodges; provides serving hours. Amends 565.02.<br><br>RI 04/19/04 CS<br>FT 04/20/04<br>AGG<br>AP<br>RC | |

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|---|---|---|---|
| 7 | CS/SB 2188<br>Comprehensive Planning / Comprehensive Planning<br>(Similar H 1593, Compare 1ST ENG/H 0293, CS/CS/CS/S 1104)<br><br>IF RECEIVED | Land Development; provides for issuance of escheatment tax deed that is free & clear of any tax certificates, accrued taxes, & liens of any nature for certain properties; provides immunity for county from environmental liability for certain properties that escheat to county; provides legislative findings re shortage of affordable rentals in state, etc. Amends 197.502, 163.3167,.3177,.3187, 288.107, 376.86.<br><br>CP 03/23/04 CS<br>JU 04/19/04<br>FT 04/20/04 If received<br>ATD<br>AP | |
| 8 | SB 2218<br>Margolis<br><br>IF RECEIVED | Tax Administration; allows personal representative of estate that is not subject to tax under Estate Tax law, to execute affidavit attesting that estate is not taxable; provides for taxation of sales of timeshare interests in timeshare plans; provides that person who willfully attempts in any manner to evade or defeat tax or fee imposed under Tax on Sales, Use & Other Transactions law, commits felony of third degree, etc. Amends FS.<br><br>JU 03/30/04 FAVORABLE<br>CP 04/16/04 FAVORABLE<br>FT 04/20/04<br>AGG<br>AP | |
| 9 | SB 2302<br>Haridopolos<br>(Similar H 0735) | Tax/Substitute Communications; deletes certain definitions; deletes provision re manner in which tax on gross receipts for communications services is applied to substitute communications system; corrects cross references; deletes provision authorizing imposition of local communications services tax on substitute communications systems; repeals provision re special rules for users of said systems. Amends 202.11,.12,.16,.17,.18,.19; repeals 202.15.<br><br>CU 03/16/04 FAVORABLE<br>CP 04/14/04 WITHDRAWN<br>FT 04/20/04<br>AGG<br>AP | |

| TAB | BILL NO. AND INTRODUCER | BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 10 | SB 2420<br>Campbell<br>(Similar H 1587) | Seniors' Services; authorizes each county to create independent special district to provide funding for seniors' services; requires approval by majority vote of electors to annually levy ad valorem taxes not to exceed certain maximum; clarifies that county may provide seniors' services or create special district to provide such services by general or special law; authorizes county to create dependent special district to provide certain services for seniors, etc.<br><br>CP 03/23/04 FAVORABLE<br>FT 04/20/04<br>AP | |
| 11 | CS/SB 2442<br>Banking and Insurance /<br>Margolis et al<br>(Compare H 1643) | Life Insurance & Annuity Contracts; provides that certificate of authority is not required for certain life insurance policies or annuity contracts issued by insurer domiciled outside U.S. & covering only persons who are not residents of U.S.; provides for disclosure; requires designated insurance policies & annuity contracts to be subject to provisions of specified provisions; defines term "charitable organization", etc. Amends 624.402, 627.404.<br><br>BI 04/13/04 CS<br>FT 04/20/04<br>AGG<br>AP | |
| 12 | SB 2444<br>Margolis<br>(Compare H 0441, H 1219, H 1343, H 1795, CS/CS/CS/S 0478, S 2794, S 3002) | Property Tax; provides additional type of transfer that does not create change in ownership for purposes of homestead assessments; revises requirements for petitioners & property appraisers re providing evidence lists & documentation for proceedings of value adjustment board; requires that petitioner be notified earlier of scheduled appearance before value adjustment board, etc. Amends FS.<br>*(A proposed committee substitute is expected to be filed prior to the amendment deadline.)*<br><br>CP 03/29/04 FAVORABLE<br>RI 03/31/04 WITHDRAWN<br>FT 04/20/04<br>AGG<br>AP | |

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|---|---|---|---|
| 13 | CS/SB 2528<br>Banking and Insurance / Wise<br>(Similar H 1653) | Insurance Premium Taxes; exempts portion of title insurance premiums from premium tax; redefines term "premium" to conform. Amends 624.509, 627.7711.<br><br>BI 03/31/04 CS<br>FT 04/20/04<br>AGG<br>AP<br>RC | |
| 14 | CS/SB 2580<br>Military and Veterans' Affairs, Base Protection, and Spaceports / Diaz de la Portilla<br>(Compare H 1111)<br><br>IF RECEIVED | License Plates; creates Adopt A Best Friend license plate & Florida National Guard license plate; provides for distribution of annual use fees received from sale of such plates. Amends 320.08056,.08058.<br><br>TR 03/30/04 FAVORABLE WITH AMEND 2<br>MS 04/16/04 CS<br>FT 04/20/04<br>ATD<br>AP | |
| 15 | CS/SB 2874<br>Comprehensive Planning / Bennett<br><br>IF RECEIVED | Florida Impact Fee Act; authorizes local governments, by ordinance, to impose impact fee as condition of development order; provides restrictions on imposition, any increase in amount, & expenditure of impact fees; provides that this act does not repeal existing laws or ordinances; restricts uses of surtax proceeds; requires report to Financial Services Dept.; requires DOR to adopt forms & use of such forms when surtax is paid, etc. Creates 201.032.<br><br>CP 03/29/04 Not considered<br>CP 04/16/04 CS<br>FT 04/20/04<br>ATD<br>AP<br>RC | |
| 16 | SB 3110<br>Alexander<br>(Similar H 1373) | Hardee Co. Economic Dev. Authority; creates Hardee Co. Economic Development Authority; provides purpose; provides definitions; provides for composition & procedures; provides powers; provides for office & staffing, including legal assistance & reimbursement to county therefor; provides that Chief Financial Officer transfer certain funds levied as excise tax upon severance of phosphate rock to authority; provides duties for Clerk of Circuit Court, etc.<br><br>FT 04/20/04<br>AGG<br>AP<br>RC | |

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# THE FLORIDA SENATE

**SPECIAL MASTER ON CLAIM BILLS**

***Location***
402 Senate Office Building
***Mailing Address***
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

| DATE | COMM | ACTION |
|---|---|---|
| 12/1/03 | SM | Fav/1 amendment |
| 04/13/04 | ED | Favorable |
| 04/20/04 | FT | |
| | | |

December 1, 2003

The Honorable James E. "Jim" King, Jr.
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 38 (2004)** – Senator Mandy Dawson
Relief of Ashraf Kamel and Marguerite Dimitri

## SPECIAL MASTER'S FINAL REPORT

THIS IS A VIGOROUSLY CONTESTED EXCESS JUDGMENT CLAIM FOR $1,402,400 BASED ON A JURY VERDICT RENDERED AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE ASHRAF KAMEL AND MARGUERITE DIMITRI FOR DAMAGES SUSTAINED DUE TO THE NEGLIGENCE OF SCHOOL BOARD EMPLOYEES, WHICH RESULTED IN THE DEATH OF THEIR SON, JEAN PIERRE KAMEL.

FINDINGS OF FACT:

**The Shooting**

On the morning of Monday, January 27, 1997, Jean Pierre Kamel, a 13-year-old student at Conniston Middle School in West Palm Beach, arrived at school on his bike. At 8:40 a.m., while standing in front of the school on a 9-foot-wide sidewalk, he was shot to death by Tronneal Mangum, a 14-year-old classmate. The 5-foot portion of the sidewalk closest to the school was owned by the school board. The 4-foot portion of the sidewalk closest to the road was owned by the city. The two portions were visibly distinguishable. The two students were on the curb, and thus on city property at the time of the shooting. School board personnel were near the area in question; however, the School Resource Officer who usually monitored that particular spot had just moved to the center of campus where the majority of students were at

that time. The officer's replacement was walking toward the scene and was approximately 40 feet away when the shots were fired.

Immediately after the shooting, Tronneal ran into the school. He went around bragging about what he had just done. He was arrested inside a classroom shortly thereafter. He was suspended from school for possession of a firearm on campus. He was subsequently tried as an adult and was sentenced to life without parole. Tronneal did not testify at his criminal trial. He has steadfastly refused, and still refuses to disclose where or how he obtained the handgun he used to kill Jean Pierre.

**The Shooter**

In 1997, Tronneal Mangum was 14 years of age, 6 feet 1 inch tall and weighed 150 pounds. He and Jean Pierre were in a seventh grade math class together. Their math teacher, who had 30 years of teaching experience, described Tronneal as a quiet, polite, yet below average student who did not cause problems in her class. She never saw Tronneal threaten or harm any student and no student had ever complained to her of threats or harassment from Tronneal. She herself never felt threatened by him. Tronneal's discipline record at school for that school year indicated several instances of disruptive behavior, with only one referral, for which he served a detention.

**Events Leading Up to the Shooting**

Months prior to the shooting, Jean Pierre asked that his seat in math class be moved away from Tronneal because they did not get along. The math teacher did so and afterward noted that Jean Pierre's performance in math class improved.

Jean Pierre and Tronneal had traded various items of personal property with each other, for example, a CD player for a bike. Two weeks before the shooting, Jean Pierre told the School Resource Officer that he had traded an expensive watch to Tronneal for a bike, but now wanted the watch back. The officer suggested that Jean Pierre tell his parents and talk to the school's administrators.

On the Thursday before the shooting, Tronneal kicked Jean Pierre in his prosthetic leg and was written up by a teacher.

The Assistant Principal met with the two students in her office. She noted that Tronneal had one previous detention but decided to use conflict resolution to solve the dispute. She concluded that the two boys were merely horse playing, and gave Tronneal a detention to be served on Tuesday, January 28. All concerned agreed that Tronneal would bring the watch back to school on Monday and deliver it to one of the school's administrators from whom Jean Pierre would get it. Jean Pierre asked that his father not be notified because he didn't want his father to know that he had traded the watch.

On the Friday before the shooting, Jean Pierre told his math teacher, "Tronneal is after me." Tronneal was absent that day and the math teacher asked Jean Pierre several times if he wanted to talk to an assistant principal. Jean Pierre replied that he didn't. The math teacher did not interpret Jean Pierre's statements as indicating that he felt threatened. He was smiling when he spoke to her. He didn't seem scared or upset. She didn't report the conversation because Jean Pierre told her that the problem had been taken care of.

Jean Pierre's father, Ashraf Kamel, testified at the civil trial that his son had told him about being kicked, but had given a slightly different story about the watch; namely that Tronneal had stolen it. Jean Pierre told his father that he had been to school administration and would have his watch back on Friday. After school on Friday, Jean Pierre told his father that Tronneal was not at school that day and that he would instead get the watch on Monday. Mr. Kamel testified that he believed that the school administrators had handled the issue and thus did not go to the school to see about it.

**The Victim**

Jean Pierre was born without a tibia in his right leg which was amputated when he was a baby. Despite having a prosthetic leg, Jean Pierre was very athletic, and was named Swimmer of the Year in 1993 by the Boys and Girls Club.

**Battle of the Experts**

*Claimants' expert* was of the opinion that the school board employees were negligent by not preparing an incident report when Jean Pierre asked to be moved away from Tronneal in math class; for the assistant principal's use of

conflict resolution rather than the school's discipline policy for what he described as an assault; and for the math teacher's failure to write a referral when Jean Pierre told her that Tronneal was after him. Claimants' expert also testified that the shooting should have been foreseeable as there had been two previous incidents of gun possession at Conniston Middle School,[1] and that the school's security plan was lacking in that only one teacher was near the area where the shooting occurred.

*Respondent's expert* was of the opinion that Conniston Middle School was ahead of the security curve with a program that emphasized early intervention, looked for troubled students, and that monitored the campus. Conniston also had an armed, fully trained officer on campus when only 6 percent of schools nationally had a police officer on campus for more than 30 hours a week. He further opined that there were no warning signs that would have been predictive of homicide; that the school could not have deterred the murder; and that having an armed officer at that precise spot at the time of the shooting might have displaced the shooting until later, but would not have prevented it.

**Legal Proceedings**

On May 21, 1999, Ashraf Kamel, on his own behalf and as personal representative of the estate of Jean Pierre Kamel, filed a wrongful death suit against the Palm Beach County School Board.

This case was tried to a jury in the Fifteenth Judicial Circuit between January 30 and February 8, 2002. The jury returned a comparative negligence verdict for a total of $2,003,000 in damages and found the Palm Beach County School Board 80 percent responsible for the death of Jean Pierre and found Jean Pierre 20 percent responsible for his own death. Tronneal Mangum was not included on the jury verdict form; thus, the jury had no opportunity to apportion any liability to the intentional tort feasor in accordance with §768.81(4)(b), F.S., and *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (1997).

The school board filed Motions for Directed Verdict and/or New Trial which were denied. The school board appealed to the Fourth District Court of Appeal. That court affirmed the case per curiam on February 12, 2003.[2]

**Claimant's main arguments**

- There is a jury verdict that was reduced to Final Judgment in the sum of $1,602,400, based on a 20 percent comparative negligence offset. The Fourth District Court of Appeal affirmed the judgment. The Final Judgment should be given full effect by the Legislature.

- The school board had a duty to protect its students and this duty was breached when:
  - The math teacher failed to document Jean Pierre's request to have his seat moved and failed to report Jean Pierre's statement that Tronneal was after him.
  - The assistant principal failed to follow school board procedures after the kicking incident.
  - School personnel were not standing at the precise location of the shooting on the day in question.

- Prior gun possession incidents at Conniston made this shooting foreseeable.

**Respondent's main arguments**

- The School Board didn't owe a duty to a student who was technically not on school grounds. This shooting took place on adjoining city property, not on school board property.
- The shooting was not foreseeable: there was no notice that Jean Pierre feared Tronneal; Tronneal was not a trouble-maker; there was no red flag in the conflict resolution process; there was no evidence that Tronneal had a gun; and there was no evidence of Tronneal's prior violent acts.
- The two prior reports of gun possession on campus were irrelevant because they did not involve these particular students, nor did they involve shootings; thus, these were not evidence of foreseeability for this shooting.
- The source of funds for this claim bill is the general operating budget of the Palm Beach County School District. Payment would negatively impact the school district's ability to fund needed educational programs.

CONCLUSIONS OF LAW:

Some see the Legislature's role in claim bills against government agencies as merely rubber-stamping and "passing through" for payment those jury verdicts that have been reduced to judgment and survived appeal, as this one has. Others perceive the Legislature's role to review,

reevaluate, and reweigh the total circumstances and the character of the public entity's liability, and to consider the factors that might not have been perceived by or introduced to the jury or court.

At the Special Master's level every claim bill, whether based on a jury verdict or not, must be measured anew against the four standard elements of negligence and of course, with or without a Final Judgment, the enactment of a claim bill is generally acknowledged to be completely discretionary with the Legislature.[3]

**Liability**

**Element 1 -- Duty**: Florida law imposes on school officials a duty to supervise students' activities while at school.[4] This incident occurred during school hours on property that both school officials and students reasonably believed was school property.[5] Thus, the duty element is satisfied.

**Element 2 -- Breach of Duty**: I find that the only breach of duty that the jury might have reasonably found concerns the incident where Jean Pierre told his math teacher that Tronneal was after him. The teacher repeatedly asked Jean Pierre if he wanted to talk to the assistant principal about that incident, and reasonable jurors might have found that sufficient; however, reasonable jurors might have found that the teacher should have nevertheless reported Jean Pierre's comment to the school's administration or have otherwise acted upon it, particularly given that Jean Pierre had told her earlier in the year that he and Tronneal did not get along.

Further, I find that it was not a breach of duty for Assistant Principal Rigola to have employed conflict resolution rather than School Conduct Code procedures for the horseplay and watch incidents. Ms. Rigola investigated, held an informal hearing on the incident and resolved the immediate problem. Further, she provided for notice to Tronneal's parent(s) because an adult's signature was required in the referral.

Perhaps the procedure could have required parental notification, but Ms. Rigola's failure to have done so cannot constitute negligence because such failure could not have been the proximate cause of Jean Pierre's death. Jean Pierre's father testified at the civil trial that Jean Pierre had told him that Tronneal kicked him; that Tronneal stole his

watch; that Tronneal would return the watch to the school's administrators; and that they would return it to Jean Pierre. Consequently, Jean Pierre's father had notice of essentially everything that Ms. Rigola could have told him.

Finally, I find that it was not a breach of duty for the school to not have a security officer or teacher monitoring the precise location of the shooting at the time it occurred. Schools do not have a duty to supervise all movements of pupils at all times.[6] Schools only have a duty to provide reasonable supervision of students. The evidence demonstrates that the duty was satisfied. The school had a reasonable system of monitoring the campus and the system was fully operational on the morning Jean Pierre was killed.

**Element 3 -- Causation:** I find the math teacher's failure to have reported or otherwise acted upon Jean Pierre's statement that Tronneal was after him could have reasonably been found by the jury to be one of several proximate causes of Jean Pierre's death. Given the teacher's knowledge about Tronneal and the substance of Jean Pierre's comment, I find that it was reasonably foreseeable to the teacher that failure to act on that comment might result in harm to Jean Pierre.

Further, I find that the evidence of prior gun possessions is not persuasive on the foreseeability issue in this case. Neither of these prior incidents involved Jean Pierre or Tronneal. Neither incident involved discharge of a weapon. Moreover, one of the incidents involved a starter pistol, which could only be lethal in a freak accident. Notably, this shooting occurred before the Columbine shootings, which focused national attention on the possession of guns in schools.

**Element 4 – Damages:** The jury assessed a total of $2,003,000 in damages: (1) $500,000 for Mr. Kamel's past pain and suffering and $500,000 for his future pain and suffering; (2) $500,000 for the victims mother's past pain and suffering and $500,000 for her future pain and suffering; and (3) $3,000 for funeral expenses. The school board was tagged for 80 percent. A Final Judgment was entered by the Circuit Court against the school board in the amount of $1,602,400 on February 22, 2002.

The school board has already paid $200,000 as follows: (a) $50,000 for attorney's fees; (b) $68,341.81 for costs; (c) $35,829.10 to Mr. Kamel; and (d) $35,829.09 to Ms. Dimitri, the victim's mother.

**General Conclusions**

I find that the school board had a duty to Jean Pierre Kamel; that an employee failed to comply with that duty; that such failure was one of several causes of Jean Pierre's death; and that Jean Pierre's parents are entitled to damages as a result of their son's death.

Further, I find, as did the jury, that 20 percent comparative liability should be assigned to Jean Pierre himself. Evidence demonstrated that Jean Pierre: (a) told Officer McIsaac that he traded his watch for a bike; (b) told his father that Tronneal stole his watch; and (c) told the assistant principal that he loaned the watch and did not want her to call his father because his father would be angry that he had given the watch away. Thus, it appears that Jean Pierre knowingly failed to notify his father and other school personnel that Tronneal was after him because he did not want to get in trouble over the watch.

Finally, the jury's assignment of 80 percent of the total liability in this case to the school board is, in my view, manifestly disproportionate and unjust. Tronneal Mangum bears at least half of the total fault; however, because the jury was not given the opportunity to assess any amount of the responsibility for the fatal results of his actions, I view it as the Legislature's prerogative and obligation to do so. The school board's single incident of negligence, only one of several equally proximate causes of harm to Jean Pierre Kamel, does not, in my view, support assessment of 80 percent of the total fault and damages.

In short, I allocate the responsibility (and thus liability) as follows:

| | |
|---|---|
| Tronneal Mangum | 50% |
| Palm Beach County School Board | 30% |
| Jean Pierre Kamel | 20% |

ATTORNEYS FEES: The claimants' attorneys have provided documentation verifying that attorney fees are capped at 25 percent in accordance with §768.28, F.S.

RECOMMENDATIONS: I recommend that Senate Bill 38 be amended: (1) to remove "Whereas" clauses inconsistent with this report's findings and conclusions; and (2) to direct the school board to compensate Jean Pierre's parents in the total amount of $400,900, which is 30% of the total jury award minus the $200,000 already paid by the school board to the claimants.

Accordingly, I recommend that Senate Bill 38 (2004) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Tina White
Senate Special Master

cc: Senator Mandy Dawson
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims

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[1] During the previous 1995-1996 school year, two gun possession incidents had occurred at Conniston. The first was on February 14, 1996, when Officer McIsaac took a .22 caliber starter pistol away from a student on campus. The second was on May 22, 1996, when a student told Officer McIsaac told that a part-time student had brought a gun to school. In response, Officer McIsaac called the West Palm Beach Police Department, and police then went to the student's home where, after a consensual search of the student's bedroom, they found a gun. Officer McIsaac never saw the student bring the gun to school; instead, he only had hearsay evidence that the gun had been on school grounds. A West Palm Beach Police Report indicated that the student was arrested for possession of a gun on school grounds.

[2] *Palm Beach County School Bd. v. Kamel*, 840 So.2d 253 (Fla. 4th DCA 2003), rehearing denied (Mar 20, 2003).

[3] *Fernandes v. Barrs*, 641 So.2d 1371, 1376 (Fla. 1st DCA 1994); *South Broward Topeekeegeeyugnee Park District v. Martin*, 564 So.2d 1265, 1267 (Fla. 4th DCA 1990), review denied mem., 576 So.2d 291 (Fla. 1991).

[4] *Rupp v. Bryant*, 417 So.2d 658, 666 (Fla. 1982).

[5] Conniston Middle School personnel routinely patrolled the entirety of the sidewalk beginning at 8:30 a.m. *See Broward County School Board v. Ruiz*, 493 So.2d 474 (Fla. 1986)(holding that school's adoption of a system of supervision and patrols was evidence on the issue of duty to provide supervision at time and place that student was assaulted).

[6] *Benton v. School Board of Broward County,* 386 So.2d 831 (Fla. 4th DCA 1980).

Bill No. SB 38

Amendment No. ___ 174668

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 12:30 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 4, line 19, through page 5, line 2, delete those lines

and insert: authorized and directed to compensate Ashraf Kamel, as personal representative of the Estate of Jean A. Pierre Kamel, and Marquerite Dimitri for the death of their son, Jean A. Pierre Kamel, caused in part by the negligence of a school board employee, in the amount of $400,900, such payment to be made by the school board out of funds not otherwise appropriated. After payment of statutory attorney's fees and costs, 50 percent of the balance shall be paid to Ashraf Kamel and the remaining 50 percent shall be paid to Marquerite Dimitri.

(Redesignate subsequent sections.)

1 ========== T I T L E  A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 1, lines 8 through page 4, line 12, delete
4 those lines
5
6 and insert:
7 appropriation; providing an effective date.
8
9 WHEREAS, Jean A. Pierre Kamel, age 13, and Tronneal
10 Mangum, age 14, were students in the seventh grade at
11 Conniston Middle School, a Palm Beach County public school,
12 during the 1996-1997 school year, and
13 WHEREAS, on Thursday, January 23, 1997, Jean and
14 Tronneal had an argument in school during which Tronneal
15 kicked Jean in his prosthetic leg, and as a result, both boys
16 were sent to a guidance counselor, and
17 WHEREAS, Jean and Tronneal told the guidance counselor
18 that the conflict occurred because Tronneal became angry when
19 Jean repeatedly asked Tronneal to return a watch that Jean had
20 lent him, and
21 WHEREAS, the guidance counselor responded by assigning
22 Tronneal to detention and directing Tronneal to return the
23 watch to the school administration office on Monday, January
24 27, 1997, and
25 WHEREAS, on Friday, January 24, 1997, Jean told one of
26 his teachers that Tronneal was after him; the teacher
27 responded by asking Jean if he wanted to talk to an assistant
28 principal; and Jean responded no, and
29 WHEREAS, on Monday, January 27, 1997, Tronneal brought
30 a gun to Conniston Middle School and shot and killed Jean at
31 8:40 a.m. on the sidewalk located in front of the school, and

1 WHEREAS, Ashraf Kamel, Jean's father, brought a
2 wrongful-death action against the Palm Beach County School
3 Board, seeking damages for Marguerite Dimitri, Jean's mother,
4 and for himself for their pain and suffering due to the death
5 of their son, and
6 WHEREAS, the Palm Beach County School Board had a duty
7 to supervise its students during school hours, and
8 WHEREAS, on February 8, 2002, a Palm Beach County jury
9 found that the Palm Beach County School Board, through its
10 agents and employees, negligently discharged its duty to
11 supervise Jean and Tronneal, and
12 WHEREAS, the jury found the Palm Beach County School
13 Board, 80-percent liable for Jean's death, and found Jean
14 20-percent comparatively negligent for his own death, and
15 WHEREAS, the jury assessed damages for Mr. Kamel's and
16 Ms. Dimitri's pain and suffering at $2,000,000, and
17 WHEREAS, the circuit court entered a final judgment on
18 February 22, 2002, in the sum of $1,602,400, based on the
19 20-percent comparative negligence offset, and
20 WHEREAS, the Palm Beach County School Board appealed
21 the final judgment and the Fourth District Court of Appeal
22 rejected the appeal in a pre curiam affirmed opinion issued on
23 February 12, 2003, and
24 WHEREAS, the Palm Beach County School Board filed a
25 Motion for Rehearing and Certification of Issues of Great
26 Public Importance, which was denied by the Fourth District
27 Court of Appeal on March 20, 2003, and
28 WHEREAS, on April 17, 2003, the Palm Beach County
29 School Board paid $200,000 to Mr. Kamel, as personal
30 representative of the Estate of Jean A. Pierre Kamel, in
31 accordance with the statutory limits on the waiver of

sovereign immunity, and

WHEREAS, the remaining balance of the judgment is $1,402,400, and, NOW, THEREFORE,

2

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 330

SPONSOR: Comprehensive Planning Committee and Senators Saunders and Argenziano

SUBJECT: Community Contribution Tax Credit

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Cooper | Yeatman | CP | Favorable/CS |
| 2. | Cibula | Maclure | CM | Favorable |
| 3. | Fournier | Johansen | FT | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

The committee substitute authorizes the community contribution tax credit program to continue in existence indefinitely. Under existing law, the statutes creating the community contribution tax credit program are scheduled to expire on June 30, 2005. The committee substitute repeals the provisions of existing law that cause the program to expire.

This committee substitute substantially amends the following sections of the Florida Statutes: 212.08, 220.03, 220.183, and 624.5105.

## II. Present Situation:

### Community Contribution Tax Credit Program

Under the community contribution tax credit program, corporations, insurance companies, and persons who collect or remit sales or use taxes may be able to receive tax credits for making donations to certain low-income housing and community development projects.

***Credits Available***

Available tax credits under the program may be taken against sales or use taxes, corporate income taxes, and insurance premium taxes.[1] Tax credits are limited to 50 percent of the amount of a "community contribution" or donation to a maximum of $200,000 annually per donor.[2] The total amount of community contribution tax credits available per year under the program is $10 million.[3] Tax credits against sales or use taxes are granted as a refund against sales and use taxes

[1] Sections 212.08(5)(q), 220.183, and 624.5105, F.S.
[2] Sections 212.08(5)(q)1.a. and c., 220.183(1)(a) and (b), and 624.5105(1)(a) and (b), F.S.
[3] Sections 212.08(5)(q)1.e., 220.183(1)(c), and 624.5105(1)(c), F.S.

reported on returns and remitted in the 12 months preceding the application to the Department of Revenue for a refund.[4] Tax credits against corporate income taxes and insurance premium taxes are claimed against taxes due.[5]

***Form of Contributions***
Community contributions or donations must take the following forms: (1) cash or other liquid assets; (2) real property; (3) goods or inventory; or (4) other physical resources.[6] For purposes of credits against insurance premium taxes and corporate income taxes, the Department of Revenue is authorized to identify "other physical resources" that qualify as a community contribution. For purposes of credits against sales or use taxes, the Office of Tourism, Trade, and Economic Development is authorized to identify "other physical resources."

***Use of Contributions***
Community contributions must be used for projects to provide: low and very low-income housing; commercial, industrial, or public resources and facilities; entrepreneurial and job development opportunities for low-income persons; access to high speed broadband capability for rural enterprise zones; and educational programs and materials for the Florida Holocaust Museum in St. Petersburg.[7]

***Project Location***
Projects to provide low and very low-income housing may be located anywhere in the state.[8] However, community development projects, such as projects to construct or rehabilitate commercial, industrial, or public facilities, must be located in an enterprise zone or Front Porch Florida Community.[9] For purposes of credits against corporate income taxes, projects increasing access to high speed broadband capabilities may be located in any area of a rural county.[10] For purposes of credits against sales or use taxes, a project that is designed to increase high speed broadband access to rural enterprise zones may be located anywhere.[11] For the purposes of credits against insurance premium taxes, however, a project that is designed to increase high speed broadband access to rural enterprise zones must be located in an enterprise zone or Front Porch Florida Community.[12]

***Contribution Recipients***
Eligible project sponsors under the program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.[13] The Office of Tourism, Trade, and Economic Development maintains a list of approved sponsors.

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[4] Section 212.08(5)(q)1.b., F.S.
[5] Sections 220.183(1)(a) and 624.5105(1)(a), F.S.
[6] Sections 212.08(5)(q)2.a., 220.03(1)(d), and 624.5105(5)(a), F.S.
[7] Sections 212.08(5)(q)2.b., 220.03(1)(t), and 624.5105(2)(b) and (5)(e), F.S.
[8] Sections 212.08(5)(q)2.d., 220.183(2)(d), and 624.5105(2)(d), F.S.
[9] *Id.*
[10] Section 220.183(2)(d), F.S.
[11] Section 212.08(5)(q)2.d., F.S.
[12] Section 624.5105(2)(d), F.S.
[13] Sections 212.08(5)(q)2.c. and 220.183(2)(c), F.S.

***Tax Credit Application Process***

Applications to receive community contribution tax credits must be submitted to the Office of Tourism, Trade, and Economic Development. The application must set forth the terms of the application, such as the name of the sponsor, a description of the project, and the type, value, and purpose of the contribution. For the purposes of credits against corporate income taxes and sales or use taxes, the sponsor must verify in the application for tax credits that the community contribution has been received.[14] For the purposes of credits against insurance premium taxes, the sponsor must state its willingness to receive the contribution in the application for tax credits.[15] After approval for community contribution tax credits is received by an applicant, the applicant must also claim the credit from the Department of Revenue.[16] Unused credits against corporate income taxes and insurance premium taxes may be carried forward for 5 years.[17] Unused credits against sales taxes may be carried forward for 3 years.[18]

***Program Expiration***

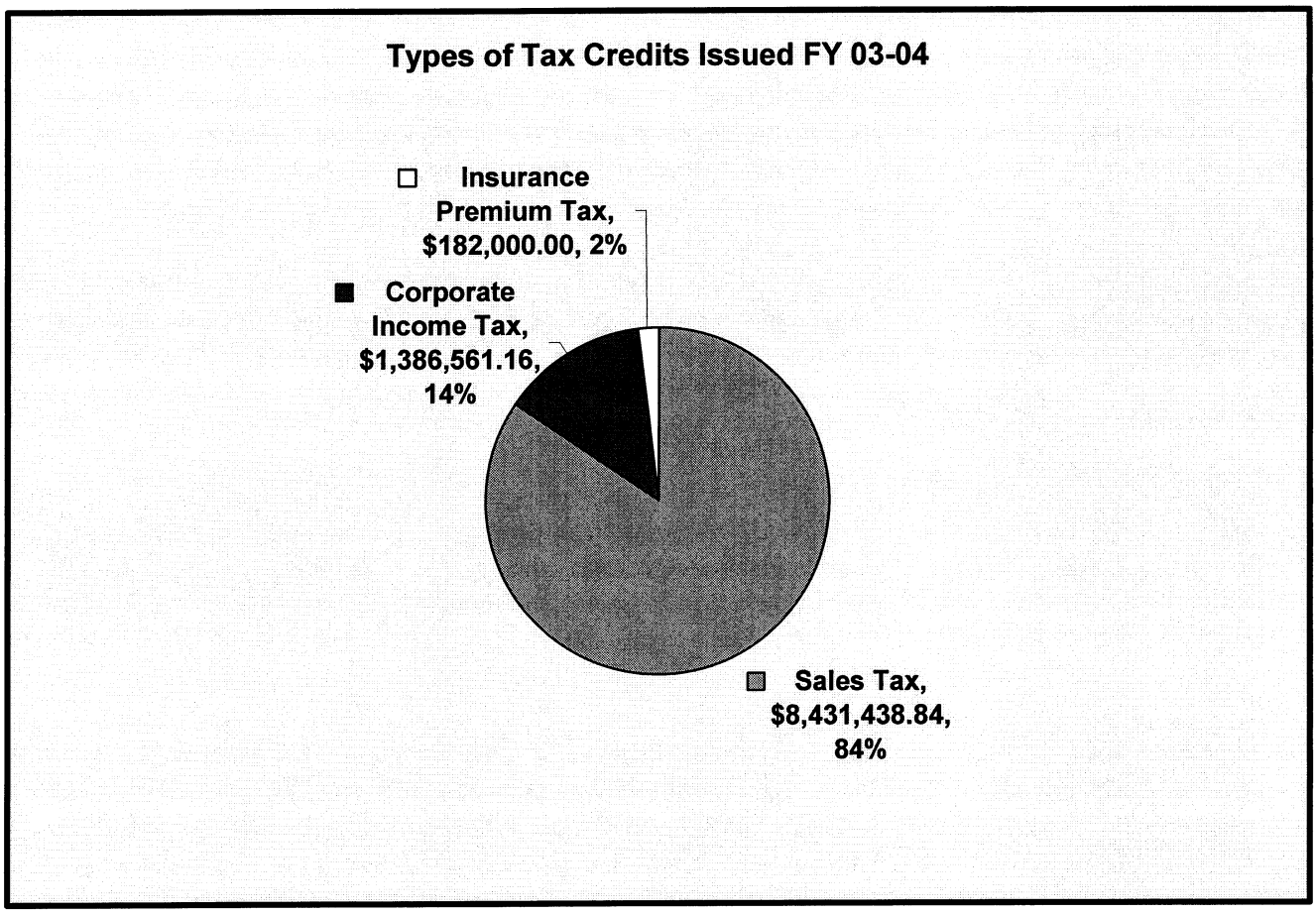
The statutes creating the community contribution tax credit program are scheduled to expire on June 30, 2005.

[14] Sections 212.08(5)(q)3.b. and 220.183(3)(b), F.S.
[15] Section 624.5105(3)(b), F.S.
[16] Section 212.08(5)(q)3.c., F.S., and Rules 12A-1.107(4), 12B-8.001(3), and 12C-1.0188(3), F.A.C.
[17] Sections 220.183(1)(e) and 624.5105(1)(e), F.S.
[18] Section 212.08(5)(q)1.b. and 5., F.S.

**Program Statistics**

Currently, most of the community contribution tax credits are used against sales taxes, as shown in Chart 1, below.

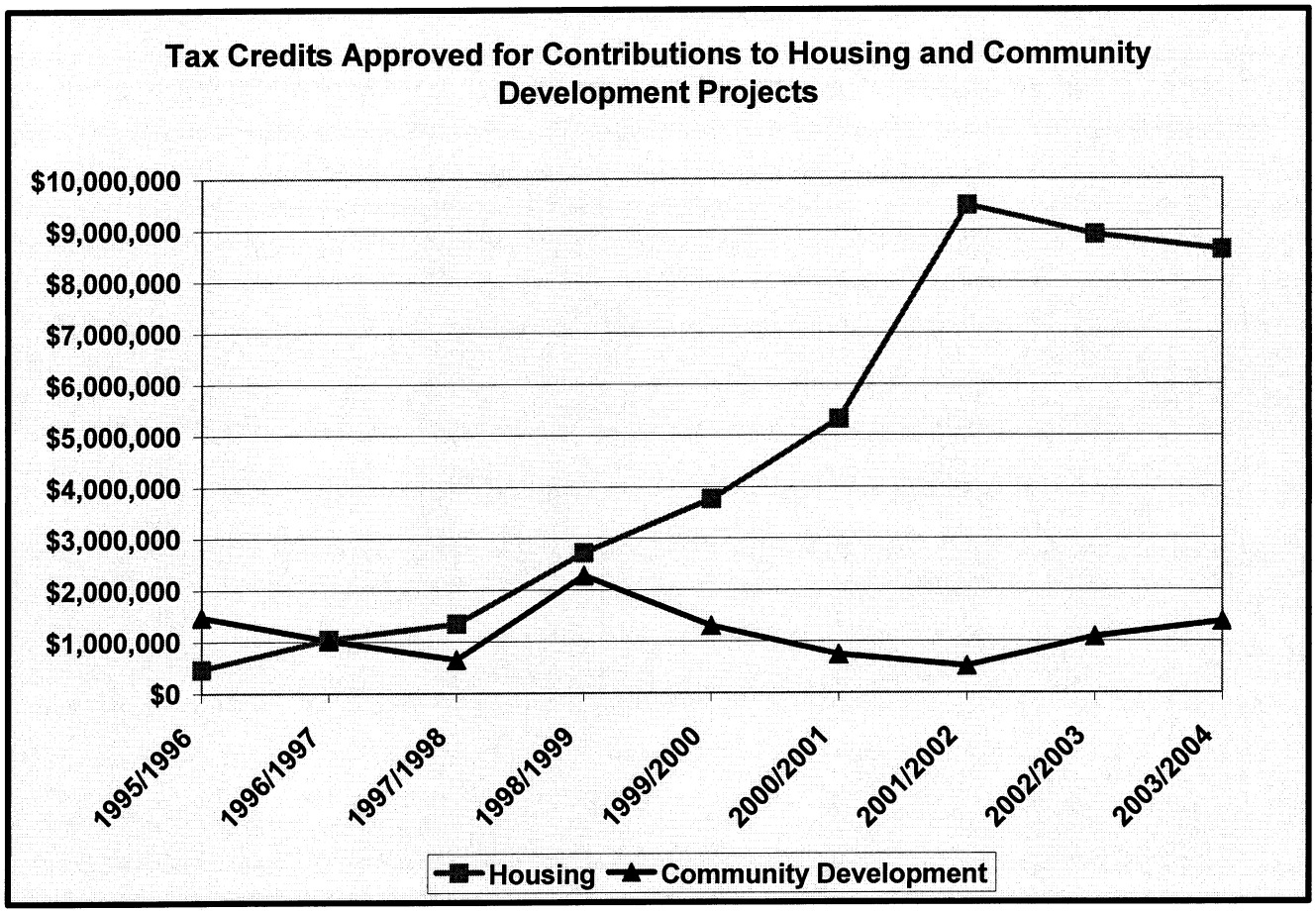
**Chart 1**




*Source:* Created from data provided by the Office of Tourism, Trade, and Economic Development

Historically, most community contribution tax credits have been made to low-income housing projects. See Chart 2.

**Chart 2**




*Source:* Created from data provided by the Office of Tourism, Trade, and Economic Development

## III. Effect of Proposed Changes:

The committee substitute authorizes the community contribution tax credit program to continue in existence indefinitely. Under existing law, the statutes creating the community contribution tax credit program are scheduled to expire on June 30, 2005. The committee substitute repeals the provisions of existing law that cause the program to expire.

Community development projects under the community contribution tax credit program currently must be located in an enterprise zone or Front Porch Florida Community. Because some statutes related to the enterprise zone program are scheduled to repeal by operation of s. 37, ch. 94-136, L.O.F., on December 31, 2005, community development projects may have to be located exclusively in Front Porch Florida communities after that date. Section 290.0065, F.S., which authorized the designation of the first 20 enterprise zones under the enterprise zone program, is among the statutes that will repeal. Other statutes, including ss. 290.0056 and 290.0057, F.S., which govern the operation and substance of the enterprise zone program, will also repeal. Even though statutes authorizing the creation of enterprise zones that were adopted

after s. 37, ch. 94-136, L.O.F., will continue to exist, it is unclear whether the zones themselves can exist after the statutes providing for the substance of the enterprise zone program repeal.

The committee substitute takes effect upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

On January 30, 2004, the Revenue Impact Conference estimated that this measure will have a recurring $10 million negative fiscal impact on state revenues and a recurring $100,000 negative fiscal impact on local revenues.

| Fiscal Year 2003-2004 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | General Revenue | | Trust | | Local | | Total | |
| Issue/Fund | 1st Year | Recurring | 1st Year | Recurring | 1st Year | Recurring | 1st Year | Recurring |
| School Supplies | $0.0 | $(9.0) | $0.0 | $(*) | $0.0 | (1.0) | $0.0 | $(10.0) |

* Insignificant (less than $50,000)

### B. Private Sector Impact:

Tax credits under the community contribution tax credit program will continue to be available to corporations, insurance companies, and persons who collect or remit sales or use taxes.

### C. Government Sector Impact:

The Office of Tourism, Trade, and Economic Development and the Department of Revenue will have to continue to process applications for community contribution tax credits and claims for tax credits.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

For ease of administration of the community contribution tax credit program, the Legislature ultimately may wish to eliminate inconsistent provisions in the three different chapters of the statutes governing the program. See the "Present Situation" section of this staff analysis for examples of inconsistencies among the statutes creating the program.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 330

Amendment No. ___ 983608

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 3:10 pm

Senator Saunders moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(q) Community contribution tax credit for donations.--

1. Authorization.--Beginning July 1, 2001, persons who are registered with the department under s. 212.18 to collect or remit sales or use tax and who make donations to eligible sponsors are eligible for tax credits against their state sales and use tax liabilities as provided in this paragraph:

1 a. The credit shall be computed as 50 percent of the
2 person's approved annual community contribution;
3 b. The credit shall be granted as a refund against
4 state sales and use taxes reported on returns and remitted in
5 the 12 months preceding the date of application to the
6 department for the credit as required in sub-subparagraph 3.c.
7 If the annual credit is not fully used through such refund
8 because of insufficient tax payments during the applicable
9 12-month period, the unused amount may be included in an
10 application for a refund made pursuant to sub-subparagraph
11 3.c. in subsequent years against the total tax payments made
12 for such year. Carryover credits may be applied for a 3-year
13 period without regard to any time limitation that would
14 otherwise apply under s. 215.26;
15 c. No person shall receive more than $200,000 in
16 annual tax credits for all approved community contributions
17 made in any one year;
18 d. All proposals for the granting of the tax credit
19 shall require the prior approval of the Office of Tourism,
20 Trade, and Economic Development;
21 e. The total amount of tax credits which may be
22 granted for all programs approved under this paragraph, s.
23 220.183, and s. 624.5105 is $15 ~~$10~~ million annually; and
24 f. A person who is eligible to receive the credit
25 provided for in this paragraph, s. 220.183, or s. 624.5105 may
26 receive the credit only under the one section of the person's
27 choice.
28 2. Eligibility requirements.--
29 a. A community contribution by a person must be in the
30 following form:
31 (I) Cash or other liquid assets;

1 (II) Real property;

2 (III) Goods or inventory; or

3 (IV) Other physical resources as identified by the

4 Office of Tourism, Trade, and Economic Development.

5 b. All community contributions must be reserved

6 exclusively for use in a project. As used in this

7 sub-subparagraph, the term "project" means any activity

8 undertaken by an eligible sponsor which is designed to

9 construct, improve, or substantially rehabilitate housing that

10 is affordable to low-income or very-low-income households as

11 defined in s. 420.9071(19) and (28); designed to provide

12 commercial, industrial, or public resources and facilities; or

13 designed to improve entrepreneurial and job-development

14 opportunities for low-income persons. A project may be the

15 investment necessary to increase access to high-speed

16 broadband capability in rural communities with enterprise

17 zones, including projects that result in improvements to

18 communications assets that are owned by a business. A project

19 may include the provision of museum educational programs and

20 materials that are directly related to any project approved

21 between January 1, 1996, and December 31, 1999, and located in

22 an enterprise zone as referenced in s. 290.00675. This

23 paragraph does not preclude projects that propose to construct

24 or rehabilitate housing for low-income or very-low-income

25 households on scattered sites. ~~The Office of Tourism, Trade,~~

26 ~~and Economic Development may reserve up to 50 percent of the~~

27 ~~available annual tax credits for housing for very-low-income~~

28 ~~households pursuant to s. 420.9071(28) for the first 6 months~~

29 ~~of the fiscal year.~~ With respect to housing, contributions may

30 be used to pay the following eligible low-income and

31 very-low-income housing-related activities:

1 (I) Project development impact and management fees for
2 low-income or very-low-income housing projects;
3 (II) Down payment and closing costs for eligible
4 persons, as defined in s. 420.9071(19) and (28);
5 (III) Administrative costs, including housing
6 counseling and marketing fees, not to exceed 10 percent of the
7 community contribution, directly related to low-income or
8 very-low-income projects; and
9 (IV) Removal of liens recorded against residential
10 property by municipal, county, or special district local
11 governments when satisfaction of the lien is a necessary
12 precedent to the transfer of the property to an eligible
13 person, as defined in s. 420.9071(19) and (28), for the
14 purpose of promoting home ownership. Contributions for lien
15 removal must be received from a nonrelated third party.
16 c. The project must be undertaken by an "eligible
17 sponsor," which includes:
18 (I) A community action program;
19 (II) A nonprofit community-based development
20 organization whose mission is the provision of housing for
21 low-income or very-low-income households or increasing
22 entrepreneurial and job-development opportunities for
23 low-income persons;
24 (III) A neighborhood housing services corporation;
25 (IV) A local housing authority created under chapter
26 421;
27 (V) A community redevelopment agency created under s.
28 163.356;
29 (VI) The Florida Industrial Development Corporation;
30 (VII) A historic preservation district agency or
31 organization;

1 (VIII) A regional workforce board;
2 (IX) A direct-support organization as provided in s.
3 1009.983;
4 (X) An enterprise zone development agency created
5 under s. 290.0056;
6 (XI) A community-based organization incorporated under
7 chapter 617 which is recognized as educational, charitable, or
8 scientific pursuant to s. 501(c)(3) of the Internal Revenue
9 Code and whose bylaws and articles of incorporation include
10 affordable housing, economic development, or community
11 development as the primary mission of the corporation;
12 (XII) Units of local government;
13 (XIII) Units of state government; or
14 (XIV) Any other agency that the Office of Tourism,
15 Trade, and Economic Development designates by rule.
16
17 In no event may a contributing person have a financial
18 interest in the eligible sponsor.
19 d. The project must be located in an area designated
20 an enterprise zone or a Front Porch Florida Community pursuant
21 to s. 14.2015(9)(b), unless the project increases access to
22 high-speed broadband capability for rural communities with
23 enterprise zones but is physically located outside the
24 designated rural zone boundaries. Any project designed to
25 construct or rehabilitate housing for low-income or
26 very-low-income households as defined in s. 420.0971(19) and
27 (28) is exempt from the area requirement of this
28 sub-subparagraph.
29 e.(I) The Office of Tourism, Trade, and Economic
30 Development shall reserve 80 percent of the available annual
31 tax credits for donations made to eligible sponsors for

1 projects that provide homeownership opportunities to
2 low-income or very-low-income households pursuant to s.
3 420.9071(19) and (28) for the first 2 months of the fiscal
4 year. If less than 80 percent of the annual tax credits for
5 donations made to eligible sponsors for projects for
6 low-income or very-low-income households are approved within
7 the first 2 months of the fiscal year, the office may approve
8 the balance of available credits for donations made to
9 eligible sponsors for projects other than those that provide
10 homeownership opportunities for low-income or very-low-income
11 households.
12 (II) The office shall reserve 20 percent of the
13 available annual tax credits for donations made to eligible
14 sponsors for projects other than those that provide
15 homeownership opportunities for low-income or very-low-income
16 households pursuant to s. 420.9071(19) and (28) for the first
17 2 months of the fiscal year. If less than 20 percent of the
18 annual tax credits for donations made to eligible sponsors for
19 projects other than those that provide homeownership
20 opportunities for low-income or very-low-income households are
21 approved within the first 2 months of the fiscal year, the
22 office may approve the balance of available credits for
23 donations made to eligible sponsors for projects that provide
24 homeownership opportunities for low-income or very-low-income
25 households.
26 (III) If, during the first 10 business days of the
27 state fiscal year, tax credit applications are received for
28 more than 80 percent of available annual tax credits from
29 eligible sponsors for projects that provide homeownership
30 opportunities for low-income or very-low-income households,
31 the office shall grant the tax credits for such applications

1 as follows:
2 (A) If an eligible sponsor submits tax credit
3 applications which in total do not exceed $200,000, the
4 credits shall be granted in full if the tax credit
5 applications are approved and subject to the provisions of
6 sub-sub-subparagraph (I).
7 (B) If an eligible sponsor submits tax credit
8 applications which, in total, equal or exceed $200,000, the
9 amount of tax credit granted pursuant to
10 sub-sub-sub-subparagraph (A) shall be subtracted from the
11 amount of available tax credits pursuant to
12 sub-sub-subparagraph (I), and the remaining credits shall be
13 granted to each approved tax credit application on a pro rata
14 basis.
15 (C) If, after the first 2 months of the fiscal year,
16 additional credits become available pursuant to
17 sub-sub-subparagraph (II), the office shall grant the tax
18 credits by first increasing the credit of those who received a
19 pro rata reduction and, if there are remaining credits,
20 granting credits to those who applied on or after the 11th
21 business day of the state fiscal year on a first-come,
22 first-served basis.
23 (IV) If, during the first 10 business days of the
24 state fiscal year, tax credit applications are received for
25 more than 20 percent of available annual tax credits from
26 eligible sponsors for projects other than those that provide
27 homeownership opportunities for low-income or very-low-income
28 households, the office shall grant the tax credits to each
29 approved tax credit application on a pro rata basis. If, after
30 the first 2 months of the fiscal year, additional credits
31 become available pursuant to sub-sub-subparagraph (I), the

1 office shall grant the tax credits by first increasing the
2 credit of those who received a pro rata reduction and, if
3 there are remaining credits, granting credits to those who
4 applied on or after the 11th business day of the state fiscal
5 year on a first-come, first-served basis.
6 3. Application requirements.--
7 a. Any eligible sponsor seeking to participate in this
8 program must submit a proposal to the Office of Tourism,
9 Trade, and Economic Development which sets forth the name of
10 the sponsor, a description of the project, and the area in
11 which the project is located, together with such supporting
12 information as is prescribed by rule. The proposal must also
13 contain a resolution from the local governmental unit in which
14 the project is located certifying that the project is
15 consistent with local plans and regulations.
16 b. Any person seeking to participate in this program
17 must submit an application for tax credit to the Office of
18 Tourism, Trade, and Economic Development which sets forth the
19 name of the sponsor, a description of the project, and the
20 type, value, and purpose of the contribution. The sponsor
21 shall verify the terms of the application and indicate its
22 receipt of the contribution, which verification must be in
23 writing and accompany the application for tax credit. The
24 person must submit a separate tax credit application to the
25 office for each individual contribution that it makes to each
26 individual project.
27 c. Any person who has received notification from the
28 Office of Tourism, Trade, and Economic Development that a tax
29 credit has been approved must apply to the department to
30 receive the refund. Application must be made on the form
31 prescribed for claiming refunds of sales and use taxes and be

1 accompanied by a copy of the notification. A person may submit
2 only one application for refund to the department within any
3 12-month period.
4 4. Administration.--
5 a. The Office of Tourism, Trade, and Economic
6 Development may adopt rules pursuant to ss. 120.536(1) and
7 120.54 necessary to administer this paragraph, including rules
8 for the approval or disapproval of proposals by a person.
9 b. The decision of the Office of Tourism, Trade, and
10 Economic Development must be in writing, and, if approved, the
11 notification shall state the maximum credit allowable to the
12 person. Upon approval, the office shall transmit a copy of the
13 decision to the Department of Revenue.
14 c. The Office of Tourism, Trade, and Economic
15 Development shall periodically monitor all projects in a
16 manner consistent with available resources to ensure that
17 resources are used in accordance with this paragraph; however,
18 each project must be reviewed at least once every 2 years.
19 d. The Office of Tourism, Trade, and Economic
20 Development shall, in consultation with the Department of
21 Community Affairs, the Florida Housing Finance Corporation,
22 and the statewide and regional housing and financial
23 intermediaries, market the availability of the community
24 contribution tax credit program to community-based
25 organizations.
26 5. Expiration.--This paragraph expires June 30, 2005;
27 however, any accrued credit carryover that is unused on that
28 date may be used until the expiration of the 3-year carryover
29 period for such credit.
30 Section 2. Paragraph (t) of subsection (1) of section
31 220.03, Florida Statutes, is amended to read:

1 220.03 Definitions.--

2 (1) SPECIFIC TERMS.--When used in this code, and when
3 not otherwise distinctly expressed or manifestly incompatible
4 with the intent thereof, the following terms shall have the
5 following meanings:

6 (t) "Project" means any activity undertaken by an
7 eligible sponsor, as defined in s. 220.183(2)(c), which is
8 designed to construct, improve, or substantially rehabilitate
9 housing that is affordable to low-income or very-low-income
10 households as defined in s. 420.9071(19) and (28); designed to
11 provide commercial, industrial, or public resources and
12 facilities; or designed to improve entrepreneurial and
13 job-development opportunities for low-income persons. A
14 project may be the investment necessary to increase access to
15 high-speed broadband capability in rural communities with
16 enterprise zones, including projects that result in
17 improvements to communications assets that are owned by a
18 business. A project may include the provision of museum
19 educational programs and materials that are directly related
20 to any project approved between January 1, 1996, and December
21 31, 1999, and located in an enterprise zone as referenced in
22 s. 290.00675. This paragraph does not preclude projects that
23 propose to construct or rehabilitate low-income or
24 very-low-income housing on scattered sites. ~~The Office of~~
25 ~~Tourism, Trade, and Economic Development may reserve up to 50~~
26 ~~percent of the available annual tax credits under s. 220.181~~
27 ~~for housing for very low income households pursuant to s.~~
28 ~~420.9071(28) for the first 6 months of the fiscal year.~~ With
29 respect to housing, contributions may be used to pay the
30 following eligible project-related activities:

31 1. Project development, impact, and management fees

1 for low-income or very-low-income housing projects;
2 2. Down payment and closing costs for eligible
3 persons, as defined in s. 420.9071(19) and (28);
4 3. Administrative costs, including housing counseling
5 and marketing fees, not to exceed 10 percent of the community
6 contribution, directly related to low-income or
7 very-low-income projects; and
8 4. Removal of liens recorded against residential
9 property by municipal, county, or special-district local
10 governments when satisfaction of the lien is a necessary
11 precedent to the transfer of the property to an eligible
12 person, as defined in s. 420.9071(19) and (28), for the
13 purpose of promoting home ownership. Contributions for lien
14 removal must be received from a nonrelated third party.
15
16 The provisions of this paragraph shall expire and be void on
17 June 30, 2005.
18 Section 3. Paragraph (c) of subsection (1), paragraph
19 (b) of subsection (2), and subsection (5) of section 220.183,
20 Florida Statutes, are amended to read:
21 220.183 Community contribution tax credit.--
22 (1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX
23 CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM
24 SPENDING.--
25 (c) The total amount of tax credit which may be
26 granted for all programs approved under this section, s.
27 212.08(5)(q), and s. 624.5105 is $15 ~~$10~~ million annually.
28 (2) ELIGIBILITY REQUIREMENTS.--
29 (b)1. All community contributions must be reserved
30 exclusively for use in projects as defined in s. 220.03(1)(t).
31 2. The Office of Tourism, Trade, and Economic Development

1 shall may reserve 80 up-to-50 percent of the available annual
2 tax credits for housing for donations made to eligible
3 sponsors for projects that provide homeownership opportunities
4 for low-income or very-low-income households pursuant to s.
5 420.9071(19) and (28) for the first 2 6 months of the fiscal
6 year. If less than 80 percent of the annual tax credits for
7 donations made to eligible sponsors for projects for
8 low-income or very-low-income households are approved within
9 the first 2 months of the fiscal year, the office may approve
10 the balance of available credits for donations made to
11 eligible sponsors for projects other than those that provide
12 homeownership opportunities for low-income or very-low-income
13 households.
14 3. The office shall reserve 20 percent of the
15 available annual tax credits for donations made to eligible
16 sponsors for projects other than those that provide
17 homeownership opportunities for low-income or very-low-income
18 households pursuant to s. 420.9071(19) and (28) for the first
19 2 months of the fiscal year. If less than 20 percent of the
20 annual tax credits for donations made to eligible sponsors for
21 projects other than those that provide homeownership
22 opportunities for low-income or very-low-income households are
23 approved within the first 2 months of the fiscal year, the
24 office may approve the balance of available credits for
25 donations made to eligible sponsors for projects that provide
26 homeownership opportunities for low-income or very-low-income
27 households.
28 4. If, during the first 10 business days of the state
29 fiscal year, tax credit applications are received for more
30 than 80 percent of available annual tax credits from eligible
31 sponsors for projects that provide homeownership opportunities

1 for low-income or very-low-income households, the office shall
2 grant the tax credits to such applications as follows:
3 a. If an eligible sponsor submits tax credit
4 applications which in total do not exceed $200,000, the
5 credits shall be granted in full if the tax credit
6 applications are approved and subject to the provisions of
7 subparagraph 2.
8 b. If an eligible sponsor submits tax credit
9 applications which in total equal or exceed $200,000, the
10 amount of tax credits granted pursuant to sub-subparagraph a.
11 shall be subtracted from the amount of available tax credits
12 pursuant to subparagraph 2., and the remaining credits shall
13 be granted to each approved tax credit application on a pro
14 rata basis.
15 c. If, after the first 2 months of the fiscal year,
16 additional credits become available pursuant to subparagraph
17 3., the office shall grant the tax credits by first increasing
18 the credit of those who received a pro rata reduction and, if
19 there are remaining credits, granting credits to those who
20 applied on or after the 11th business day of the state fiscal
21 year on a first-come, first-served basis.
22 5. If, during the first 10 business days of the state
23 fiscal year, tax credit applications are received for more
24 than 20 percent of available annual tax credits from eligible
25 sponsors for projects other than those that provide
26 homeownership opportunities for low-income or very-low-income
27 households, the office shall grant the tax credits to each
28 approved tax credit application on a pro rata basis. If, after
29 the first 2 months of the fiscal year, additional credits
30 become available pursuant to subparagraph 2., the office shall
31 grant the tax credits by first increasing the credit of those

1 who received a pro rata reduction and, if there are remaining
2 credits, granting credits to those who applied on or after the
3 11th business day of the state fiscal year on a first-come,
4 first-served basis.
5 (5) EXPIRATION.--The provisions of this section,
6 except paragraph (1)(e), shall expire and be void on June 30,
7 2005.
8 Section 4. Paragraph (c) of subsection (1) and
9 subsection (6) of section 624.5105, Florida Statutes, are
10 amended, and paragraph (e) is added to subsection (2) of that
11 section, to read:
12 624.5105 Community contribution tax credit;
13 authorization; limitations; eligibility and application
14 requirements; administration; definitions; expiration.--
15 (1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--
16 (c) The total amount of tax credit which may be
17 granted for all programs approved under this section and ss.
18 212.08(5)(g) and s. 220.183 is $15 $10 million annually.
19 (2) ELIGIBILITY REQUIREMENTS.--
20 (e)1. The Office of Tourism, Trade, and Economic
21 Development shall reserve 80 percent of the available annual
22 tax credits for donations made to eligible sponsors for
23 projects that provide homeownership opportunities for
24 low-income or very-low-income households pursuant to s.
25 420.9071(19) and (28) for the first 2 months of the fiscal
26 year. If less than 80 percent of the annual tax credits for
27 donations made to eligible sponsors for projects that provide
28 homeownership opportunities for low-income or very-low-income
29 households are approved within the first 2 months of the
30 fiscal year, the office may approve the balance of available
31 credits for donations made to eligible sponsors for projects

1 other than those that provide homeownership opportunities for
2 low-income or very-low-income households.
3 2. The office shall reserve 20 percent of the
4 available annual tax credits for donations made to eligible
5 sponsors for projects other than those that provide
6 homeownership opportunities for low-income or very-low-income
7 households pursuant to s. 420.9071(19) and (28) for the first
8 2 months of the fiscal year. If less than 20 percent of the
9 annual tax credits for donations made to eligible sponsors for
10 projects other than those that provide homeownership
11 opportunities for low-income or very-low-income households are
12 approved within the first 2 months of the fiscal year, the
13 office may approve the balance of available credits for
14 donations made to eligible sponsors for projects that provide
15 homeownership opportunities for low-income or very-low-income
16 households.
17 3. If, during the first 10 business days of the state
18 fiscal year, tax credit applications are received for more
19 than 80 percent of available annual tax credits from eligible
20 sponsors for projects that provide homeownership opportunities
21 for low-income or very-low-income households, the office shall
22 grant the tax credits to such applications as follows:
23 a. If an eligible sponsor submits tax credit
24 applications which in total do not exceed $200,000, the
25 credits shall be granted in full if the tax credit
26 applications are approved and subject to the provisions of
27 subparagraph 1.
28 b. If an eligible sponsor submits tax credit
29 applications which in total equal or exceed $200,000, the
30 amount of tax credits granted pursuant to sub-subparagraph a.
31 shall be subtracted from the amount of available tax credits

1 pursuant to subparagraph 1., and the remaining credits shall
2 be granted to each approved tax credit application on a pro
3 rata basis.
4 c. If, after the first 2 months of the fiscal year,
5 additional credits become available pursuant to subparagraph
6 2., the office shall grant the tax credits by first increasing
7 the credit of those who received a pro rata reduction and, if
8 there are remaining credits, granting credits to those who
9 applied on or after the 11th business day of the state fiscal
10 year on a first-come, first-served basis.
11 4. If, during the first 10 business days of the state
12 fiscal year, tax credit applications are received for more
13 than 20 percent of available annual tax credits from eligible
14 sponsors for projects other than those that provide
15 homeownership opportunities for low-income or very-low-income
16 households, the office shall grant the tax credits to each
17 approved tax credit application on a pro rata basis. If, after
18 the first 2 months of the fiscal year, additional credits
19 become available pursuant to subparagraph 1., the office shall
20 grant the tax credits by first increasing the credit of those
21 who received a pro rata reduction and, if there are remaining
22 credits, granting credits to those who applied on or after the
23 11th business day of the state fiscal year on a first-come,
24 first-served basis.
25 (6) EXPIRATION.--The provisions of this section,
26 except paragraph (1)(e), shall expire and be void on June 30,
27 2005.
28 Section 5. This act shall take effect July 1, 2004.
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1 ========== T I T L E  A M E N D M E N T ==========
2 And the title is amended as follows:
3 Delete everything before the enacting clause
4
5 and insert:
6 A bill to be entitled
7 An act relating to community contribution tax
8 credits; amending s. 212.08, F.S.; requiring
9 the Office of Tourism, Trade, and Economic
10 Development to reserve portions of certain
11 annual tax credits for eligible sponsors of
12 certain low-income housing projects; providing
13 requirements, criteria, and limitations;
14 amending s. 220.03, F.S.; revising a definition
15 to delete a provision authorizing the office to
16 reserve certain portions of available annual
17 tax credits for certain low-income housing
18 purposes; amending s. 220.183, F.S.; increasing
19 the amount of available annual community
20 contribution tax credits; revising eligibility
21 criteria; requiring the Office of Tourism,
22 Trade, and Economic Development to reserve
23 portions of certain annual tax credits for
24 eligible sponsors of certain low-income housing
25 projects; providing requirements, criteria, and
26 limitations; amending s. 624.5105, F.S.;
27 increasing the amount of available annual
28 community contribution tax credits; revising
29 eligibility criteria; requiring the Office of
30 Tourism, Trade, and Economic Development to
31 reserve portions of certain annual tax credits

1 for eligible sponsors of certain low-income
2 housing projects; providing requirements,
3 criteria, and limitations; providing an
4 effective date.
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# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1338

SPONSOR: Senator Campbell

SUBJECT: Determination of Tax Situs for the Communications Services Tax

DATE: April 20, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Cooper | Yeatman | CP | Fav/1 amendment |
| 2. | Fournier | Johansen | FT | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

This bill requires that any database of enhanced zip codes which is used to determine the local taxing jurisdiction in which a service address is located must be certified by DOR by January 1, 2005.

This bill amends section 202.22 of the Florida Statutes.

## II. Present Situation:

"Zip codes" are a major contributor to the ability of the United States Postal Service to employ automation in the processing of mail. The use of "enhanced" or Zip + 4 codes allow machines to even further pinpoint the final destination of each letter. The enhanced zip code is also used to more precisely identify the billing addresses of individuals and businesses for tax purposes.

Currently, communications services providers that are responsible for collecting local communications services tax are required to assign customer service addresses to local taxing jurisdictions in order to collect tax at the correct rates. Pursuant to s. 202.22, F.S., a provider is not liable (held harmless) for tax, interest, and penalty resulting from the incorrect assignment of a service address if it exercises "due diligence" in employing one of the following methods to assign service addresses to local taxing jurisdictions:

- The Department of Revenue (DOR) database;
- A database that has been certified by DOR;
- An enhanced zip code method; or
- A database that is determined in an audit to meet the requirements for certification, even though such database had not been certified by DOR.

In order for a provider that assigns service addresses to local taxing jurisdictions based on the use of zip codes to be held harmless, the assignments must be based on enhanced zip codes of at least nine digits. In addition, if an enhanced zip code area overlaps jurisdictional boundaries, or if an enhanced zip code cannot be assigned (i.e., because an address is in a rural area or a location without postal delivery), a provider must use a reasonable methodology to determine the taxing jurisdiction to which the affected address will be assigned. A methodology is reasonable if the information a provider obtains to assign the affected addresses is obtained from one of the following sources:

- The DOR database;
- A database certified by DOR;
- A responsible representative of the relevant local taxing jurisdiction;
- The U.S. Census Bureau; or
- The U.S. Postal Service

Pursuant to s. 202.28(1), F.S., a provider that uses the DOR database, a certified database, or an enhanced zip code method to assign service addresses is entitled to a .75% collection allowance in regard to taxes collected in respect of addresses so assigned. Pursuant to s. 202.22(6)(a), F.S., a provider who fails to use an eligible method will only receive a .25% collection allowance. A provider who uses a database that could be, but has not been, certified is only eligible for the .25% collection allowance, even though that provider is held harmless against assessment upon audit.

## III. Effect of Proposed Changes:

**Section 1** amends s. 202.22(1) F.S., to require that any database of enhanced zip codes which is used to determine the local taxing jurisdiction in which a service address is located must be certified by DOR by January 1, 2005.

**Section 2** provides that this act will take effect upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

DOR reports that due to the "flush left" placement of the certification requirement, a person that uses an enhanced zip code database must have the database certified to receive the "held harmless" protection and the increased collection allowance of .75%. Persons that use an enhanced zip code database that is not certified would be treated in the same manner as a person that does not use any of the eligible methods. Such persons receive no "held harmless" protection, unless upon audit the database would have qualified for certification, and would only receive a .25% collection allowance.

### C. Government Sector Impact:

This bill requires that any database of enhanced zip codes which is used to determine the local taxing jurisdiction in which a service address is located must be certified by DOR by January 1, 2005. The impact on DOR is unavailable at this time.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

DOR reports that pursuant to s. 202.22(3), F.S., the department has 180 days to provide written notice of a certification applicant's approval or denial. Therefore, users of enhanced zip code databases that are currently entitled to a .75 percent (.0075) collection allowance and "hold harmless" protection must apply for certification no later than June 1, 2004, to allow time for the department to process the certification application prior to the mandated January 1, 2005, deadline. Without knowledge of how many enhanced zip code database users would apply for certification, it is not possible to determine whether the department would be able to process the applications by the required deadline of 180 days or the January 1, 2005, deadline for the database users. There are 256 registered providers who have indicated on their Form DR-700020, Notification of Method Employed to Determine Taxing Jurisdiction (Communications Services Tax), that they use an enhanced zip code database to determine the local taxing jurisdiction. These include many major mobile service providers. Based on the problems that the department has encountered in certifying address databases for other communications services providers, the January 1, 2005 deadline to complete the certification process is probably unrealistic.

## VIII. Amendments:

#1 by Comprehensive Planning Committee:
This amendment allows DOR an additional 6 months to certify databases of enhanced zip codes, and allows dealers to receive the appropriate service charges should their database be approved.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 1338

Amendment No. 1 190310

CHAMBER ACTION

Senate House

The Committee on Comprehensive Planning recommended the following amendment:

**Senate Amendment**

On page 1, line 15 through page 2, line 22, delete those lines

and insert:

Section 1. Paragraph (e) is added to section 202.22, Florida Statutes, to read:

202.22 Determination of local tax situs.--

(1) A dealer of communications services who is obligated to collect and remit a local communications services tax imposed under s. 202.19 shall be held harmless from any liability, including tax, interest, and penalties, which would otherwise be due solely as a result of an assignment of a service address to an incorrect local taxing jurisdiction, if the dealer of communications services exercises due diligence in applying one or more of the following methods for determining the local taxing jurisdiction in which a service address is located:

1 (a) Employing an electronic database provided by the
2 department under subsection (2).
3 (b) Employing a database developed by the dealer or
4 supplied by a vendor which has been certified by the
5 department under subsection (3).
6 (c)1. Employing enhanced zip codes to assign each
7 street address, address range, post office box, or post office
8 box range in the dealer's service area to a specific local
9 taxing jurisdiction.
10 2. If an enhanced zip code overlaps boundaries of
11 municipalities or counties, or if an enhanced zip code cannot
12 be assigned to the service address because the service address
13 is in a rural area or a location without postal delivery, the
14 dealer of communications services or its database vendor shall
15 assign the affected service addresses to one specific local
16 taxing jurisdiction within such zip code based on a reasonable
17 methodology. A methodology satisfies this subparagraph if the
18 information used to assign service addresses is obtained by
19 the dealer or its database vendor from:
20 a. A database provided by the department;
21 b. A database certified by the department under
22 subsection (3);
23 c. Responsible representatives of the relevant local
24 taxing jurisdictions; or
25 d. The United States Census Bureau or the United
26 States Postal Service.
27 (d) Employing a database of street addresses or other
28 assignments that does not meet the requirements of paragraphs
29 (a)-(c), but meets the criteria set forth in paragraph (3)(a)
30 at the time of audit by the department.
31 (e) Any database of enhanced zip codes which is used

1 to determine the local taxing jurisdiction in which a service
2 address is located must be certified by the department by July
3 1, 2005. Notwithstanding any provision of law to the contrary,
4 if a dealer submits an application for certification on or
5 before January 1, 2005, the 180-day time limit set forth in
6 paragraph (3)(d) does not apply. During the time the
7 application is under consideration by the department or, if
8 the application is denied, until the denial is no longer
9 subject to administrative or judicial review or until a later
10 date fixed by order of the reviewing court:
11 1. For purposes of computing the amount of the
12 deduction to which such dealer is entitled under s. 202.28,
13 the dealer shall be deemed to have used a certified database
14 pursuant to paragraph (1)(b).
15 2. In the event that such application is approved,
16 such approval shall be deemed to have been effective on the
17 date of the application or July 1, 2005, whichever is later.
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# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1358

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Garcia

SUBJECT: Enterprise Zones

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Maclure | Maclure | CM | Fav/CS |
| 2. | | | GO | Withdrawn |
| 3. | Fournier | Johansen | FT | |
| 4. | | | ATD | |
| 5. | | | AP | |
| 6. | | | RC | Withdrawn |

## I. Summary:

Committee Substitute for Senate Bill 1358 authorizes the following communities to apply to the Office of Tourism, Trade, and Economic Development for the designation of new enterprise zones: Osceola County or the county jointly with the City of Kissimmee; City of South Daytona; City of Lake Wales; Walton County; Miami-Dade County jointly with the City of Hialeah; and Miami-Dade County or the county jointly with the City of West Miami.

The committee substitute authorizes the following communities to apply to the Office of Tourism, Trade, and Economic Development to amend the boundaries of existing enterprise zones: Leon County; Miami-Dade County; Jacksonville/Duval County; Orange County; and Sarasota County/City of Sarasota.

The committee substitute amends the following sections of the Florida Statutes: 290.0065, 290.00675, and 290.00688. The committee substitute creates the following sections of the Florida Statutes: 290.00702, 290.00703, and 290.00704, as well as unnumbered sections of the Florida Statutes.

## II. Present Situation:

### Florida Enterprise Zone Program

The Florida Enterprise Zone Act of 1994 (act), codified in ss. 290.001-290.016, F.S., was created:

> to provide the necessary means to assist local communities, their residents, and the private sector in creating the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas and to provide jobs for residents of such areas.

(Section 290.003, F.S.)

Under the act, areas of the state meeting specified criteria, including suffering from pervasive poverty, unemployment, and general distress, have been designated as enterprise zones.[1] The act established a process for the nomination and designation of a maximum of 20 enterprise zones (ss. 290.0055 and 290.0065, F.S.). Subsequent to the 1994 act, however, the Legislature has authorized additional zones. The Office of Tourism, Trade, and Economic Development (OTTED) reports that today there are 51 enterprise zones.[2] Certain state and local incentives are authorized to induce private businesses to invest in these enterprise zones.

***State Incentives***

- *Enterprise zone jobs credit against corporate income taxes*: Businesses located in an enterprise zone which pay Florida corporate income tax are authorized to receive a credit against their tax liability based on the amount of wages paid to new employees who are either residents of an enterprise zone or participants in a welfare transition program. Section 220.181, F.S.
- *Enterprise zone jobs credit against sales tax*: Businesses located within an enterprise zone which collect and remit Florida sales and use tax are allowed a credit against their sales tax due based on the amount of wages paid to new employees who are either residents of an enterprise zone or participants in a welfare transition program. Section 212.096, F.S.
- *Enterprise zone property tax credit*: New, expanded, or rebuilt businesses located within an enterprise zone are allowed a credit on their Florida corporate income tax based on the amount of property taxes paid. Section 220.182, F.S.
- *Sales tax refund for building materials*: A refund is available for sales taxes paid on the purchase of building materials used in the rehabilitation of real property in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or $5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or $10,000. Section 212.08(5)(g), F.S.
- *Sales tax refund for business property used in an enterprise zone*: A refund is available for sales taxes paid on the purchase of business property with a purchase price of $5,000 or more purchased by and for use in a business located in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales

[1] Florida's enterprise zone program dates back to 1982. The 1994 legislation significantly revised the program, provided for the expiration in December 1994 of all then-existing zones, and established a process for the designation of up to 20 new zones during the summer of 1995.
[2] Office of Tourism, Trade, and Economic Development, *Florida Enterprise Zone Program Annual Report October 1, 2002-September 30, 2003*, 1, March 1, 2004.

taxes paid or $5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or $10,000. Section 212.08(5)(h), F.S.

***Local Incentives***

In addition to the incentives provided by the state, some local governments offer incentives as part of their enterprise zone development plans. Examples of the local incentives include:

- *Sales tax exemption for electrical energy used in an enterprise zone*: A sales tax exemption is available to qualified businesses located in an enterprise zone on the purchase of electrical energy. The amount of the exemption is equal to 50 percent of the sales taxes otherwise due or 100 percent of the sales taxes otherwise due if 20 percent or more of the business's employees reside in an enterprise zone. This exemption is only available if the municipality in which the business is located has passed an ordinance to exempt the municipal utility taxes on such business. Sections 212.08(15) and 166.231(8), F.S.
- *Economic development ad valorem tax exemption*: Up to 100 percent of the assessed value of improvements to real or tangible property of a new or expanded business located in an enterprise zone may be exempted from property taxes if the voters of a municipality authorize the governing body of the municipality to grant such exemptions. This exemption does not apply to school or independent district taxes. Section 196.1995, F.S.
- *Occupational license tax exemption*: By ordinance, the governing body of a municipality may exempt 50 percent of the occupational license tax for businesses located in an enterprise zone. Section 205.054, F.S.
- *Local impact fee abatement or reduction, or low-interest or interest-free loans or grants to businesses*. Section 290.0057(1)(e), F.S.

***Estimated Program Impact***

The estimated economic impact of the Enterprise Zone Program is summarized in the table below.

| YEAR | NEW OR RELOCATED BUSINESSES | JOBS CREATED | NUMBER OF ZONES | STATE INCENTIVES | LOCAL INCENTIVES |
|---|---|---|---|---|---|
| 2002-2003 | 2,278 | 5,057 | 51 | $5,401,583 | $12,486,571 |
| 2001-2002 | 1,244 | 5,630 | 47 | $6,739,551 | $ 5,847,694 |
| 2000-2001 | 654 | 6,394 | 34 | $4,746,396 | $16,202,894 |
| 1999-2000 | 766 | 5,141 | 34 | $5,458,835 | $10,135,657 |
| 1998-1999 | 776 | 5,305 | 32 | $5,170,899 | $18,839,076 |
| 1997-1998 | 151 | 3,572 | 31 | $4,495,218 | $ 8,583,197 |
| 1996-1997 | 434 | 4,573 | 30 | $4,449,941 | $ 6,803,474 |
| 1995-1996 | 128 | 2,188 | 19 | $3,437,344 | $817,422 |

*Source:* Compilation of data from the Office of Tourism, Trade, and Economic Development, *Florida Enterprise Zone Program Annual Report October 1, 2002-September 30, 2003*, 1 and 5-7, March 1, 2004, as well as prior year's annual reports.

***Program Expiration***

The Florida Enterprise Zone Act of 1994 is scheduled for repeal on December 31, 2005, as provided by s. 37, ch. 94-136, L.O.F. Although most of the statutory authority for the program expires on December 31, 2005, some of the state tax incentives for the program are scheduled to expire on June 30, 2005. (See, for example, ss. 212.08(5)(q) and 220.181(9), F.S.)

## III. Effect of Proposed Changes:

This committee substitute provides for the designation of multiple new enterprise zones and authorizes multiple existing enterprise zones to change their geographic boundaries.

**New Enterprise Zones**

The committee substitute authorizes the following new enterprise zones:

- ***Osceola County/Kissimmee***: The county, or the county and the city jointly, may apply to the Office of Tourism, Trade, and Economic (OTTED or the office) for designation of one enterprise zone within the county or within the county and the city. The local government or governments must submit the application by December 31, 2004, and must comply with the enterprise zone local nominating procedures and criteria under s. 290.0055, F.S. The office shall establish the effective date of the enterprise zone. (See Section 4.)

- ***City of South Daytona***: The city may apply to OTTED for the designation of one enterprise zone within the city. The city must submit the application by December 31, 2004, and must comply with the enterprise zone local nominating procedures and criteria under s. 290.0055, F.S. The office shall establish the effective date of the enterprise zone. (See Section 5.)

- ***City of Lake Wales***: The city may apply to OTTED for the designation of one enterprise zone within the city. The enterprise zone may encompass an area of up to 3 contiguous square miles. The city must submit the application by December 31, 2004, and must comply with the enterprise zone local nominating procedures and criteria under s. 290.0055, F.S. The office shall establish the effective date of the enterprise zone. (See Section 6.)

- ***Walton County***: The county may apply to OTTED for the designation of one enterprise zone within the county which may encompass an area of up to 6 square miles. The county must submit the application by December 31, 2004, and must comply with the enterprise zone local nominating procedures and criteria under s. 290.0055, F.S. The office shall establish the effective date of the enterprise zone. (See Section 7.)

- ***Miami-Dade County/City of West Miami***: Miami-Dade County, or the county jointly with the City of West Miami, may apply to OTTED for the designation of an enterprise zone in the City of West Miami. The community must submit the application by December 31, 2004, and must comply with the enterprise zone local nominating procedures and criteria under s. 290.0055, F.S. The office shall establish the effective date of the enterprise zone. (See Section 8.)

- ***Miami-Dade County/Hialeah***: Miami-Dade County and the City of Hialeah may apply for designation of an area within the city bounded by specifically named roads in the committee substitute. The area encompasses Hialeah Park, a thoroughbred racing establishment located within the City of Hialeah.[3] Hialeah Park is comprised of an area of 206 acres, according to the Miami-Dade County Property Appraiser's on-line database. The committee substitute requires the local governments to submit the application by June 1, 2004, and requires OTTED to designate the area with an effective date of July 1, 2004. The community's application must comply with the enterprise zone local nominating procedures and criteria under s. 290.0055, F.S., except for the requirement that the area suffer from pervasive poverty, unemployment, and general distress. This element of the committee substitute takes effect upon the legislation becoming a law. (See Section 9.)

**Boundary Changes or Expansions of Existing Zones**

The committee substitute authorizes the following revisions to the geographic boundaries of existing enterprise zones:

- ***Leon County***: The committee substitute amends s. 290.0065(11), F.S., to provide that a community with a population greater than 235,000 but less than 260,000 may apply to OTTED to amend its enterprise zone boundaries in order to replace areas that are not suitable for development. According to OTTED, this change is designed for the Leon County enterprise zone. (See Section 1.) The committee substitute also revises the statute that authorizes the Leon County enterprise zone (s. 290.00688, F.S.) to delete the specifically delineated census track and block groups that define the parameters of the existing enterprise zone. Elimination of these prescribed boundaries for the Leon County enterprise zone will facilitate the county's ability to amend the boundaries. (See Section 3.)

- ***Miami-Dade County***: The committee substitute authorizes the Miami-Dade County enterprise zone to expand its boundaries by adding 8.7 square miles. The addition must include areas to the north or east of the northeastern-most section of the existing enterprise zone. OTTED must approve the addition by January 1, 2005, if the area is consistent with the enterprise zone local nominating criteria in s. 290.0055, F.S. The county must apply for the boundary expansion by October 1, 2004. (See Section 1, creating s. 290.0065(12), F.S.)

[3] Hialeah Park is not currently operating thoroughbred races. The Department of Business and Professional regulation has initiated an administrative action to revoke the park's permit due to inactivity, and the park has challenged the action in circuit court.

The committee substitute also authorizes Miami-Dade County to seek replacement of up to 75 acres in the existing enterprise zone. The new area incorporated into the enterprise zone must by part of a revitalization area targeted by the county for assistance and must be contiguous to a zoo. In addition, the county must have previously completed a master plan for development of the area. The office must approve the boundary change effective January 1, 2005, if the enterprise zone continues to comply with the enterprise zone local nominating criteria in s. 290.0055, F.S. (See Section 1, creating s. 290.0065(13), F.S.)

- ***Sarasota County/City of Sarasota***: The committee substitute amends s. 290.00675, F.S., to authorize OTTED to approve requests to amend the boundaries of an enterprise zone in a community having a population of 50,000 persons but less than 60,000. However, the boundary change may not increase the overall size of the enterprise zone by more than 400 acres, and the area added to the enterprise zone must be contiguous to the existing zone. The community must submit its request for the boundary change before December 31, 2004. This provision is designed to enable the enterprise zone within Sarasota County/City of Sarasota to amend its boundaries. (See Section 2.)

- ***Jacksonville***: The committee substitute authorizes the governing body within the consolidated government of Jacksonville and Duval County to apply to OTTED before December 31, 2004, to amend the boundaries of the Jacksonville enterprise zone in order to add three noncontiguous areas that were designated as a federal empowerment zone under the 2000 federal Community Renewal Tax Relief Act. (See Section 10.)

  The City of Jacksonville's enterprise zone is approximately 16.3 square miles with a population of 59,653.[4] In 2002, Jacksonville's enterprise zone was designated as a federal empowerment zone.[5] However, three distinct business districts outside the existing state enterprise zone were also included in the federal empowerment zone. Businesses within the empowerment zone are eligible for a variety of wage credits, tax deductions, bond financing, and capital gains from the federal government, as well as technical assistance from federal agencies to assist local businesses in securing additional benefits. According to OTTED, the three noncontiguous areas proposed for addition to the state enterprise zone are approximately 3.125 square miles.

- ***Orange County***: The committee substitute authorizes Orange County to apply to OTTED to amend the boundaries of one noncontiguous area of its enterprise zone. The office must approve the boundary change if the amended area does not exceed 5 square miles and complies with the enterprise zone local nominating criteria in s. 290.0055, F.S. The application must reach OTTED by December 31, 2004. The committee substitute is not clear on whether the amendment represents an addition to the total size of the

[4] See, Enterprise Florida, Inc., Enterprise Zone Website, Zone Contacts (Jacksonville), *at* http://www.floridaenterprisezone.com/PageView.asp?Org_id=1601 (last visited March 27, 2004).
[5] U.S. Department of Housing and Urban Development, News Release, *Bush Administration Announces Community Revitalization Efforts – HUD Announces Seven New Empowerment Zones*, January 15, 2002, *available at* http://www.ahfc.state.ak.us/Department_Files/Communications_Department/News-Releases/02-nr/02-008-ez-rel-11502.doc (last visited March 27, 2002).

enterprise zone or whether the new area must replace an existing portion of the zone. (See Section 11.)

**Severability**

The committee substitute includes a severability clause, specifying that, if any provision of the act is held invalid, the invalidity does not affect other provisions in the act which can be given effect. (See Section 12.)

**Effective Date**

Except as otherwise provided in the act, the act takes effect July 1, 2004.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

Business located within the new enterprise zones authorized under this committee substitute may be eligible for a variety of state and local tax incentives. Further, changes in the boundaries of existing enterprise zones may change the degree to which state and local tax incentives are used in those communities. The Revenue Impact Conference has reviewed many of the enterprise zone provisions contained in this committee substitute and estimated its impact to be $(1.1) million for FY 2004-05. The findings of the Revenue Impact Conference are listed in the table below.

| Fiscal Year 2004-2005 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | General Revenue | | Trust | | Local | | Total | |
| Issue/Fund | 1st Year | Recurring | 1st Year | Recurring | 1st Year | Recurring | 1st Year | Recurring |
| Jacksonville | $(0.2) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $ (0.2) | $0.0 |
| Lake Wales | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $0.0 | $0.0 |
| Leon County | $(0.2) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(0.2) | $0.0 |
| Miami-Dade (zoo area) | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Miami-Dade (NE) | $(0.3) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(0.3) | $0.0 |
| Orange County | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 |
| Osceola/Kissimmee | $(0.1) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(0.1) | $0.0 |
| South Daytona | $(0.2) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(0.2) | $0.0 |
| Walton County | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 |
| City of Hialeah | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 |
| West Miami | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 |
| Sarasota | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 | $(*) | $0.0 |

(*) = Insignificant (less than $50,000)

The sum of the impacts less than $50,000 is estimated to be $(0.2) million.

### B. Private Sector Impact:

To the extent the new enterprise zones and boundary changes to existing enterprise zones encourage businesses to make investments in the applicable communities, the businesses may benefit from a variety of state and local economic incentives.

### C. Government Sector Impact:

The Office of Tourism, Trade, and Economic Development will incur costs related to the review of applications for new enterprise zones and enterprise zone boundary changes authorized by this committee substitute. In addition, the committee substitute may result in increased costs for the Department of Revenue to review and approve applications for tax incentives granted to businesses in the new or amended enterprise zones. The administrative costs do not appear to be significant.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 1358

Amendment No. ___ 162016

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/16/04

TIME: 3:55 pm

Senator Posey moved the following amendment:

**Senate Amendment (with title amendment)**

On page 10, lines 5-16, delete those lines

and insert:

Section 11. Notwithstanding any other provision of chapter 290, Florida Statutes, the governing body of any inland county, with a state-designated enterprise zone and a population greater than 500,000, may apply to the Office of Tourism, Trade, and Economic Development to amend the boundaries of such enterprise zone. The increased areas shall be contiguous to the existing enterprise zone. The office shall approve the application as long as the amended area does not exceed 5 square miles and is consistent with the categories, criteria, and limitations imposed by section 290.0055, Florida Statutes, upon the establishment of such enterprise zone. The enterprise zone boundary amendment application must be received before December 31, 2004.

1 ========== T I T L E  A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 2, line 2, after the semicolon,
4
5 insert:
6 authorizing the governing body of certain
7 counties to apply to the Office of Tourism,
8 Trade, and Economic Development to amend the
9 boundaries of a certain area within a certain
10 enterprise zone; requiring the office to
11 approve the application under certain
12 circumstances; providing requirements;
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Bill No. CS for SB 1358

Amendment No. ___ 892324

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/18/04

TIME: 2 pm

Senator Posey moved the following amendment:

**Senate Amendment (with title amendment)**

On page 4, between lines 28 and 29,

insert: (3) Notwithstanding any other law, the Office of Tourism, Trade, and Economic Development may amend the boundaries of an area designated as The City of Brooksville/Hernando County Enterprise Zone # 2701. Hernando County is a community having a population greater than 140,000. The boundary amendment must not increase the overall size of the enterprise zone by more than 5 square miles. The increased area shall be contiguous to the existing enterprise zone. The boundary amendment must also be consistent with the limitations imposed by s. 290.0055. The application package for the boundary amendment must be submitted to the Office of Tourism, Trade, and Economic Development no later than December 31, 2004.

1 ========== T I T L E  A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 1, lines 10-13, delete those lines
4
5 and insert:
6 amend the boundaries of enterprise zones in two
7 communities with specified populations;
8 limiting the size by which the enterprise zones
9 may be increased; requiring that the
10 applications for enterprise zone boundaries be
11 filed by a specified date; amending s.
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# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1700

SPONSOR: Ethics and Elections Committee, Senator Cowin and others

SUBJECT: Constitutional initiatives; financial impact statement

DATE: April 9, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Rubinas | Rubinas | EE | Fav/CS |
| 2. | Brown | Lang | JU | Favorable |
| 3. | Fournier | Johansen | FT | |
| 4. | | | RC | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:


The Committee Substitute for Senate Bill 1700 requires the Financial Impact Estimating Conference to develop a short statement for inclusion on the ballot, identifying the financial impact of each amendment to the Florida Constitution proposed by initiative.

The committee substitute establishes a Financial Impact Estimating Conference comprised of principals from the Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and House of Representatives who have appropriate expertise in the subject matter of the initiative, or their designees.

The Committee Substitute to Senate Bill 1700 also imposes a requirement for the Financial Impact Estimating Conference to draft an initiative financial information statement further detailing the financial impact of the measure. This statement must be a summary no more than 500 words and additional detailed information that includes assumptions made to develop the financial impact, the work papers, and any other information deemed relevant by the Financial Impact Estimating Conference.

The summary and additional information shall be made available at supervisors of elections offices, each polling place on election day, and on the website of the Secretary of State and the Office of Economic and Demographic Research. Each supervisor of elections office, which has a website, shall post the summary from the financial information statements on their website and shall include the internet addresses for the financial information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the mailing required by section 101.20, Florida Statutes.

The bill is effective upon becoming law.

This bill substantially amends or repeals the following sections of the Florida Statutes: 15.21, 16.061, 100.371, 100.381, 101.161, 101.62, and 216.136.

## II. Present Situation:

***General Background on Constitutional Amendments***

Section 10 of Article IV of the State Constitution requires the Attorney General to request an advisory opinion of the Florida Supreme Court regarding the validity of any initiative petition submitted by the Division of Elections. Section 16.061, F.S. requires the Attorney General to request this opinion within 30 days of receiving the initiative petition. Although the Court is not required to hold a hearing within a specified time, the Court is constitutionally required to render their written opinion expeditiously.[1]

There is no limitation or judicial review as to the subject matter of a proposed amendment. However, the language contained in the initiative is constitutionally required to relate to a single subject.[2] Regarding the standard of review for legislative proposals, the Supreme Court has typically applied a presumption of validity to these amendments.[3]

***Financial Impact Statements***

In 2002, the Legislature enacted a law requiring a fiscal impact statement on the ballot for all constitutional amendments.[4] The Florida Supreme Court subsequently held that the law was unconstitutional because it was not necessary to ensure ballot integrity, the only basis on which legislation impacting the initiative process could be upheld.[5] The Court noted, however, that "[i]f Floridians wish to have a fiscal impact statement included with all initiatives to amend the constitution, then they can vote to adopt House Joint Resolution 571."[6] At the 2002 general election, Floridians did precisely that --- effectively negating the Supreme Court's decision. Committee Substitute for Senate Bill 1700, similar to the 2002 law, is the implementing bill mandated by the 2002 constitutional amendment.

In Florida, the professional staffs from the Legislature and Executive branches met in a series of regularly scheduled Consensus Estimating Conferences to provide the forecasts needed to support the planning and budgeting process. These conferences are held at least three times a year according to the following schedule: once in the fall to provide forecasts for the Governor's budget recommendations, once in the winter to provide final estimates for the Legislature's appropriation process, and once in the spring to adjust the winter forecast to reflect legislative changes. Impact conferences are held when estimates are needed to determine the impact of

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[1] s. 10, art. IV, *Fla. Const.*

[2] s. 3, art. XI, *Fla. Const.*

[3] Thomas R. Rutherford, *The People Drunk or the People Sober? Direct Democracy Meets the Supreme Court of Florida*, St. Thomas Law Review, page 75 (Fall 2002).

[4] Chapter 2002-390, Laws of Florida.

[5] Smith v. Coalition to Reduce Class Size, 827 So.2d 959 (Fla. 2002).

[6] *Id.* at 964-65. House Joint Resolution 571 states that the legislature shall provide by general law for the provision of a fiscal impact statement to the public, *prior to the holding of an election*. Read literally, this language does not appear to unequivocally authorize the inclusion of a fiscal impact statement *on the ballot* as opposed to at some time preceding the election. However, the Court's decision strongly suggested that the adoption of the amendment would serve to remove the 2002 statute's constitutional infirmities.

changes or proposed changes to current law or current administration or when a fiscal impact statement for a constitutional amendment proposed by citizen initiative is required.

Statutory authority for the consensus forecasts is provided in s. 216.133 to s. 216.137, F.S., which specify the duties of each conference and designates the conference principals and participants. Revenue estimating is carried on as part of the overall consensus estimating process. Subsection (3) of s. 216.136, F.S., provides that the principals of the Revenue Estimating Conference are the Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the House and Senate who have forecasting expertise, or their designees. Historically, the representatives of the House and Senate have been the staff directors of the tax committees, and the policy coordinator overseeing tax issues has represented the Governor's Office.

## III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1700 establishes a Financial Impact Estimating Conference to prepare a financial impact statement of not more than 50 words for inclusion on the ballot for any constitutional initiative measure that has received a threshold level of statewide and geographic support. The proposed Financial Impact Estimating Conference shall consist of four principals; one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative. All meetings of the Financial Impact Estimating Conference are required to be open meetings.

The Financial Impact Estimating Conference is required to reach consensus or majority concurrence on the financial impact statement. The Financial Impact Estimating Conference is required to submit the financial impact statement to the Attorney General and the Secretary of State within 45 days after receipt of the amendment or within 30 days after receipt, if receipt is 120 days or less before the election. If the Conference does not agree on the statement, the following language shall appear on the ballot: "The fiscal impact of this measure, if any, cannot be reasonably determined at this time."

The financial impact statement must be clear, unambiguous, and no more than 50 words in length. The statement may set forth a range of potential impacts.

The Attorney General must petition the Florida Supreme Court for an advisory opinion on whether the financial impact statement meets all legal requirements. If the Court strikes down the fiscal impact statement, it must remand it to the Financial Impact Estimating Conference for re-drafting, *provided* the Court's opinion is rendered at least 75 days before the election. In order to facilitate the preparation and mailing of ballots, including advance overseas absentee ballots, if the Court has not approved a financial impact statement for a particular measure by the 55th day preceding the election, the financial impact statement shall be deemed approved for placement on the ballot.

The financial impact statement must be separately set forth on the ballot after the ballot summary as required by s 100.161(1), F.S.

The Financial Impact Estimating Conference must also draft an initiative financial information statement further detailing the financial impact of the measure. This statement must be a summary of no more than 500 words and additional detailed information that includes assumptions made to develop the fiscal impact, the work papers, and any other information deemed relevant by the Financial Impact Estimating Conference. The Department of State is required to provide copies of the summary from the statements. The summary and additional information shall be made available at supervisors of elections offices, each polling place on election day, and on the website of the Secretary of State and Office of Economic and Demographic Research. Each supervisor of elections office, which has a website, shall post the summary from the financial information statements on their website and shall include the internet addresses for the financial information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the mailing required by s. 101.20, F.S.

The Secretary of State is required to immediately submit all currently active initiative petitions it received before the effective date of this bill, to the Financial Impact Estimating Conference.

The bill is effective upon becoming law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

The Financial Impact Estimating Conference may incur additional costs to comply with the requirements in the bill, including research costs. The amount of these additional costs will vary depending on the number and complexity of constitutional amendments that require the preparation of a financial impact statement and financial information statement.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The Florida Supreme Court is not required to advance the review of the financial impact language on its docket, or to rule expeditiously, as it is constitutionally required to do for petition reviews. However, it is assumed that the Court will do so in a timely fashion; alternatively, the impact statement will appear on the ballot absent court review.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 1700

Amendment No. ___ 744196

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/12/04

TIME: 8:50 am

Senator Posey moved the following amendment:

**Senate Amendment**

On page 5, line 12, delete the number "50"

and insert: 75

Bill No. CS for SB 1700

Amendment No. ___ 154904

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 12:15 pm

Senator Geller moved the following amendment:

**Senate Amendment**

On page 5, lines 23-25, delete those lines

and insert:

4.~~2.~~ If the members of the Financial Impact Revenue Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the conference and no redraft has been approved by the Supreme Court by 5 p.m. on the 75th day before the election, the following statement shall

Bill No. CS for SB 1700

Amendment No. ___ 640550

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 12:15 pm

Senator Geller moved the following amendment:

**Senate Amendment**

On page 5, lines 11-13, delete those lines

and insert: majority concurrence on a financial ~~clear and unambiguous fiscal~~ impact statement, which shall:

a. State the estimated increase or decrease in any revenues or costs to the state or local governments resulting from the proposed initiative; and

b. Be no more than 75 ~~50~~ words in length. The statement shall be immediately submitted to the Attorney General.

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Bill No. CS for SB 1700

Amendment No. ___ 633338

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 12:15 pm

Senator Geller moved the following amendment:

**Senate Amendment**

On page 6, lines 11-13, delete those lines

and insert:

2. If, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact

Bill No. CS for SB 1700

Amendment No. ___ 445424

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 3:50 pm

Senator Geller moved the following **substitute for amendment** (154904):

**Senate Amendment**

On page 5, lines 23-25, delete those lines

and insert:

4.~~2.~~ If the members of the Financial Impact ~~Revenue~~ Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by 5 p.m. on the 75th day before the election, the following statement shall

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# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2060

SPONSOR: Regulated Industries Committee and Senator Smith

SUBJECT: Non-Quota Alcoholic Beverage License

DATE: April 19, 2004 REVISED: _____ _____ _____ _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Oxamendi | Imhof | RI | Fav/CS |
| 2. | Keating | Johansen | FT | |
| 3. | | | AGG | |
| 4. | | | AP | |
| 5. | | | RC | |
| 6. | | | | |

## I. Summary:


The bill provides for an alcoholic beverage license for a sporting and recreational complex that has at least 10,000 acres of land, an indoor sleeping facility with at least 12 rooms, a restaurant that seats at least 25 persons, and has been in continuous existence for at least two years. The license would be granted upon the payment of appropriate fees, and would not be subject to any quota or limitation.

The bill provides that the enclosed area of the complex must be considered the licensed premises, and that the entity would be treated as a vendor licensed to sell alcoholic beverages by the drink.

The bill requires that the licensed complex shall only sell and or serve alcoholic beverages in a manner consistent with any local ordinance of a governing body having jurisdiction over the location of the complex. It provides rulemaking authority for the Division of Alcoholic Beverages and Tobacco governing the designation process, criteria for qualification, and all other rules necessary for the effective enforcement and administration of the provisions of this bill.

This bill substantially amends section 565.02, Florida Statutes.


## II. Present Situation:

The Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (department) is the agency authorized to enforce the provisions of the Beverage Law in chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

Section 561.20, F.S., limits the number of licenses under s. 565.02(1)(b)-(f), F.S., that may be issued in a county to no more than one such license to each 7,500 residents within such county.

Section 561.20(1), F.S., provides that regardless of the number of licenses issued before October 1, 2000, no license issued under s 565.02(1)(a)-(f), F.S., shall be issued so that the number of such licenses within a county exceeds one such license to each 7,500 residents within the county.

These limited alcoholic beverage licenses are known as quota licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverages licenses are available without limitation. Applications for quota licenses can exceed the number of available licenses.

The number of residents is based upon the Florida Estimate of Population as published by the Bureau of Economic and Business Research at the University of Florida based on the last population estimate prepared pursuant to s. 186.901, F.S.[1] For 2003, there were 42 available licenses based on the increases in population.[2]

The Beverage Law provides for several other types of beverage licenses, including consumption off premises only, consumption on the premises of beer only and beer and wine only. Motels, hotels, restaurants, boats, clubs, and other locations have the ability to serve alcoholic beverages under certain license restrictions.[3]

**License fees.**

Section 565.02(1), F.S., sets forth the license fees for vendors who are permitted to sell any alcoholic beverages regardless of alcohol content. These licenses permit the sale for consumption on premises of beer, wine and liquor. Section 565.02(1)(b)-(f), F.S., establishes license fees for consumption on premises licenses that are based on the population of the county. These fees range from $1,820 for a license in a county with a population of more than 100,000 to $624 for a license in a county with a population of 25,000 or less.

Section 565.02(1)(g), F.S., establishes a fee in addition to the fees established in s. 565.02(1)(b)-(f), F.S., for any vendor operating a place of business where consumption on the premises is permitted and which has more than three separate rooms or enclosures in which permanent bars or counters are located from which alcoholic beverages are served for consumption on the licensed premises.

Section 565.02(4), F.S., establishes an annual license tax of $400 for persons associated together as a chartered or incorporated club. This subsection also provides a $50 fee to permit golf clubs to sell to non-members for a limited eight consecutive days for one event a year.

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[1] Section 186.901, F.S., provides that the population estimate of local governmental units shall be submitted annually to the Executive Office of the Governor as of April 1 of each year.

[2] These licenses were available in 30 counties. The most that were available were four in Hillsborough and Palm Beach Counties. Three were available in Dade County. Applications were accepted from August 18, 2003, through November 15, 2003.
*See* http://www.myflorida.com/dbpr/abt/licensing/quota_notice.shtml

[3] *See* http://www.state.fl.us/dbpr/abt/rules_statutes/license_types.pdf

Section 565.02, F.S., also provides license fees for other entities, including chartered horse or dog racetracks or jai alai frontons,[4] theme park complexes,[5] non-profit entities that manage or support a symphony orchestra,[6]

In addition to these fees, s. 561.19, F.S., provides a fee of $10,750 for each new liquor license that is issued subject to the limitation in s. 561.20(1), F.S.

## III. Effect of Proposed Changes:

**Section 1.** The bill creates section 565.02(12), F.S., to provide that a sporting and recreational complex may obtain a license for on-premises consumption of alcoholic beverage licenses. The license would be granted upon the payment of appropriate fees, and would not be subject to any quota or limitation if the complex:

- Is comprised of at least 10,000 acres of land;
- has indoor sleeping facilities with at least 12 rooms;
- has a restaurant that seats at least 25 persons; and
- has been in continuous existence for at least two years.

The bill provides that the enclosed area of the complex must be considered the licensed premises, and that the entity would be treated as a vendor licensed to sell alcoholic beverages by the drink. The bill does not define the term "enclosed area." It is not clear whether the term "enclosed area" is limited to the buildings of the complex or whether the term encompasses the fenced, or otherwise enclosed, outdoor parameters of the complex.

The bill requires that the licensed complex shall only sell or serve alcoholic beverages in a manner consistent with any local ordinance of a governing body having jurisdiction over the location of the complex. It provides rulemaking authority for the Division of Alcoholic Beverages and Tobacco governing the designation process, criteria for qualification, and all other rules necessary for the effective enforcement and administration of the provisions of this bill.

This bill would establish a new license classification for a sporting and recreational complex alcoholic beverage license. The bill amends s. 565.02, F.S., which establishes licensure fees for several alcoholic beverage license classifications. However, the bill does not set a fee for the new license, it only refers to the payment of an "appropriate fee" for on premises consumption of alcoholic beverages. The appropriate fee may be one of the license fees set forth in s. 565.02(1), F.S., that are based upon the population of the county.

According to the department, the number of locations that could qualify for this license is indeterminate. However, the department estimates that this bill would provide a maximum of five additional licensees.

**Section 2.** This bill would take effect on July 1, 2004.

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[4] 565.02(5), F.S.
[5] 565.02(6), F.S.
[6] 565.02(8), F.S.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

According to the Department of Business and Professional Regulation, this bill would have an indeterminate, but minimal fiscal impact.

### B. Private Sector Impact:

An applicant for a license authorized by this bill would have to pay the appropriate fee, which range from $1,820 for a license in a county with a population of more than 100,000 to $625 for a license in a county with a population of 25,000 or less.

### C. Government Sector Impact:

Based on the department's estimate of no more than five additional licensees and utilizing the median fee, the department estimates that the additional licenses would generate $6,500 in additional revenues annually.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2188

SPONSOR: Comprehensive Planning Committee

SUBJECT: Land Development

DATE: April 19, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Herrin | Yeatman | CP | Favorable/CS |
| 2. | Cibula | Lang | JU | Favorable |
| 3. | Keating | Johansen | FT | |
| 4. | | | ATD | |
| 5. | | | AP | |
| 6. | | | | |

## I. Summary:


**Tax Deeds**
The bill clarifies that lands available for taxes which revert to the county 3 years after being offered for public sale shall escheat to the county free and clear of all tax certificates and accrued taxes. Further, the bill provides immunity for the county from environmental liability associated with properties that escheat to the county. It provides that the county and the Department of Environmental Protection (DEP) may enter into a written agreement that addresses investigative and remedial activities for a property that escheats to the county.

**Accessory Dwelling Units**
This bill provides legislative findings on the lack of affordable rentals for very-low-income, low-income, and moderate-income persons. The bill makes a finding that encouraging local governments to permit accessory dwelling units to increase the availability of affordable rentals serves a public purpose. It provides definitions and authorizes a local government to adopt an ordinance allowing accessory dwelling units (ADUs) in any areas zoned for single-family residential use based upon a finding that there is a shortage of affordable rentals. Each ADU that is allowed under an ordinance adopted under this section shall count towards the affordable housing component of the housing element in the local government's comprehensive plan. The bill requires DCA to report to the Legislature on January 1, 2007, regarding the effectiveness of using ADUs to address a local government's shortage of affordable housing.

**Urban Infill and Redevelopment**
This bill provides legislative findings regarding the benefits of mixed-use high density development for urban infill and redevelopment areas. It also expresses legislative intent to discourage single-use zoning in those areas. The bill requires the DCA to provide technical

assistance, including a model ordinance, to encourage mixed-use, high density urban infill and redevelopment projects.

In addition, the bill contains legislative findings regarding transfer of development rights programs in urban areas. It expresses legislative intent to encourage high-density development in urban infill and redevelopment areas while protecting historic structures and open spaces. The bill requires DCA to provide technical assistance, including a model ordinance, that promotes the transfer of development rights for urban infill and redevelopment projects.

**Water Supplies**
The bill requires a local government to address water supply projects necessary to meet existing and future water use demands in its comprehensive plan, extends the deadline for a local government to consider a regional water supply plan in its comprehensive plan, and provides for the local government's work plan for building water supply facilities to be updated at certain intervals. It requires DCA, the DEP, the water management districts, and regional planning councils to provide assistance to local governments relating to the implementation or rural lands stewardship areas. This bill provides that rural land stewardship area designation should be specifically encouraged as a future land use map overlay. Also, it allows for multicounty rural land stewardship areas and deletes acreage thresholds for these areas.

**Brownfield Redevelopment Bonus Refunds Program**
Finally, it reduces the number of jobs that must be created for participation in the brownfield redevelopment bonus refund and increases the percentage of a primary lender loan to which the limited state loan guaranty applies for redevelopment projects in brownfield areas.

The bill substantially amends the following sections of Florida Statutes: 197.502, 163.3167, 163.3177, 163.3187, 288.107, and 376.86.

## II. Present Situation:

Urban infill and redevelopment projects are those projects that use vacant or under-utilized parcels within an urban area to improve existing neighborhoods and encourage economic development. In general, as communities have continued to grow with low density development and new public facilities towards the fringe, many older urban areas have begun to decline and are now considered distressed neighborhoods. The issue of strategies to promote and encourage urban infill and redevelopment was the subject of an interim project by the Committee on Comprehensive Planning in 2004.[1] In this report, staff discussed the obstacles to infill and redevelopment in an urban area, including land assemblage issues, abandoned properties, environmental contamination, outdated zoning regulations, and inadequate infrastructure. The Legislative Committee on Intergovernmental Relations also issued a report on Urban Revitalization this year and provided several preliminary policy options, but did not recommend any significant statutory changes.[2]

[1] *Strategies to Promote and Encourage Urban Infill and Redevelopment*, Committee on Comprehensive Planning, Interim Project Report 2004-165, December 2003.
[2] *Urban Revitalization in Florida*, Legislative Committee on Intergovernmental Relations (Preliminary Summary), December 2003.

At the same time urban infill and redevelopment projects are facing numerous barriers, the cost of housing continues to rise in many urban communities. Families move farther from work centers in search of housing that is within their income range. During the past three years, the median price for an existing home in Palm Beach County has risen by 73 percent while the county's median family income has risen by only 7 percent.[3] The median selling price for a home in Palm Beach County is now $290,000.[4] Similarly, Broward County has experienced a sharp increase in home prices. The median price for an existing single-family home is $226,000.[5] However, a family earning the Broward County median household income of $56,400 can only afford a $162,000 home under federal standards which allow 30% of annual income as the upper limit of income payable towards housing.

In order to address the rising cost of housing, some communities have worked with community development corporations to build mixed-use and mixed-income projects in urban areas.[6] These types of projects are high density with multiple uses including retail, office, and residential units. Also, these projects may have a number of units available to reduced-income buyers at lower prices.[7] In general, these types of high density, mixed-use developments have been successful, but are still in need of incentives because of some of the impediments to urban infill and redevelopment.

Several states have turned to the use of "granny flats" or accessory dwelling units (ADUs)to alleviate severe housing shortages. For example, California recently enacted legislation that requires cities to establish standards for ADUs. An application that meets the city's established standards (i.e., size, height, set-back, and parking) for an accessory dwelling unit must be approved without a public hearing.[8] Although some groups oppose this new legislation, some California cities have already authorized ADUs and are offering incentives such as the waiver of permitting fees for ADUs that rent for 80 percent of the median monthly income in the city. Proponents of ADUs argue these units generate more property tax revenue as the result of higher assessments and local governments save some of the expense associated with building additional affordable housing units.[9] The state of Washington requires its cities with more than 20,000 people to allow ADUs in any neighborhood.[10]

**Growth Policy Act**

The Florida Legislature passed urban infill and redevelopment legislation in 1999, allowing local governments to designate urban infill and redevelopment areas.[11] The intent of this legislation was to have a holistic approach to revitalizing urban centers, ensuring the adequate provision of infrastructure and education facilities, and the creation of jobs and economic opportunity. The

[3] *$240,000 It's the New Norm in Palm Beach County*, Jennifer Peltz and John Maines, South Florida Sun-Sentinel, Nov. 24, 2003.
[4] *See id.*
[5] *$226,000 It's the New Norm for Homes in Broward County*, Brittany Wallman and John Maines, South Florida Sun-Sentinel, Nov. 23, 2003.
[6] *Housing Communities Near Atlantic Avenue Draw Good Review from Delray Residents*, Michelle Brown, Florida Sun Sentinel, Nov. 24, 2003.
[7] *See id.*
[8] *See Cities Scrambling to Control "Granny Flats"*, Daniel S. Levine, East Bay Business Times, June 16, 2003.
[9] *"Granny Flats" Finding a Home in Tight Market*, Haya El Nasser, USA Today, Jan. 5, 2004.
[10] *See Cities Scrambling to Control "Granny Flats"*, Daniel S. Levine, East Bay Business Times, June 16, 2003.
[11] Ch. 99-378, § 1, Laws of Fla.

legislation provided incentives for designating urban infill and redevelopment areas and created a grant program for local governments. The Legislature appropriated $2.5 million in fiscal year 2000-01 to implement the Urban Infill and Redevelopment Assistance Grant Program. In addition, the legislation provided exceptions from transportation concurrency requirements, substantial deviation thresholds for Developments of Regional Impact, and limitations on comprehensive plan amendments for certain types of development within designated urban infill and redevelopment areas. Notwithstanding the incentives for urban infill and redevelopment, there are persistent barriers to urban infill and redevelopment projects.

**Tax Certificate Process**

The issue of returning property that is encumbered by a tax lien and publicly owned properties to productive use has become an important issue in many areas of the country. The ability of a municipality to deal efficiently with tax delinquent properties affects urban infill and redevelopment projects. Abandoned or vacant properties in an urban area often become a haven for criminal activity, cause surrounding property values to decline, and discourage investment by current and potential residents and commercial investors. The benefits of returning these properties to productive use include increased tax revenues, improvement of surrounding properties by current residents and business owners, new residential and commercial investment, and improvement in the quality of life for neighborhood residents.[12]

Chapter 197, F.S., provides the exclusive method for enforcing tax liens resulting from unpaid ad valorem taxes and special assessments. Section 197.502(7), F.S., provides that if there are no bidders at a public sale, the property is listed as "land available for taxes" and the clerk is required to notify the county commission and all certificate holders that the land is available. Within 90 days from the public sale, the county may purchase the land for the opening bid. For county held certificates on nonhomestead property, the opening bid is the value of all outstanding tax certificates plus omitted years' taxes, delinquent taxes, interest, and all fees and costs paid by the county.[13] The opening bid for an individual certificate holder on nonhomestead property must include the amount of money paid to the tax collector by the certificate holder at the time of the application, the amount required to redeem the applicant's tax certificate, and all other costs and fees paid by the applicant.[14]

Section 197.502(8), F.S., provides that land not bought during a public sale is transferred 3 years from the day of the sale to the county and all certificates and liens against the property are cancelled. In addition, counties are authorized to cancel county-held tax certificates and omitted years' taxes on properties acquired under that section to provide infill housing. Also, property acquired by the county under s. 197.502, F.S., for infill housing does not have a right of redemption, i.e., the county is prohibited from transferring such property back to the previous owner or any entity in which the taxpayer or the taxpayer's family has an interest. Some counties in Florida have infill housing programs that attempt to expedite the process of "recycling" tax delinquent properties. However, at least one county has experienced delays in clearing title to those properties.

[12] *Renewing Public Assets for Community Development*, Professor Frank S. Alexander, LISC [Local Initiatives Support Corporation] Online Resource Library at 1.
[13] S. 197.502(6), F.S.
[14] S. 197.502(6), F.S.

**Environmental Liability and Escheated Property**
Currently, a county does not enjoy any immunity from liability for a property with environmental contamination that escheats to the county. The Department of Transportation (DOT) has an immunity provision relating to property that it acquires through eminent domain. Section 337.27, F.S., provides that the DOT is not subject to liability under chapters 376 or 403 for preexisting soil or groundwater contamination due solely to its ownership. This provision does not affect the rights or liabilities of any past or future owners to the liability of any governmental entity for any actions that create or exacerbate a pollution source. The DOT and the DEP are authorized to enter into an interagency agreement regarding the performance, funding, and reimbursement of the investigative and remedial acts necessary for any property acquired by DOT through eminent domain.

**Land Development Regulations**
Many local zoning codes and land use designations discourage high density development. In particular, many mixed-use developments or those that combine commercial and residential uses require a variance or zoning change. Such projects usually also require an increase in density under existing zoning regulations. The cost associated with developing or redeveloping a property that does not conform to existing zoning regulations may deter some developers. Alternatively, the developer may pursue a lower-density project outside the urban service area that contributes to sprawl.

Some municipalities have dealt with the density issue creatively through the use of transferable development rights. The concept of transferable development rights has typically been used to allow the purchase or transfer of density units from rural lands to allow for a higher density development in a selected area. However, some local governments have begun using transferred development rights for redevelopment projects. The City of West Palm Beach recently adopted an ordinance allowing the owner of a building that is smaller than allowed under existing zoning regulations to sell the difference to a developer upon agreeing to a historic designation for the structure.[15] Those development rights are then transferred to eligible properties. Under the ordinance, the developer may exceed certain height restrictions when using transferred development rights.

**Comprehensive Planning**
The Local Government Comprehensive Planning and Land Development Regulation Act of 1985[16] (Act) establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making.

Under the Act, DCA was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the

[15] Sec. 94-116, West Palm Beach Code of Ordinances. *See also Law Lets Building Owners Cash in on History*, Thomas R. Collins, Palm Beach Post, Sept. 15, 2003.
[16] Ss. 163.3161-163.3246, F.S.

requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan.

Section 163.3167(1), F.S., of the act provides for municipalities or counties to plan for their future development and growth, adopt and amend their comprehensive plans and elements of the plan, implement their adopted or amended comprehensive plans through the adoption of appropriate land development regulations, and to establish and maintain administrative procedures to implement the provisions of the act. Each local government is required to prepare an Evaluation and Appraisal Report (EAR) every 7 years that assesses the local government's progress in implementing its comprehensive plan.[17]

In 2002, the Legislature amended s. 163.3177(6)(c), F.S., to require a local government to consider the appropriate water management district's water supply plan in its general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element by January 1, 2005 ,or its EAR adoption deadline, whichever occurs first. The element must also include a workplan, including at least a 10-year planning period, for building water supply facilities necessary to serve existing and new development in the local government's jurisdiction.

**Rural Land Stewardship Areas**

Section 163.3177(11), F.S., provides for the establishment of rural land stewardship areas. This program is intended to allow for land use efficiencies within existing urban areas and allows for the conversion of rural lands to other uses, where appropriate and consistent with the affected local comprehensive plan, through the use of innovative planning and development strategies. Such strategies may include urban villages, new towns, satellite communities, clustering and open space provisions, mixed-use development and sector planning.[18] The DCA is authorized to allow up to five local governments to designate all or portions of their lands, that are classified in the future land use element as agricultural, rural, or an equivalent land use, as a rural land stewardship area.[19]

- The rural land stewardship area designation is intended to further the broad principles of rural sustainability, including:
- Restoration and maintenance of the economic value associated with rural lands;
- Control of urban sprawl;
- Identification and protection of ecosystems, habitats, and natural resources;
- Promotion of rural economic activity;
- Maintenance of the vitality of Florida's agricultural economy; and
- Protection of the character of Florida's rural areas.[20]

[17] Section 163.3191(1), F.S.
[18] Section 163.3177(11)(b), F.S.
[19] Section 163.3177(11)(d), F.S.
[20] Section 163.3177(11)(d)2., F.S.

A local government may apply to DCA in writing to request consideration for authorization to designate a rural land stewardship area. Such area may not be less than 50,000 acres and may not exceed 250,000 acres in size. The designated area must be located outside of a municipality and established urban growth boundaries.[21] The plan amendment designating the rural land stewardship area must include criteria for the creation of a receiving area within the stewardship area. At a minimum, this criteria must include the adequacy of suitable land for development that avoids conflict with environmentally sensitive land, compatibility between the transition of uses from higher density to lower intensity rural uses, and receiving area service boundaries which separate receiving areas from other land uses within the stewardship area.[22]

Following the adoption of a plan amendment that creates a rural land stewardship area, a local government, by ordinance, is required to assign credits to the area known as "transferable rural land use credits." These credits may only be used on lands designated as receiving areas and solely for the purpose of implementing innovative planning and development strategies. The underlying density assigned to a parcel ceases to exist once it is transferred to a receiving area or the underlying density to the parcel is utilized. The use or conveyance of these credits must be recorded in the county records where the property is located as a covenant or restrictive easement running with the land in favor of the county, a resource agency, or a recognized statewide land trust. Land may be withdrawn from a rural land stewardship area through a plan amendment.[23]

**Brownfields**

Section 288.107, F.S., provides for the brownfield redevelopment bonus refund. The term "brownfield site" is defined as an abandoned, idled, or underused industrial or commercial property where expansion or redevelopment is complicated by actual or perceived environmental contamination. A "brownfield area" means a contiguous area of one or more brownfield sites. The Office of Tourism, Trade, and Economic Development is authorized to approve bonus refunds of up to $2,500 for any qualified target industry business that meets certain criteria.[24] The minimum criteria for participating in the brownfield redevelopment bonus refund include the creation of at least 10 new full-time permanent jobs and the completion of a fixed capital investment of at least $2 million in mixed-use business activities. The jobs created may not include construction or site rehabilitation jobs associated with implementing a brownfield site agreement.

Section 376.86, F.S., creates the Brownfield Areas Loan Guarantee Program. Specifically, the Brownfield Areas Loan Guarantee Council reviews, approves, or denies the situations and circumstances for participation by agreements with local governments, lenders, and others associated with the redevelopment of brownfield areas for a limited state of up to 5 years of loan guarantees or loan loss reserves. This limited state loan guaranty applies only to 10 percent of the primary lender loans for redevelopment projects in brownfield areas.[25]

[21] Section 163.3177(11)(d)6., F.S.
[22] Section 163.3177(11)(d)6., F.S.
[23] Section 163.3177(11)(d)6., F.S.
[24] Section 288.107(2), F.S.
[25] Section 376.86(1), F.S.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently issued a progress report on the Brownfields Redevelopment Program.[26] The report recommended eliminating the requirement that a business create a minimum of 10 new jobs to receive brownfield incentives. Additionally, OPPAGA recommends increasing the state guarantee on loans to developers from 10 percent to 50 percent or higher.

## III. Effect of Proposed Changes:

### Tax Deeds

**Section 1.** The bill amends s. 197.502, F.S., providing that lands available for taxes which revert to the county 3 years after being offered for public sale shall escheat to the county free and clear of all tax certificates and accrued taxes. The bill specifies that liens of any nature against the property are cancelled and the clerk is required to issue an escheatment tax deed vesting title in the board of county commissioners where the property is located. Further, the bill provides immunity for the county from environmental liability associated with properties that escheat to the county. This does not affect the rights or liabilities of any past or future owners to the liability of any governmental entity for any actions that create or exacerbate a pollution source. It provides that the county and DEP may enter into a written agreement that addresses investigative and remedial activities for a property that escheats to the county.

### Accessory Dwelling Units

**Section 2.** of the bill provides legislative findings on the lack of affordable rentals for very-low-income, low-income, and moderate-income persons. The bill makes a finding that encouraging local governments to permit accessory dwelling units to increase the availability of affordable rentals serves a public purpose. It provides definitions for the following terms: accessory dwelling unit, affordable rental, local government, low-income persons, moderate-income persons, and very-low-income persons.

The bill authorizes a local government to adopt an ordinance allowing Accessory Dwelling Units (ADUs) in any area zoned for single-family use based upon a finding that there is a shortage of affordable rentals in its jurisdiction. Each ADU that is allowed by an ordinance adopted under this section shall count towards the affordable housing component of the housing element in the local government's comprehensive plan. Finally, the bill requires DCA to report to the Legislature on January 1, 2007, regarding the effectiveness of using ADUs to address a local government's shortage of affordable housing. The report must include the number of ordinances adopted under this section and the number of ADUs created under those ordinances.

### Water Supplies

**Section 3.** The bill creates subsection (13) of s. 163.3167, F.S., to require a local government to address, in its comprehensive plan, water supply projects necessary to meet existing and projected water use demand for the applicable planning period.

[26] *Brownfield Rehabilitation Is Increasing; More Time Needed to Assess Program's Impact*, Office of Program Policy Analysis and Government Accountability, Report No. 04-18, Feb. 2004.

**Rural Lands Stewardship Areas**

**Section 4.** The bill amends s. 163.3177, F.S., providing that rural lands stewardship area designation should be specifically encouraged as a future land use map overlay. It extends the deadline by which a local government must consider a water supply plan, approved pursuant to s. 373.0361, F.S., in the general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element of its comprehensive plan. Also, it requires the local government's work plan for building water supply facilities to be updated every 5 years or within 12 months after the adoption of a revised regional water supply plan.

The bill also requires DCA, DEP, the water management districts, and regional planning councils to provide assistance to local governments relating to the implementation or rural lands stewardship areas. This assistance may include, but is not limited to, the following:

- Assistance from DEP and the water management districts in creating a geographic information systems land cover database and aerial photogrammetry necessary that is needed to designate a stewardship area;
- Allocation of funds for conservation easement and land acquisition programs that could be leveraged to protect greater acreages using a rural land stewardship area approach; and
- Expansion of DCA's role as a resource agency and grants to facilitate the establishment of these stewardship areas in rural counties that do not have the staff or planning budget to create such an area.

The provisions of this bill allow for the designation of multicounty rural land stewardship areas. It provides that a local government, regional planning council, or stakeholder organization of private land owners, in conjunction with another local government, may apply to DCA for authorization to designate a rural land stewardship area. It deletes acreage thresholds for these stewardship areas, and removes a limitation on the number of local governments which may be designated. Also, it allows transferable land use credits to be assigned at different ratios according to the natural resource and other beneficial characteristics of the land and according to the land use remaining following the transfer of credits.

The bill exempts a comprehensive plan amendment that establishes or implements a rural land stewardship area from the limitation on the frequency of plan amendments.

**Urban Infill and Redevelopment**

**Section 5.** The bill also amends s. 163.3177(11), F.S., to provide legislative findings regarding the benefits of mixed-use high density development for urban infill and redevelopment areas. It also expresses legislative intent to discourage single-use zoning in those areas. The bill requires DCA to provide technical assistance, including a model ordinance, to encourage mixed-use, high density urban infill and redevelopment projects.

The bill also amends s. 163.3177(11), F.S., to provide legislative findings regarding a program for the transfer of development rights in urban areas. It expresses legislative intent to encourage high-density development in urban infill and redevelopment areas while protecting historic structures and open spaces. The bill requires DCA to provide technical assistance, including a

model ordinance, that promotes a program for the transfer of development rights for urban infill and redevelopment projects.

**Brownfield Redevelopment Bonus Refunds Program**

**Section 6.** The bill amends s. 288.107, F.S., reducing the number of full-time permanent jobs, from 10 to 5, that are required for a business to participate in the brownfield redevelopment bonus refund.

**Section 7.** The bill amends s.376.86, F.S., increasing the percentage of a primary lender loan to which the limited state loan guaranty applies for redevelopment projects in brownfield areas.

**Section 8.** Provides an effective date of July 1, 2004.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

### D. Other Constitutional Issues:

This bill excuses homeowners from covenants and restrictions, as adopted by the respective homeowner's association or as specified in legal instruments that created the association, which prohibit accessory dwelling units or secondary units. Retroactive application of this bill may raise the issue of impairing obligations of contracts.[27]

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.[28] The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.[29] In *Exxon Corp. v. Eagerton*[30], the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

[27] Art. I, § 10, Fla. Const.; Art. I, § 10 U.S. Const.
[28] Stone v. Mississippi, 101 U.S. 814 (1880).
[29] General Motors Corp. v. Romein, 503 U.S. 181 (1992).
[30] 462 U.S. 176 (1983).

In 1989, the Federal District Court in Tampa held that the state statute permitting condominium unit owners to display the American Flag [s. 718.113(4), F.S.] did not impair existing contract rights of the condominium association to restrict such display. The court suggested in dicta that personal display of the flag is constitutionally protected speech, and because "the statute did not create rights, but merely recognized them, it does not impair existing contract rights."[31]

Article I, Section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.[32] This exception extends to laws that are reasonable and necessary to serve an important public purpose,[33] to include protecting the public's health, safety or welfare.[34]

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.[35]

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill provides for an escheatment tax deed that is free and clear of all tax certificates, accrued taxes, and other liens and vests title in the board of county commissioners for properties that have been offered for public sale for a 3-year period and have reverted to the county. This should reduce litigations costs regarding title issues for parties that purchase a property after it has escheated to the county.

In addition, the bill authorizes local governments, based on a finding that there is a shortage of affordable rentals, to permit ADUs in any single family neighborhood. This should assist very-low-income, low-income, and moderate-income persons in finding an affordable rental in those areas that currently have housing costs that exceed an amount a person earning the median income for the area can afford. The ADUs would also provide additional income for the property owner.

This bill reduces the number of jobs that a business must create to receive brownfield incentives. It also increases the state guaranty on loans to developers from 10% to 50% for redevelopment projects in brownfield areas. This could result in the rehabilitation of a

[31] *Gerber v. Longboat Harbour North Condominium, Inc.*, 724 F.Supp. 884 (M.D.FL., 1989).
[32] *Park Benziger & Co. v. Southern Wine & Spirits*, Inc., 391 So. 2d 681 (Fla. 1980).
[33] *Yellow Cab Co. v. Dade County,* 412 So. 2d 395 (Fla. 3rd DCA 1982), *cert. denied,* 424 So. 2d 764 (Fla. 1982).
[34] *Khoury v. Carvel Homes South, Inc.*, 403 So. 2d 1043 (Fla. 1st DCA 1981), *cert. denied,* 412 So. 2d 467 (Fla. 1981).
[35] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979).

greater number of designated brownfield areas which benefits both the developer and the community where the brownfield site is located.

### C. Government Sector Impact:

The bill authorizes a local government, based upon a finding that there is a shortage of affordable rentals in its jurisdiction, to permit ADUs in any single family neighborhood. This could lead to increased property tax revenues.

The DCA is required by the bill to provide technical assistance to local governments, including the development of a model ordinance, that encourages mixed-use, high density development in urban infill and redevelopment areas and also a transfer of development rights program in those areas. In addition, DCA and the water management districts must assist local governments with the creation and implementation of rural land stewardship areas.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 2188

Amendment No. ___ 851284

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 3:05 pm

Senator Geller moved the following amendment:

**Senate Amendment (with title amendment)**

On page 6, line 10, delete "projects"

and insert: sources

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

And the title is amended as follows:

On page 1, line 28, delete "projects"

and insert:

sources

Bill No. CS for SB 2188

Amendment No. ___ 670256

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 3:05 pm

Senator Geller moved the following amendment:

**Senate Amendment**

On page 9, lines 24-27, delete those lines

and insert: soils for septic tanks. By December 1, 2006 ~~January-1,-2005,-or-the-Evaluation-and-Appraisal-Report adoption-deadline-established-for-the-local-government pursuant-to-s.-163.3191(a),-whichever-date-occurs-first~~, the

Bill No. CS for SB 2188

Amendment No. ___ 114078

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 3:05 pm

Senator Geller moved the following amendment:

**Senate Amendment**

On page 10, line 5, delete that line

and insert: approval of the revised regional water supply plan. Amendments to incorporate the work plan do not count towards the limitation on the frequency of adoption of amendments to a comprehensive plan.

Bill No. CS for SB 2188

Amendment No. ___ 024184

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 3:30 pm

Senator Geller moved the following amendment:

**Senate Amendment (with title amendment)**

On page 11, line 9, through

page 19, line 17, delete those lines

and insert:

(d)1. The department, in cooperation with the Department of Agriculture and Consumer Services, the Department of Environmental Protection, water management districts, and regional planning councils, shall provide assistance to local governments in the implementation of this paragraph and rule 9J-5.006(5)(l), Florida Administrative Code. Implementation of those provisions shall include a process by which the department may authorize ~~up-to-five~~ local governments to designate all or portions of lands classified in the future land use element as predominantly agricultural, rural, open, open-rural, or a substantively equivalent land use, as a rural land stewardship area within which planning and economic incentives are applied to encourage the implementation of innovative and flexible planning and

1 development strategies and creative land use planning
2 techniques, including those contained herein and in rule
3 9J-5.006(5)(l), Florida Administrative Code. Assistance may
4 include, but is not limited to:
5 a. Assistance from the Department of Environmental
6 Protection and water management districts in creating the
7 geographic information systems land cover database and aerial
8 photogrammetry needed to prepare for a rural land stewardship
9 area;
10 b. Support for local government implementation of
11 rural land stewardship concepts by providing information and
12 assistance to local governments regarding land acquisition
13 programs that may be used by the local government or
14 landowners to leverage the protection of greater acreage and
15 maximize the effectiveness of rural land stewardship areas;
16 and
17 c. Expansion of the role of the Department of
18 Community Affairs as a resource agency to facilitate
19 establishment of rural land stewardship areas in smaller rural
20 counties that do not have the staff or planning budgets to
21 create a rural land stewardship area.
22 2. The department shall encourage participation by
23 local governments of different sizes and rural characteristics
24 in establishing and implementing rural land stewardship areas.
25 It is the intent of the Legislature that rural land
26 stewardship areas be used to further the following broad
27 principles of rural sustainability: restoration and
28 maintenance of the economic value of rural land; control of
29 urban sprawl; identification and protection of ecosystems,
30 habitats, and natural resources; promotion of rural economic
31 activity; maintenance of the viability of Florida's

1 agricultural economy; and protection of the character of rural
2 areas of Florida. Rural land stewardship areas may be
3 multicounty in order to encourage coordinated regional
4 stewardship planning.
5 3. A local government, in conjunction with a regional
6 planning council, a stakeholder organization of private land
7 owners, or another local government, shall notify may-apply-to
8 the department in writing of its intent requesting
9 consideration-for-authorization to designate a rural land
10 stewardship area and-shall-describe-its-reasons-for-applying
11 for-the-authorization-with-supporting-documentation-regarding
12 its-compliance-with-criteria-set-forth-in-this-section.
13 4.--In-selecting-a-local-government,-the-department
14 shall,-by-written-agreement:
15 a.--Ensure-that-the-local-government-has-expressed-its
16 intent-to-designate-a-rural-land-stewardship-area-pursuant-to
17 the-provisions-of-this-subsection-and-clarify-that-the-rural
18 land-stewardship-area-is-intended.
19 b.--Ensure-that-the-local-government-has-the-financial
20 and-administrative-capabilities-to-implement-a-rural-land
21 stewardship-area.
22 5. The written notification agreement shall describe
23 include the basis for the designation, authorization-and
24 provide-criteria-for-evaluating-the-success-of-the
25 authorization including the extent to which the rural land
26 stewardship area enhances rural land values, controls,-control
27 urban sprawl, provides necessary open space for agriculture
28 and protection of the natural environment, promotes rural
29 economic activity, and maintains rural character and the
30 economic viability of agriculture. The-department-may
31 terminate-the-agreement-at-any-time-if-it-determines-that-the

1 ~~local-government-is-not-meeting-the-terms-of-the-agreement.~~
2 4.~~6.~~ A rural land stewardship area shall be not less
3 than 10,000 ~~50,000~~ acres and shall ~~not-exceed-250,000-acres-in~~
4 ~~size,-shall~~ be located outside of municipalities and
5 established urban growth boundaries, and shall be designated
6 by plan amendment. The plan amendment designating a rural
7 land stewardship area shall be subject to review by the
8 Department of Community Affairs pursuant to s. 163.3184 and
9 shall provide for the following:
10 a. Criteria for the designation of receiving areas
11 within rural land stewardship areas in which innovative
12 planning and development strategies may be applied. Criteria
13 shall at a minimum provide for the following: adequacy of
14 suitable land to accommodate development so as to avoid
15 conflict with environmentally sensitive areas, resources, and
16 habitats; compatibility between and transition from higher
17 density uses to lower intensity rural uses; the establishment
18 of receiving area service boundaries which provide for a
19 separation between receiving areas and other land uses within
20 the rural land stewardship area through limitations on the
21 extension of services; and connection of receiving areas with
22 the rest of the rural land stewardship area using rural design
23 and rural road corridors.
24 b. Goals, objectives, and policies setting forth the
25 innovative planning and development strategies to be applied
26 within rural land stewardship areas pursuant to the provisions
27 of this section.
28 c. A process for the implementation of innovative
29 planning and development strategies within the rural land
30 stewardship area, including those described in this subsection
31 and rule 9J-5.006(5)(l), Florida Administrative Code, which

1 provide for a functional mix of land uses and which are
2 applied through the adoption by the local government of zoning
3 and land development regulations applicable to the rural land
4 stewardship area.
5 d. A process which encourages visioning pursuant to s.
6 163.3167(11) to ensure that innovative planning and
7 development strategies comply with the provisions of this
8 section.
9 e. The control of sprawl through the use of innovative
10 strategies and creative land use techniques consistent with
11 the provisions of this subsection and rule 9J-5.006(5)(l),
12 Florida Administrative Code.
13 5.~~7.~~ A receiving area shall be designated by the
14 adoption of a land development regulation. Prior to the
15 designation of a receiving area, the local government shall
16 provide the Department of Community Affairs a period of 30
17 days in which to review a proposed receiving area for
18 consistency with the rural land stewardship area plan
19 amendment and to provide comments to the local government.
20 6.~~8.~~ Upon the adoption of a plan amendment creating a
21 rural land stewardship area, the local government shall, by
22 ordinance, assign to the area a certain number of credits, to
23 be known as "transferable rural land use credits," which shall
24 not constitute a right to develop land, nor increase density
25 of land, except as provided by this section. The total amount
26 of transferable rural land use credits assigned to the rural
27 land stewardship area must correspond to the 25-year or
28 greater projected population of the rural land stewardship
29 area. Transferable rural land use credits are subject to the
30 following limitations:
31 a. Transferable rural land use credits may only exist

1 within a rural land stewardship area.
2 b. Transferable rural land use credits may only be
3 used on lands designated as receiving areas and then solely
4 for the purpose of implementing innovative planning and
5 development strategies and creative land use planning
6 techniques adopted by the local government pursuant to this
7 section.
8 c. Transferable rural land use credits assigned to a
9 parcel of land within a rural land stewardship area shall
10 cease to exist if the parcel of land is removed from the rural
11 land stewardship area by plan amendment.
12 d. Neither the creation of the rural land stewardship
13 area by plan amendment nor the assignment of transferable
14 rural land use credits by the local government shall operate
15 to displace the underlying density of land uses assigned to a
16 parcel of land within the rural land stewardship area;
17 however, if transferable rural land use credits are
18 transferred from a parcel for use within a designated
19 receiving area, the underlying density assigned to the parcel
20 of land shall cease to exist.
21 e. The underlying density on each parcel of land
22 located within a rural land stewardship area shall not be
23 increased or decreased by the local government, except as a
24 result of the conveyance or use of transferable rural land use
25 credits, as long as the parcel remains within the rural land
26 stewardship area.
27 f. Transferable rural land use credits shall cease to
28 exist on a parcel of land where the underlying density
29 assigned to the parcel of land is utilized.
30 g. An increase in the density of use on a parcel of
31 land located within a designated receiving area may occur only

1 through the assignment or use of transferable rural land use
2 credits and shall not require a plan amendment.
3 h. A change in the density of land use on parcels
4 located within receiving areas shall be specified in a
5 development order which reflects the total number of
6 transferable rural land use credits assigned to the parcel of
7 land and the infrastructure and support services necessary to
8 provide for a functional mix of land uses corresponding to the
9 plan of development.
10 i. Land within a rural land stewardship area may be
11 removed from the rural land stewardship area through a plan
12 amendment.
13 j. Transferable rural land use credits may be assigned
14 at different ratios of credits per acre according to the
15 natural resource or other beneficial use characteristics of
16 the land and according to the land use remaining following the
17 transfer of credits, with the highest number of credits per
18 acre assigned to the most preserve environmentally valuable
19 land and a lesser number of credits to be assigned to open
20 space and agricultural land.
21 k. The use or conveyance of transferable rural land
22 use credits must be recorded in the public records of the
23 county in which the property is located as a covenant or
24 restrictive easement running with the land in favor of the
25 county and either the Department of Environmental Protection,
26 Department of Agriculture and Consumer Services, a water
27 management district, or a recognized statewide land trust.
28 7.9. Owners of land within rural land stewardship
29 areas should be provided incentives to enter into rural land
30 stewardship agreements, pursuant to existing law and rules
31 adopted thereto, with state agencies, water management

1 districts, and local governments to achieve mutually agreed
2 upon conservation objectives. Such incentives may include,
3 but not be limited to, the following:
4 a. Opportunity to accumulate transferable mitigation
5 credits.
6 b. Extended permit agreements.
7 c. Opportunities for recreational leases and
8 ecotourism.
9 d. Payment for specified land management services on
10 publicly owned land, or property under covenant or restricted
11 easement in favor of a public entity.
12 e. Option agreements for sale to public entities or
13 private land conservation entities ~~government~~, in either fee
14 or easement, upon achievement of conservation objectives.
15 8.~~10.~~ The department shall report to the Legislature
16 on an annual basis on the results of implementation of rural
17 land stewardship areas authorized by the department, including
18 successes and failures in achieving the intent of the
19 Legislature as expressed in this paragraph. ~~It-is-further-the~~
20 ~~intent-of-the-Legislature-that-the-success-of-authorized-rural~~
21 ~~land-stewardship-areas-be-substantiated-before-implementation~~
22 ~~occurs-on-a-statewide-basis.~~
23 (e) The Legislature finds that mixed-use, high-density
24 development is appropriate for urban infill and redevelopment
25 areas. Mixed-use projects accommodate a variety of uses,
26 including residential and commercial, and usually at higher
27 densities that promote pedestrian-friendly, sustainable
28 communities. The Legislature recognizes that mixed-use,
29 high-density development improves the quality of life for
30 residents and businesses in urban areas. The Legislature finds
31 that mixed-use, high-density redevelopment and infill benefits

1 residents by creating a livable community with alternative
2 modes of transportation. Furthermore, the Legislature finds
3 that local zoning ordinances often discourage mixed-use,
4 high-density development in areas that are appropriate for
5 urban infill and redevelopment. The Legislature intends to
6 discourage single-use zoning in urban areas which often leads
7 to lower-density, land-intensive development outside an urban
8 service area. Therefore, the Department of Community Affairs
9 shall provide technical assistance to local governments,
10 including a model ordinance, to encourage mixed-use,
11 high-density urban infill and redevelopment projects.
12 (f) The Legislature finds that a program for the
13 transfer of development rights is a useful tool to preserve
14 historic buildings and create public open spaces in urban
15 areas. A program for the transfer of development rights allows
16 the transfer of density credits from historic properties and
17 public open spaces to areas designated for high-density
18 development. The Legislature recognizes that high-density
19 development is integral to the success of many urban infill
20 and redevelopment projects. The Legislature intends to
21 encourage high-density urban infill and redevelopment while
22 preserving historic structures and open spaces. Therefore, the
23 Department of Community Affairs shall provide technical
24 assistance to local governments, including a model ordinance,
25 in order to promote the transfer of development rights within
26 urban areas for high-density infill and redevelopment
27 projects.
28
29
30 ========== T I T L E A M E N D M E N T ==========
31 And the title is amended as follows:

8

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2218

SPONSOR: Senator Margolis

SUBJECT: Tax Administration

DATE: April 17, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Cibula | Lang | JU | Favorable |
| 2. | Cooper | Yeatman | CP | Favorable |
| 3. | Keating | Johansen | FT | |
| 4. | | | AGG | |
| 5. | | | AP | |
| 6. | | | | |

## I. Summary:


Senate Bill 2218 amends several sections of law regulating the administration of taxes that are administered by the Department of Revenue (department). Specifically, the bill:

- Permits a personal representative of any estate regardless of the date of death of the decedent to execute an affidavit attesting that the estate is not taxable;
- Specifies dates that taxes resulting from the sale of timeshares are due to the department;
- Provides another method to determine the service address of a communications service;
- Authorizes the imposition of criminal penalties on a person who willfully attempts to evade or defeat a tax or fee imposed under ch. 212, F.S.;
- Authorizes the department to compromise tax liability for tourist taxes administered under ch. 212, F.S., in addition to taxes imposed under ch. 212, F.S.; and
- Provides a procedure for the department to dispose of unclaimed personal property obtained during an investigation or legal proceeding.

This bill substantially amends the following sections of the Florida Statutes: 198.32, 199.35, 201.02, 201.08, 201.11, 212.12, 213.21. The bill also creates section 213.758, Florida Statutes.


## II. Present Situation:

See "Effect of Proposed Changes" section of this staff analysis.

## III. Effect of Proposed Changes:

ESTATE TAX
(Section 1)

PRESENT SITUATION:

Florida's estate tax is equal to the federal credit allowed for state death taxes paid. Every personal representative is required to give notice to the Department of Revenue (department) of the decedent's death on a form specified by the department. If the estate is required to file a federal estate tax return, the estate must also file a Florida estate tax return.

Prior to January 1, 2000, estates that did not have to file a federal return still had to file a form with the department indicating that "no tax is due." When the department received the form indicating "no tax is due", it issued a certificate to the estate stating that "no tax is due." The estate then filed the certificate with the Clerk of the Court.

In 1999, s. 198.32, F.S., was amended to allow the estates of decedents who died on or after January 1, 2000, that are not required to file a federal return, to file and "Affidavit of No Florida Estate Tax Due' directly with the Clerk of the Court and not have to obtain a nontaxable certificate from the department. However, the estates for decedents who died prior to January 1, 2000, are still required to file the form with the department in order to obtain a nontaxable certificate.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 198.32(2), F.S., to enable the personal representative of any estate, regardless of the date of death of the decedent, to eliminate the presumption that an estate owes taxes by executing an "Affidavit of No Florida Estate Tax Due" directly to the Clerk of the Court instead of first obtaining a nontaxable certificate from the Department of Revenue.

DOCUMENTARY STAMP TAX AND NON-RECURRING INTANGIBLE TAX ON TIMESHARES
(Sections 2, 3 and 4)

PRESENT SITUATION:

Section 721.08, F.S., imposes special escrow requirements on purchaser's funds to protect consumers who purchase timeshare interests. The law is to protect the purchaser's funds prior to closing and allows release of funds from escrow only upon cancellation or nocompliance with the provisions of the statute.

Section 213.756, F.S., provides that certain monies collected from a purchaser under the representation that the funds are taxes and are state funds from the moment of collection and thus, are not subject to refund absent proof that such funds have been refunded previously to the purchaser.

The deeds and mortgages executed in conjunction with the sale of timeshare interest in real property are subject to the documentary stamp tax (Chapter 201) and the non-recurring intangible tax (Chapter 199).

Section 201.02, F.S., imposes a documentary stamp tax in the amount of 70 cents for each $100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property, or any interest therein, are granted, assigned, transferred, or vested in a person.

Section 201.08, F.S., imposes a documentary stamp tax in the amount of 35 cents for $100 of a promissory note, nonnegotiable note, written obligation to pay money, or assignment of compensation, delivered, sold, transferred or assigned in this state. The amount of the tax may not exceed $2,450, except on mortgages, trust deeds, security agreements, or other evidences of indebtedness filed or recorded in this state.

Section 199.133(1), F.S., imposes a one-time nonrecurring intangible tax of 2 mills on each dollar of just valuation of all notes, bonds, and other obligations for payment of money which are secured by mortgage, deed of trust, or other lien upon real property situated in Florida. Nonrecurring taxes must be paid the earlier of the date the written instrument creating the obligation is recorded by a clerk of a circuit court or 30 days after the creation of the obligation. Section 199.135, F.S., provides for the due date and payment of the nonrecurring tax.

The department has taken the position that taxes must be remitted when they become due pursuant to chapters 201 and 199. The timeshare industry believes that remitting taxes prior to the release of funds from escrow would violate the provisions of s. 721.08, F.S.

EFFECT OF PROPOSED CHANGES:

The bill amends ss. 199.135, 201.02, and 201.08, F.S., recognizing the special escrow requirements that apply to sale of timeshare interests. The bill provides that taxes on notes or other obligations and mortgages or other liens executed in conjunction with the sale of a developer of a timeshare interest in a timeshare plan are due on the earlier of the date on which:

1. The mortgage or other lien is recorded; or
2. All of the conditions precedent to the release of the purchaser's escrowed funds or other property pursuant to s. 721.08(2)(c), F.S., have been complied with, regardless of whether the developer has posted an alternative assurance.

If moneys are designated on a closing statement as taxes collected from the purchaser, but the mortgage or other lien with respect to which the tax was collected is never recorded, the tax moneys shall be paid to the department on or before the 20th day of the month following the month in which the funds are available for release from escrow, unless the moneys are refunded to the purchaser before that date.

The bill authorizes the Department of Revenue to adopt ruled to implement the method for reporting taxes due under these provisions.

## COMMUNICATION SERVICES TAX
(Section 5)

PRESENT SITUATION:

Chapter 202, F.S., imposes a communications services tax at the rate of 6.8 percent on the sales price of certain communication services and 10.8 percent on the sale of home satellite service. The term "service address" in ch. 202, F.S., is used to determine which local taxing jurisdictions may add additional taxes to a communications service. The current definition of "service address" in s. 202.11, F.S., does not provide guidance for sourcing or situsing communications services where a credit or payment mechanism not related to a service address is used and the location of the equipment from which the communications services originates or are received by the customer are not known.

EFFECT OF PROPOSED CHANGES:

The bill mends s. 201.11, F.S., to provide an additional method to determine a service address of a communications service subject to the communications services tax. If the service address cannot be determined under the existing methods, the bill provides that the service address is the residential or business address of the customer. This new method is effective July 1, 2004. According to the department, the method provided by the bill to determine a service address is necessary to determine the service address of mobile communications equipment such as satellite radios that travel across multiple taxing jurisdictions.

## SALES AND USE TAX – FRAUD DEFINITION
(Section 6)

PRESENT SITUATION:

Chapter 212, F.S., establishes the state sales tax rate of 6 percent on the retail sale of tangible personal property. Sales taxes must typically be collected by a dealer and submitted to the department with a return. Section 212.12(2), F.S., provides specific penalties for a taxpayer who:

- fails to timely file a return or timely remit tax;
- fails to disclose a tax or fee due with a return;
- knowingly and with a willful intent to evade tax fails to file six consecutive returns (criminal penalty);
- makes a false or fraudulent return with a willful intent to evade payment (criminal penalty);
- fails to timely remit the proper estimated payment; or
- fails to timely remit the proper estimated payment with a consolidated return.

Presently there is no specific penalty for willfully attempting to evade a tax or fee imposed under chapter 212.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.12(2), F.S., to provide that effective July 1, 2004, a "person who willfully attempts" to "evade or defeat" a tax imposed under ch. 212, F.S., commits a felony of the third degree and may be punished by the imposition of the following penalties:

- A penalty of 100 percent of the tax bill;
- A fine of up to $5,000;
- Imprisonment of up to 5 years; or
- Imprisonment of up to 10 years if the person is a habitual felony offender.

PROCEDURES FOR COMPROMISING TAX LIABILTIY
(Sections 7 and 8)

PRESENT SITUATION:

Section 213.21(10), F.S., provides procedures for the department to compromise a taxpayer's liability "solely for the purpose of administering the tax imposed by chapter 212." Taxes such as the tourist impact tax imposed under ss. 125.0108 and 125.0104, F.S., however, are administered under ch. 212, F.S.,

Chapter 2002-213, Laws of Florida, amended s. 212.21(10), F.S., to allow the department to automatically waive penalties for taxes under chapter 212 for a one-time noncompliant tax return for an otherwise compliant taxpayer. Previously, such a taxpayer would have had to request the penalty waiver in writing. The question has arisen whether this compromise authority applies to other taxes and fees that are not imposed under chapter 212, F.S., but are administered under the provisions found in chapter 212, F.S.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 213.21(10), F.S., to specify and clarify that all taxes administered under chapter 212, F.S., qualify for the automatic penalty compromise. The bill authorizes the department to compromise tax liability for tourist taxes, imposed pursuant to ss. 125.0108 and 125.0104, F.S., but administered under ch. 212, F.S. In addition, the department is restricted from compromising tax liability for the rental car surcharge imposed pursuant to s. 212.0606, F.S.

Section 8 specifies that this authority specified in section 7 of this bill is retroactive to July 1, 2003.

UNCLAIMED EVIDENCE
(Section 9)

PRESENT SITUATION:

Florida law contains no provisions for the disposition of unclaimed evidence at the conclusion of a criminal investigation by the department. As soon as practical after the disposition of a case, the department returns the records to the person or entity from which the records were received. Sometimes the department is unable to locate the appropriate party to return the records or documents and other times no claim is made for the records or documents. These unclaimed documents are currently stored by the department indefinitely and at a growing expense to the state.

EFFECTS OF PROPOSED CHANGES:

The bill creates s. 213.758, F.S., to authorize the department to retain title to property that it has seized pursuant to an investigation or obtained for use as evidence in a legal proceeding that remains unclaimed by the owner for 60 days or more after the conclusion of a proceeding. The bill authorizes the department to retain the property or transfer it to another state agency. If the property has little to no value the department may destroy it.

The department is authorized to prescribe by rule procedures to be followed when transferring title or record of ownership of property of appreciable value or when destroying property not of appreciable value. The rule shall also set forth criteria regarding treatment of unclaimed evidence or unclaimed tangible personal property, including, but not limited to, notice and timing requirements.

This provision of the bill is important to the department because of the increasing costs of storing unclaimed evidence.

**Section** 10 provides an effective date stating that, except as otherwise provide in the bill, the bill takes effect upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

The timing of the receipt of taxes in conjunction with the sale of timeshares will change slightly.

### B. Private Sector Impact:

The bill will enable a person to compromise tourist taxes administered, but not imposed under ch. 212, F.S.

### C. Government Sector Impact:

The bill clarifies provisions of law related to the administration of taxes. As a result, the Department of Revenue may be able to collect taxes due more efficiently. The bill also clarifies which local taxing jurisdictions may tax a particular communications service.

## VI. Technical Deficiencies:

The Department of Revenue in its analysis of this bill has recommended that technical amendments be made to this bill to clarify when certain taxes that arise from the sale of a timeshare are due.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 2218

Amendment No. ___ 125224

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 1:35 pm

Senator Margolis moved the following amendment:

**Senate Amendment**

On page 3, line 6, delete that line

and insert: obligations secured by a mortgage or other lien upon real property situated in this state executed in

SENATE AMENDMENT 2

Bill No. SB 2218

Amendment No. ___ 225514

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 1:35 pm

Senator Margolis moved the following amendment:

**Senate Amendment**

On page 3, lines 21-25, delete those lines

and insert: must be made upon the mortgage or other lien.

2. Notwithstanding paragraph (a), if moneys are designated on a closing statement as taxes collected from the purchaser, but the mortgage or other lien with respect to which the tax was collected has not been recorded, the tax moneys

Bill No. SB 2218

Amendment No. ___ 924642

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 1:36 pm

Senator Margolis moved the following amendment:

**Senate Amendment**

On page 5, lines 1-5, delete those lines

and insert: has been recorded or delivered to the purchaser, the tax moneys shall be paid to the department on or before the 20th day of the month following the month in which such funds are available for release from escrow pursuant to s. 721.08(2)(a) or (b), unless such moneys are refunded to the

Bill No. SB 2218

Amendment No. ___ 524298

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 1:36 pm

Senator Margolis moved the following amendment:

**Senate Amendment**

On page 5, line 22, after the word "recorded"

insert: or filed in Florida

Bill No. SB 2218

Amendment No. ___ 424924

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 1:36 pm

Senator Margolis moved the following amendment:

**Senate Amendment**

On page 6, line 2-7, delete those lines

and insert: subsequently recorded or filed in Florida, a notation reflecting the prior payment of the tax must be made upon the mortgage.

2. Notwithstanding paragraph (a), if moneys are designated on a closing statement as taxes collected from the purchaser, but the mortgage or other evidence of indebtedness with respect to which the tax is collected has not been recorded,

Bill No. SB 2218

Amendment No. ___ 025826

CHAMBER ACTION

Senate | House

TAXATION COMMITTEE

4/19/04

1:36 pm

Senator Margolis moved the following amendment:

**Senate Amendment**

On page 9, lines 9 and 10, delete those lines

and insert:

(e) Any person who willfully attempts in any manner to evade any tax or fee imposed under this chapter or

Bill No. SB 2218

Amendment No. ___ 563234

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 1:37 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 and 28,

insert:

Section 10. Paragraph (e) of subsection (1) and subsection (12) of section 212.06, Florida Statutes, are amended to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.--

(1)

(e)1. Notwithstanding any other provision of this chapter, tax shall not be imposed on any vessel registered under ~~pursuant to~~ s. 328.52 by a vessel dealer or vessel manufacturer with respect to a vessel used solely for demonstration, sales promotional, or testing purposes. The term "promotional purposes" shall include, but not be limited to, participation in fishing tournaments. For the purposes of this paragraph, "promotional purposes" means the entry of the

1 vessel in a marine-related event where prospective purchasers
2 would be in attendance, where the vessel is entered in the
3 name of the dealer or manufacturer, and where the vessel is
4 clearly marked as for sale, on which vessel the name of the
5 dealer or manufacturer is clearly displayed, and which vessel
6 has never been transferred into the dealer's or manufacturer's
7 accounting books from an inventory item to a capital asset for
8 depreciation purposes.
9 2. The provisions of this paragraph do not apply to
10 any vessel when used for transporting persons or goods for
11 compensation; when offered, let, or rented to another for
12 consideration; when offered for rent or hire as a means of
13 transportation for compensation; or when offered or used to
14 provide transportation for persons solicited through personal
15 contact or through advertisement on a "share expense" basis.
16 3. Notwithstanding any other provision of this
17 chapter, tax may not be imposed on any vessel imported into
18 this state for the sole purpose of being offered for sale at
19 retail by a yacht broker or yacht dealer registered in this
20 state if the vessel remains under the care, custody, and
21 control of the registered broker or dealer and the owner of
22 the vessel does not make personal use of the vessel during
23 that time. The provisions of this chapter govern the
24 taxability of any sale or use of the vessel subsequent to its
25 importation under this provision.
26 (12) In lieu of any other facts which may indicate
27 commingling, any boat which remains in this state for more
28 than an aggregate of 183 days in any 1-year period, except as
29 provided in subparagraph (1)(e)3., subsection (8), or s.
30 212.08(7)(t), shall be presumed to be commingled with the
31 general mass of property of this state.

1
2 (Redesignate subsequent sections.)
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5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 On page 2, line 2, after the semicolon,
8
9 insert:
10 amending s. 212.06, F.S.; clarifying that sales
11 tax is not due on any vessel imported into this
12 state for the sole purpose of being offered for
13 retail sale by a registered Florida yacht
14 broker-dealer under certain conditions;
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Bill No. SB 2218

Amendment No. ___

813574

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 1:37 pm

Posey

Senator ~~Bennett~~ moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 and 28,

insert:

Section 10. Subsection (2) of section 198.29, Florida Statutes, is amended to read:

198.29 Refunds of excess tax paid.--

(2) Notwithstanding the foregoing provisions, no refund of estate tax shall be made nor shall any personal representative be entitled to bring any action for refund of estate tax after the expiration of 4 years from the date of payment of the tax to be refunded, unless there shall have been filed with the department written notice of any administrative or judicial determination of the federal estate tax liability of the estate, whichever shall last occur, and such notice shall have been so filed not later than 60 days after the determination shall have become final. <u>If a personal representative will be required to pay to another state or states tax that will be credited against the Florida liability</u>

1 pursuant to s. 198.02, the personal representative shall
2 notify the department in writing of such a requirement within
3 4 years after the payment of Florida estate tax or within 60
4 days following the date the administrative or judicial
5 determination of the federal estate tax liability of the
6 estate becomes final, whichever occurs later. The personal
7 representative shall file the final determination and proof of
8 payment from the other state or states within 60 days after
9 receipt of the last of such final determinations from the
10 other state or states in order to claim a refund.
11
12 (Redesignate subsequent sections.)
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15 ========== T I T L E A M E N D M E N T ==========
16 And the title is amended as follows:
17 On page 2, line 2, after the semicolon,
18
19 insert:
20 amending s. 198.29, F.S.; allowing refunds of
21 taxes paid if taxes paid to another state will
22 be credited against the Florida liability;
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Bill No. SB 2218

Amendment No. ___ 932030

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 2:30 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 and 28,

insert:

Section 10. Sections 3 and 4 of chapter 2000-345, Laws of Florida, as amended by section 55 of chapter 2002-218, Laws of Florida, are amended to read:

Section 3. Effective July 1, 2008 ~~2006~~, subsection (10) of section 212.031, Florida Statutes, as created by this act, is repealed, and paragraph (a) of subsection (1) and subsection (3) of said section, as amended by this act, are amended to read:

212.031 Lease or rental of or license in real property.--

(1)(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless such property is:

1. Assessed as agricultural property under s. 193.461.

2. Used exclusively as dwelling units.

3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6).

4. Recreational property or the common elements of a condominium when subject to a lease between the developer or owner thereof and the condominium association in its own right or as agent for the owners of individual condominium units or the owners of individual condominium units. However, only the lease payments on such property shall be exempt from the tax imposed by this chapter, and any other use made by the owner or the condominium association shall be fully taxable under this chapter.

5. A public or private street or right-of-way and poles, conduits, fixtures, and similar improvements located on such streets or rights-of-way, occupied or used by a utility or franchised cable television company for utility or communications or television purposes. For purposes of this subparagraph, the term "utility" means any person providing utility services as defined in s. 203.012. This exception also applies to property, excluding buildings, wherever located, on which antennas, cables, adjacent accessory structures, or adjacent accessory equipment used in the provision of cellular, enhanced specialized mobile radio, or personal communications services are placed.

6. A public street or road which is used for transportation purposes.

7. Property used at an airport exclusively for the purpose of aircraft landing or aircraft taxiing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling

1 aircraft.
2 8.a. Property used at a port authority, as defined in
3 s. 315.02(2), exclusively for the purpose of oceangoing
4 vessels or tugs docking, or such vessels mooring on property
5 used by a port authority for the purpose of loading or
6 unloading passengers or cargo onto or from such a vessel, or
7 property used at a port authority for fueling such vessels, or
8 to the extent that the amount paid for the use of any property
9 at the port is based on the charge for the amount of tonnage
10 actually imported or exported through the port by a tenant.
11 b. The amount charged for the use of any property at
12 the port in excess of the amount charged for tonnage actually
13 imported or exported shall remain subject to tax except as
14 provided in sub-subparagraph a.
15 9. Property used as an integral part of the
16 performance of qualified production services. As used in this
17 subparagraph, the term "qualified production services" means
18 any activity or service performed directly in connection with
19 the production of a qualified motion picture, as defined in s.
20 212.06(1)(b), and includes:
21 a. Photography, sound and recording, casting, location
22 managing and scouting, shooting, creation of special and
23 optical effects, animation, adaptation (language, media,
24 electronic, or otherwise), technological modifications,
25 computer graphics, set and stage support (such as
26 electricians, lighting designers and operators, greensmen,
27 prop managers and assistants, and grips), wardrobe (design,
28 preparation, and management), hair and makeup (design,
29 production, and application), performing (such as acting,
30 dancing, and playing), designing and executing stunts,
31 coaching, consulting, writing, scoring, composing,

1 choreographing, script supervising, directing, producing,
2 transmitting dailies, dubbing, mixing, editing, cutting,
3 looping, printing, processing, duplicating, storing, and
4 distributing;
5 b. The design, planning, engineering, construction,
6 alteration, repair, and maintenance of real or personal
7 property including stages, sets, props, models, paintings, and
8 facilities principally required for the performance of those
9 services listed in sub-subparagraph a.; and
10 c. Property management services directly related to
11 property used in connection with the services described in
12 sub-subparagraphs a. and b.
13 10. Leased, subleased, licensed, or rented to a person
14 providing food and drink concessionaire services within the
15 premises of a convention hall, exhibition hall, auditorium,
16 stadium, theater, arena, civic center, performing arts center,
17 publicly owned recreational facility, or any business operated
18 under a permit issued pursuant to chapter 550. A person
19 providing retail concessionaire services involving the sale of
20 food and drink or other tangible personal property within the
21 premises of an airport shall be subject to tax on the rental
22 of real property used for that purpose, but shall not be
23 subject to the tax on any license to use the property. For
24 purposes of this subparagraph, the term "sale" shall not
25 include the leasing of tangible personal property.
26 11. Property occupied pursuant to an instrument
27 calling for payments which the department has declared, in a
28 Technical Assistance Advisement issued on or before March 15,
29 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),
30 Florida Administrative Code; provided that this subparagraph
31 shall only apply to property occupied by the same person

1 before and after the execution of the subject instrument and
2 only to those payments made pursuant to such instrument,
3 exclusive of renewals and extensions thereof occurring after
4 March 15, 1993.
5 (3) The tax imposed by this section shall be in
6 addition to the total amount of the rental or license fee,
7 shall be charged by the lessor or person receiving the rent or
8 payment in and by a rental or license fee arrangement with the
9 lessee or person paying the rental or license fee, and shall
10 be due and payable at the time of the receipt of such rental
11 or license fee payment by the lessor or other person who
12 receives the rental or payment. The owner, lessor, or person
13 receiving the rent or license fee shall remit the tax to the
14 department at the times and in the manner hereinafter provided
15 for dealers to remit taxes under this chapter. The same
16 duties imposed by this chapter upon dealers in tangible
17 personal property respecting the collection and remission of
18 the tax; the making of returns; the keeping of books, records,
19 and accounts; and the compliance with the rules and
20 regulations of the department in the administration of this
21 chapter shall apply to and be binding upon all persons who
22 manage any leases or operate real property, hotels, apartment
23 houses, roominghouses, or tourist and trailer camps and all
24 persons who collect or receive rents or license fees taxable
25 under this chapter on behalf of owners or lessors.
26 Section 4. Effective July 1, 2008 ~~2006~~, paragraph (b)
27 of subsection (1), paragraph (a) of subsection (2), and
28 subsection (3) of section 212.04, Florida Statutes, as amended
29 by this act, are amended to read:
30 212.04 Admissions tax; rate, procedure, enforcement.--
31 (1)

1 (b) For the exercise of such privilege, a tax is
2 levied at the rate of 6 percent of sales price, or the actual
3 value received from such admissions, which 6 percent shall be
4 added to and collected with all such admissions from the
5 purchaser thereof, and such tax shall be paid for the exercise
6 of the privilege as defined in the preceding paragraph. Each
7 ticket must show on its face the actual sales price of the
8 admission, or each dealer selling the admission must
9 prominently display at the box office or other place where the
10 admission charge is made a notice disclosing the price of the
11 admission, and the tax shall be computed and collected on the
12 basis of the actual price of the admission charged by the
13 dealer. The sale price or actual value of admission shall,
14 for the purpose of this chapter, be that price remaining after
15 deduction of federal taxes, if any, imposed upon such
16 admission, and, the rate of tax on each admission shall be
17 according to the brackets established by s. 212.12(9).
18 (2)(a)1. No tax shall be levied on admissions to
19 athletic or other events sponsored by elementary schools,
20 junior high schools, middle schools, high schools, community
21 colleges, public or private colleges and universities, deaf
22 and blind schools, facilities of the youth services programs
23 of the Department of Children and Family Services, and state
24 correctional institutions when only student, faculty, or
25 inmate talent is used. However, this exemption shall not apply
26 to admission to athletic events sponsored by an institution
27 within the State University System, and the proceeds of the
28 tax collected on such admissions shall be retained and used by
29 each institution to support women's athletics as provided in
30 s. 240.533(3)(c).
31 2.a. No tax shall be levied on dues, membership fees,

1 and admission charges imposed by not-for-profit sponsoring
2 organizations. To receive this exemption, the sponsoring
3 organization must qualify as a not-for-profit entity under the
4 provisions of s. 501(c)(3) of the Internal Revenue Code of
5 1954, as amended.
6 b. No tax imposed by this section and not actually
7 collected before August 1, 1992, shall be due from any museum
8 or historic building owned by any political subdivision of the
9 state.
10 3. No tax shall be levied on an admission paid by a
11 student, or on the student's behalf, to any required place of
12 sport or recreation if the student's participation in the
13 sport or recreational activity is required as a part of a
14 program or activity sponsored by, and under the jurisdiction
15 of, the student's educational institution, provided his or her
16 attendance is as a participant and not as a spectator.
17 4. No tax shall be levied on admissions to the
18 National Football League championship game, on admissions to
19 any semifinal game or championship game of a national
20 collegiate tournament, or on admissions to a Major League
21 Baseball all-star game.
22 5. A participation fee or sponsorship fee imposed by a
23 governmental entity as described in s. 212.08(6) for an
24 athletic or recreational program is exempt when the
25 governmental entity by itself, or in conjunction with an
26 organization exempt under s. 501(c)(3) of the Internal Revenue
27 Code of 1954, as amended, sponsors, administers, plans,
28 supervises, directs, and controls the athletic or recreational
29 program.
30 6. Also exempt from the tax imposed by this section to
31 the extent provided in this subparagraph are admissions to

1 live theater, live opera, or live ballet productions in this
2 state which are sponsored by an organization that has received
3 a determination from the Internal Revenue Service that the
4 organization is exempt from federal income tax under s.
5 501(c)(3) of the Internal Revenue Code of 1954, as amended, if
6 the organization actively participates in planning and
7 conducting the event, is responsible for the safety and
8 success of the event, is organized for the purpose of
9 sponsoring live theater, live opera, or live ballet
10 productions in this state, has more than 10,000 subscribing
11 members and has among the stated purposes in its charter the
12 promotion of arts education in the communities which it
13 serves, and will receive at least 20 percent of the net
14 profits, if any, of the events which the organization sponsors
15 and will bear the risk of at least 20 percent of the losses,
16 if any, from the events which it sponsors if the organization
17 employs other persons as agents to provide services in
18 connection with a sponsored event. Prior to March 1 of each
19 year, such organization may apply to the department for a
20 certificate of exemption for admissions to such events
21 sponsored in this state by the organization during the
22 immediately following state fiscal year. The application shall
23 state the total dollar amount of admissions receipts collected
24 by the organization or its agents from such events in this
25 state sponsored by the organization or its agents in the year
26 immediately preceding the year in which the organization
27 applies for the exemption. Such organization shall receive the
28 exemption only to the extent of $1.5 million multiplied by the
29 ratio that such receipts bear to the total of such receipts of
30 all organizations applying for the exemption in such year;
31 however, in no event shall such exemption granted to any

1 organization exceed 6 percent of such admissions receipts
2 collected by the organization or its agents in the year
3 immediately preceding the year in which the organization
4 applies for the exemption. Each organization receiving the
5 exemption shall report each month to the department the total
6 admissions receipts collected from such events sponsored by
7 the organization during the preceding month and shall remit to
8 the department an amount equal to 6 percent of such receipts
9 reduced by any amount remaining under the exemption. Tickets
10 for such events sold by such organizations shall not reflect
11 the tax otherwise imposed under this section.
12 7. Also exempt from the tax imposed by this section
13 are entry fees for participation in freshwater fishing
14 tournaments.
15 8. Also exempt from the tax imposed by this section
16 are participation or entry fees charged to participants in a
17 game, race, or other sport or recreational event if spectators
18 are charged a taxable admission to such event.
19 9. No tax shall be levied on admissions to any
20 postseason collegiate football game sanctioned by the National
21 Collegiate Athletic Association.
22 (3) Such taxes shall be paid and remitted at the same
23 time and in the same manner as provided for remitting taxes on
24 sales of tangible personal property, as hereinafter provided.
25
26 (Redesignate subsequent sections.)
27
28
29 ========== T I T L E A M E N D M E N T ==========
30 And the title is amended as follows:
31 On page 2, line 2, after the semicolon,

1 insert:
2 amending ss. 2 and 3, ch. 2000-345, Laws of
3 Florida, as amended; extending for 2 years a
4 tax exemption provided for certain real
5 property that is rented, leased, subleased, or
6 licensed to a concessionaire; providing
7 requirements for collecting the tax imposed on
8 certain rentals, leases, or licenses; providing
9 requirements for determining the sale price or
10 actual value of certain ticket sales; extending
11 for 2 years a tax exemption provided for
12 certain admission charges; providing
13 requirements for collecting the tax on certain
14 admissions;
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Bill No. SB 2218

Amendment No. ___ 440338

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 1:38 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 and 28,

insert:

Section 10. Effective July 1, 2004, paragraph (a) of subsection (13) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency telephone number "911."--

(13) "911" FEE.--

(a) Following approval by referendum as set forth in paragraph (b), or following approval by a majority vote of its board of county commissioners, a county may impose a "911" fee to be paid by the local exchange subscribers within its boundaries served by the "911" service. Proceeds from the "911" fee shall be used only for "911" expenditures as set forth in subparagraph 6. The manner of imposing and collecting said payment shall be as follows:

1. At the request of the county subscribing to "911" service, the telephone company shall, insofar as is

1 practicable, bill the "911" fee to the local exchange
2 subscribers served by the "911" service, on an individual
3 access line basis, at a rate not to exceed 50 cents per month
4 per line (up to a maximum of 25 access lines per account bill
5 rendered). However, the fee may not be assessed on any pay
6 telephone in this state. A county collecting the fee for the
7 first time may collect the fee for no longer than 36 months
8 without initiating the acquisition of its "911" equipment.
9 2. Fees collected by the telephone company pursuant to
10 subparagraph 1. shall be returned to the county, less the
11 costs of administration retained pursuant to paragraph (c).
12 The county shall provide a minimum of 90 days' written notice
13 to the telephone company prior to the collection of any "911"
14 fees.
15 3. Any county that currently has an operational "911"
16 system or that is actively pursuing the implementation of a
17 "911" system shall establish a fund to be used exclusively for
18 receipt and expenditure of "911" fee revenues collected
19 pursuant to this section. All fees placed in said fund, and
20 any interest accrued thereupon, shall be used solely for "911"
21 costs described in subparagraph 6. The money collected and
22 interest earned in this fund shall be appropriated for "911"
23 purposes by the county commissioners and incorporated into the
24 annual county budget. Such fund shall be included within the
25 financial audit performed in accordance with s. 218.39. A
26 report of the audit shall be forwarded to the office within 60
27 days of its completion. A county may carry forward on an
28 annual basis unspent moneys in the fund for expenditures
29 allowed by this section, or it may reduce its fee. However, in
30 no event shall a county carry forward more than 10 percent of
31 the "911" fee billed for the prior year. The amount of moneys

1 carried forward each year may be accumulated in order to allow
2 for capital improvements described in this subsection. The
3 carryover shall be documented by resolution of the board of
4 county commissioners expressing the purpose of the carryover
5 or by an adopted capital improvement program identifying
6 projected expansion or replacement expenditures for "911"
7 equipment and service features, or both. In no event shall the
8 "911" fee carryover surplus moneys be used for any purpose
9 other than for the "911" equipment, service features, and
10 installation charges authorized in subparagraph 6. Nothing in
11 this section shall prohibit a county from using other sources
12 of revenue for improvements, replacements, or expansions of
13 its "911" system. A county may increase its fee for purposes
14 authorized in this section. However, in no case shall the fee
15 exceed 50 cents per month per line. All current "911" fees
16 shall be reported to the office within 30 days of the start of
17 each county's fiscal period. Any fee adjustment made by a
18 county shall be reported to the office. A county shall give
19 the telephone company a 90-day written notice of such fee
20 adjustment.
21 4. The telephone company shall have no obligation to
22 take any legal action to enforce collection of the "911" fee.
23 The telephone company shall provide quarterly to the county a
24 list of the names, addresses, and telephone numbers of any and
25 all subscribers who have identified to the telephone company
26 their refusal to pay the "911" fee.
27 5. The county subscribing to "911" service shall
28 remain liable to the telephone company for any "911" service,
29 equipment, operation, or maintenance charge owed by the county
30 to the telephone company.
31

1 As used in this paragraph, "telephone company" means an
2 exchange telephone service provider of "911" service or
3 equipment to any county within its certificated area.
4 6. It is the intent of the Legislature that the "911"
5 fee authorized by this section to be imposed by counties will
6 not necessarily provide the total funding required for
7 establishing or providing the "911" service. For purposes of
8 this section, "911" service includes the functions of database
9 management, call taking, location verification, and call
10 transfer. The following costs directly attributable to the
11 establishment and/or provision of "911" service are eligible
12 for expenditure of moneys derived from imposition of the "911"
13 fee authorized by this section: the acquisition,
14 implementation, and maintenance of Public Safety Answering
15 Point (PSAP) equipment and "911" service features, as defined
16 in the Florida Public Service Commission's lawfully approved
17 "911" and related tariffs and/or the acquisition,
18 installation, and maintenance of other "911" equipment,
19 including call answering equipment, call transfer equipment,
20 ANI controllers, ALI controllers, ANI displays, ALI displays,
21 station instruments, "911" telecommunications systems,
22 teleprinters, logging recorders, instant playback recorders,
23 telephone devices for the deaf (TDD) used in the "911" system,
24 PSAP backup power systems, consoles, automatic call
25 distributors, and interfaces (hardware and software) for
26 computer-aided dispatch (CAD) systems; salary and associated
27 expenses for "911" call takers for that portion of their time
28 spent taking and transferring "911" calls; salary and
29 associated expenses for a county to employ a full-time
30 equivalent "911" coordinator position and a full-time
31 equivalent staff assistant position per county for the portion

1 of their time spent administrating the "911" system; training
2 costs for PSAP call takers in the proper methods and
3 techniques used in taking and transferring "911" calls;
4 expenses required to develop and maintain all information (ALI
5 and ANI databases and other information source repositories)
6 necessary to properly inform call takers as to location
7 address, type of emergency, and other information directly
8 relevant to the "911" call-taking and transferring function;
9 and, in a county defined in s. 125.011(1), such expenses
10 related to a nonemergency "311" system, or similar
11 nonemergency system, which improves the overall efficiency of
12 an existing "911" system or reduces "911" emergency response
13 time for a ~~2-year~~ pilot project that ends June 30, 2009 ~~June~~
14 ~~30,-2003~~. However, no wireless telephone service provider
15 shall be required to participate in this pilot project or to
16 otherwise implement a nonemergency "311" system or similar
17 nonemergency system. The "911" fee revenues shall not be used
18 to pay for any item not listed, including, but not limited to,
19 any capital or operational costs for emergency responses which
20 occur after the call transfer to the responding public safety
21 entity and the costs for constructing buildings, leasing
22 buildings, maintaining buildings, or renovating buildings,
23 except for those building modifications necessary to maintain
24 the security and environmental integrity of the PSAP and "911"
25 equipment rooms.
26 7. It is the goal of the Legislature that enhanced
27 "911" service be available throughout the state. Expenditure
28 by counties of the "911" fees authorized by this section
29 should support this goal to the greatest extent feasible
30 within the context of local service needs and fiscal
31 capability. Nothing in this section shall be construed to

1 prohibit two or more counties from establishing a combined
2 emergency "911" telephone service by interlocal agreement and
3 utilizing the "911" fees authorized by this section for such
4 combined "911" service.
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7 ========== T I T L E A M E N D M E N T ==========
8 And the title is amended as follows:
9 On page 2, line 2, after the semicolon,
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11 insert:
12 amending s. 365.171, F.S.; continuing the
13 authorization for certain counties to expend
14 moneys derived from the "911" fee for
15 nonemergency telecommunications; deleting the
16 limitation imposed under a pilot project;
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Bill No. SB 2218

Amendment No. ___

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 1:38 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 & 28,

insert:

Section 10. (1) The taxes levied under sections 202.12(1), 202.19(7), 202.15, and 203.01, Florida Statutes, shall not be levied on the actual cost of operating a substitute communications system, as defined in s. 202.11, Florida Statutes, during the period from the effective date of this act through December 31, 2005.

(2) The Department of Revenue shall not make assessments of tax on the costs of operating a substitute communications system for the period October 1, 2001 through the effective date of this act. No refunds shall be made of any tax that has been remitted to the Department of Revenue on the costs of operating a substitute communications system prior to the effective date of this act.

(3) Notwithstanding the provisions of chapter 120, Florida Statutes, to the contrary, the Department of Revenue

1 may adopt rules to carry out this section.
2
3 (Redesignate subsequent sections.)
4
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6 ========== T I T L E  A M E N D M E N T ==========
7 And the title is amended as follows:
8 On page 2, line 2, after the semicolon ";"
9
10 insert:
11 relating to the tax on communications services
12 levied under s. 202.12, and the tax on
13 communications services levied under s. 202.19,
14 F.S.; providing a short title; specifying the
15 period during which the actual cost of
16 operating a substitute communications system
17 shall be exempt from such taxes; providing for
18 rules by the Department of Revenue;
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Bill No. SB 2218

Amendment No. ___ 542762

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 2 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 and 28,

insert:

Section 10. (1) The Department of Revenue shall serve as the state agency for screening applicants for state funding for a qualified job training organization.

(2) The Department of Revenue shall adopt rules pursuant to sections 120.536(1) and 120.54, Florida Statutes, for the receipt and processing of applications for funding pursuant to subsection (5).

(3) For purposes of this section, the term "qualified job training organization" means an organization that:

(a) Is located in this state.

(b) Is exempt from income taxation under s. 501(c)3 or s. 501(c)4 of the Internal Revenue Code of 1986, as amended.

(c) Specializes in the retail sale of donated items.

(d) Provides job training and employment services to individuals with workplace disadvantages and disabilities.

1 (e) Uses a majority of its revenues for job training
2 and placement programs that create jobs and foster economic
3 development.
4 (4) To be eligible for funding pursuant to subsection
5 (5), an organization must be certified by the Department of
6 Revenue as meeting the criteria specified in subsection (3).
7 Sixty days after certifying an applicant, the Department of
8 Revenue shall begin distributing proceeds to the organization
9 pursuant to subsection (5).
10 (5) The department shall distribute monthly to
11 qualified job training organizations certified as provided in
12 this section an amount equal to the proceeds, as defined in
13 section 212.20(5)(a), Florida Statutes, received and collected
14 in the previous month by the department under the provisions
15 of chapter 212, Florida Statutes, which are generated by a
16 qualified job training organization and remitted on its sales
17 and use tax returns. The total distribution shall not exceed
18 $3 million annually. Distributions shall begin 60 days
19 following certification by the department pursuant to
20 subsection (4) and shall continue for not more than 2 years.
21 Distributions shall be used solely to encourage and provide
22 economic development through capital construction,
23 improvements, or equipment that will result in expanded
24 employment opportunities.
25 (6) After a qualified job training organization is
26 certified, the organization shall use proceeds provided
27 pursuant to subsection (5) solely to encourage and provide
28 economic development through capital construction,
29 improvements, or equipment that will result in expanded
30 employment opportunities.
31 (7) The Department of Revenue may audit a qualified

1 job training organization as provided in section 213.34,
2 Florida Statutes, to verify that the distributions to the
3 organization pursuant to this section have been expended by
4 the organization as required by this section. Such audit
5 information is subject to the confidentiality requirements of
6 chapter 213, Florida Statutes. If the Department of Revenue
7 determines that the distributions have not been expended as
8 required by this section, the department may pursue recovery
9 of such proceeds pursuant to the laws and rules governing the
10 assessment of taxes.
11 (8) Failure to use the proceeds as provided in this
12 section shall be grounds for revoking certification.
13 (9) This section takes effect October 1, 2004, and
14 expires September 30, 2006.
15
16 (Redesignate subsequent sections.)
17
18
19 ========== T I T L E A M E N D M E N T ==========
20 And the title is amended as follows:
21 On page 2, line 2, after the semicolon,
22
23 insert:
24 providing duties and responsibilities of the
25 Department of Revenue relating to providing
26 funding to qualified job training
27 organizations; providing a definition;
28 providing for department certification of an
29 organization as a qualified job training
30 organization; providing for distribution of
31 certain funds to a certified organization;

specifying uses of distributed funds;

9

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2302

SPONSOR: Senator Haridopolis

SUBJECT: Tax/Substitute Communications

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Caldwell | Caldwell | CU | Favorable |
| 2. | Fournier | Johansen | CP | |
| 3. | | | FT | |
| 4. | | | AGG | |
| 5. | | | AP | |
| 6. | | | | |

## I. Summary:

The bill amends chapter 202, Florida Statutes, which imposes a communications services tax (CST) on, among other services, the actual cost of operating a substitute communications system in the state of Florida. This bill repeals the tax on substitute systems.

This bill amends or repeals the following sections of the Florida Statutes: 202.11, 202.12, 202.16, 202.17, 202.18, 202.19, and 202.15.

## II. Present Situation:

In 1985, the Legislature added a substitute telephone or telecommunication system to the list of services subject to gross receipts and sales tax. At that time, most of the communications services available today did not exist. Ch. 85-174, Laws of Florida, provided:

> Any person who purchases, installs, rents, or leases a telephone system or telecommunications system for his own use to provide himself with telephone service or telecommunication service which is wholly or partially independent of any local telephone system or any intrastate or interstate interexchange network or which is a substitute for any telephone company switched service or a substitute for any dedicated facility by which a telephone company provides a communications path is exercising a taxable privilege. . . .

The Legislature substantially rewrote Florida's communications tax law in the 2000 Regular Session. Chapter 202, Florida Statutes, creates the Communications Services Tax Simplification Law (CST) which became effective January 1, 2002. Communications services are now subject to a uniform statewide tax rate and a local tax administered by the Department of Revenue

(DOR). While many issues were addressed in the rewrite, substitute communications systems were not, except to change the term "telephone service or telecommunication service" to the conforming term "communications service." Presently, the term "substitute communications system" is defined in s. 202.11(16), F.S., to mean:

> Any telephone system, or other system capable of providing communications services, which a person purchases, installs, rents or leases for his or her own use to provide himself or herself with services used as a substitute for any switched service or dedicated facility by which a dealer of communications services provides a communication path.

The intent of taxing substitute telephone service or telecommunications services was to provide equal tax treatment on an in-house telephone system and telephone service purchased from a commercial provider. Today, there is uncertainty as to the proper interpretation of a "substitute communications system."

To address that uncertainty, the DOR issued a draft rule, 12A-19.036 on substitute communications systems to initiate discussion of this issue. A public workshop was held on August 1, 2003. At the workshop, many members of the business community expressed concern that the DOR's interpretation of the term was too broad. The department has not taken further steps in the rulemaking process for this rule. Examples of taxable substitute communications services from the rule include:

- A telephone system with switching and routing capabilities allowing for intercom and other self-contained communications at the taxpayer's facility.
- A computer local area network (LAN) system that uses a router to provide switching capabilities necessary to connect the multiple computers used by the taxpayer's employees.
- A wireless dispatch system that transmits and switches voice or data signals to provide a communications path between and among remote receivers and a central base station.
- Telephone transmission and receiving equipment located at various sites where the owner does business which include a tower for the purpose of providing communications services between those sites in lieu of using a local exchange provider and long distance provider.
- A system to transmit, route, and switch data to permit monitoring the activities and operations of manufacturing equipment, pipelines, rail systems, or utilities.
- A small business with five computers each connected to a central router that allows the computers to share printers, files and documents, and other business related activities.
- A two-way mobile radio system that includes a base station, central tower used for signal switching, and several mobile radio units and for which the company does not buy airtime or switching services from a provider.

DOR states that each of these examples fit the definition of a substitute communications system. (Home users of local area networks would not be taxable since the tax liability is based on

depreciation and allocation of other business costs not typically incurred in residential households.)

Generally, sales tax and the CST attempt to create an equal tax situation between a business that buys its goods or services from another and businesses that create the goods or services in-house. Taxing substitutes is generally viewed as a tax fairness issue rather than simply a way to raise additional revenue. According to the DOR, however, defining and valuing a substitute communications service is more difficult than defining and valuing a service that is purchased from another entity.

The substitute communications concept has long been in statute, but has not been defined or examined in light of the switch to a tax on communications services. DOR reports approximately 10 companies presently pay taxes for substitute communications systems. DOR states it has not actively enforced the measure, but at the request of local governments, it will ultimately have to implement and enforce taxation of substitute communications systems.

## III. Effect of Proposed Changes:

Section 1 amends s. 202.11, F.S., by deleting definitions of the terms "Actual cost of operating a substitute communications system" and "Substitute communications system."

Section 2 amends s. 202.12, F.S., by deleting references to the tax rate used in calculating communications services on the actual cost of operating a substitute communications system.

Section 3 amends s. 202.16, F.S., by deleting the exception reference for the collection and remittance of communications services tax for substitute communications systems.

Section 4 amends. s. 202.17, F.S., by deleting the exception reference for the issuance of annual communications services tax resale certificates by DOR to persons registered as users of substitute communications systems.

Section 5 amends s. 202.18, F.S., by deleting the requirement for the distribution of communications services tax proceeds collected from substitute communications systems.

Section 6 amends s. 202.19, F.S., by deleting the authorization for the imposition of the local communications services tax by a local government on the actual cost of operating a substitute communications system.

Section 7 repeals s. 202.15, F. S. relating to a special rules for users of substitute communications systems.

Section 8 provides the act shall take effect upon becoming law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

According to DOR, approximately $300,000 of revenue is currently collected, which will not be collected if this bill passes. The loss will be split among PECO, General Revenue, and local revenue.

If the provisions are not repealed and DOR adopts and enforces rules that broaden the definition of what is considered a substitute communications system, it is unknown how much additional taxes would be collected, but it could be a very large amount.

B. Private Sector Impact:

If the provisions are repealed, approximately ten businesses will no longer be required to pay approximately $300,000 in substitute communications systems taxes.

If the provisions are not repealed, the amount of additional taxes due and who they will be assessed against cannot be determined until the term "substitute communications systems" is defined.

C. Government Sector Impact:

According to DOR, approximately $300,000 of revenue is currently collected, which will not be collected if this bill passes. The loss will be split among PECO, General Revenue, and local revenue.

If the provisions are not repealed and DOR adopts and enforces rules that broaden the definition of what is considered a substitute communications system, it is unknown how much additional taxes would be collected, but it could be a very large amount.

## VI. Technical Deficiencies:

According to DOR, s. 203.01(1)(a)2., F.S., imposes a gross receipts tax on the retail sale of communications services in Florida and on the actual cost of operating a substitute communications system in Florida. The bill does not delete the authorization to impose the gross receipts tax on the actual cost of operating a substitute communications system.

The bill proposes that the act shall take effect upon becoming law. This means that DOR would need to administer and enforce this tax for the period October 1, 2001, through the effective date of the act becoming law. DOR states that such enforcement is problematic. Therefore, DOR

proposes a retroactive repeal of this tax effective October 1, 2001, and that any such repeal would not create a right to a refund of any previously paid tax on substitute communications systems.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 2302

Amendment No. ___ 285520

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 11 am

Senator Posey moved the following amendment:

**Senate Amendment (with title amendment)**

On page 1, line 20, delete everything after the enacting clause

and insert:

Section 1. This act may be cited as the "Florida Substitute Communications Systems Tax Relief Act."

Section 2. (1) The taxes levied under sections 202.12(1), 202.19(7), 202.15, and 203.01, Florida Statutes, shall not be levied on the actual cost of operating a substitute communications system, as defined in s. 202.11, Florida Statutes, during the period from the effective date of this act through December 31, 2005.

(2) The Department of Revenue shall not make assessments of tax on the costs of operating a substitute communications system for the period October 1, 2001 through the effective date of this act. No refunds shall be made of any tax that has been remitted to the Department of Revenue on the costs of operating a substitute communications system

1 prior to the effective date of this act.
2 (3) Notwithstanding the provisions of chapter 120,
3 Florida Statutes, to the contrary, the Department of Revenue
4 may adopt rules to carry out this section.
5 Section 3. This act shall take effect upon becoming a
6 law.
7
8
9 ========== T I T L E A M E N D M E N T ==========
10 And the title is amended as follows:
11 On page 1, delete everything before the enacting clause
12
13 and insert:
14 An act relating to the tax on gross receipts
15 for utility and communications services, the
16 tax on communications services levied under s.
17 202.12, and the tax on communications services
18 levied under s. 202.19, F.S.; providing a short
19 title; specifying the period during which the
20 actual cost of operating a substitute
21 communications system shall be exempt from such
22 taxes; providing for rules by the Department of
23 Revenue; providing an effective date.
24
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31

Bill No. SB 2302

Amendment No. ___ 525790

CHAMBER ACTION

Senate | House

Senator Margolis moved the following **amendment to amendment** (285520):

**Senate Amendment (with title amendment)**

On page 2, between lines 4 and 5,

insert:

Section 3. Effective July 1, 2004, paragraph (a) of subsection (13) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency telephone number "911."--

(13) "911" FEE.--

(a) Following approval by referendum as set forth in paragraph (b), or following approval by a majority vote of its board of county commissioners, a county may impose a "911" fee to be paid by the local exchange subscribers within its boundaries served by the "911" service. Proceeds from the "911" fee shall be used only for "911" expenditures as set forth in subparagraph 6. The manner of imposing and collecting said payment shall be as follows:

1. At the request of the county subscribing to "911"

1 service, the telephone company shall, insofar as is
2 practicable, bill the "911" fee to the local exchange
3 subscribers served by the "911" service, on an individual
4 access line basis, at a rate not to exceed 50 cents per month
5 per line (up to a maximum of 25 access lines per account bill
6 rendered). However, the fee may not be assessed on any pay
7 telephone in this state. A county collecting the fee for the
8 first time may collect the fee for no longer than 36 months
9 without initiating the acquisition of its "911" equipment.
10 2. Fees collected by the telephone company pursuant to
11 subparagraph 1. shall be returned to the county, less the
12 costs of administration retained pursuant to paragraph (c).
13 The county shall provide a minimum of 90 days' written notice
14 to the telephone company prior to the collection of any "911"
15 fees.
16 3. Any county that currently has an operational "911"
17 system or that is actively pursuing the implementation of a
18 "911" system shall establish a fund to be used exclusively for
19 receipt and expenditure of "911" fee revenues collected
20 pursuant to this section. All fees placed in said fund, and
21 any interest accrued thereupon, shall be used solely for "911"
22 costs described in subparagraph 6. The money collected and
23 interest earned in this fund shall be appropriated for "911"
24 purposes by the county commissioners and incorporated into the
25 annual county budget. Such fund shall be included within the
26 financial audit performed in accordance with s. 218.39. A
27 report of the audit shall be forwarded to the office within 60
28 days of its completion. A county may carry forward on an
29 annual basis unspent moneys in the fund for expenditures
30 allowed by this section, or it may reduce its fee. However, in
31 no event shall a county carry forward more than 10 percent of

1 the "911" fee billed for the prior year. The amount of moneys
2 carried forward each year may be accumulated in order to allow
3 for capital improvements described in this subsection. The
4 carryover shall be documented by resolution of the board of
5 county commissioners expressing the purpose of the carryover
6 or by an adopted capital improvement program identifying
7 projected expansion or replacement expenditures for "911"
8 equipment and service features, or both. In no event shall the
9 "911" fee carryover surplus moneys be used for any purpose
10 other than for the "911" equipment, service features, and
11 installation charges authorized in subparagraph 6. Nothing in
12 this section shall prohibit a county from using other sources
13 of revenue for improvements, replacements, or expansions of
14 its "911" system. A county may increase its fee for purposes
15 authorized in this section. However, in no case shall the fee
16 exceed 50 cents per month per line. All current "911" fees
17 shall be reported to the office within 30 days of the start of
18 each county's fiscal period. Any fee adjustment made by a
19 county shall be reported to the office. A county shall give
20 the telephone company a 90-day written notice of such fee
21 adjustment.
22 4. The telephone company shall have no obligation to
23 take any legal action to enforce collection of the "911" fee.
24 The telephone company shall provide quarterly to the county a
25 list of the names, addresses, and telephone numbers of any and
26 all subscribers who have identified to the telephone company
27 their refusal to pay the "911" fee.
28 5. The county subscribing to "911" service shall
29 remain liable to the telephone company for any "911" service,
30 equipment, operation, or maintenance charge owed by the county
31 to the telephone company.

1

2 As used in this paragraph, "telephone company" means an
3 exchange telephone service provider of "911" service or
4 equipment to any county within its certificated area.
5 6. It is the intent of the Legislature that the "911"
6 fee authorized by this section to be imposed by counties will
7 not necessarily provide the total funding required for
8 establishing or providing the "911" service. For purposes of
9 this section, "911" service includes the functions of database
10 management, call taking, location verification, and call
11 transfer. The following costs directly attributable to the
12 establishment and/or provision of "911" service are eligible
13 for expenditure of moneys derived from imposition of the "911"
14 fee authorized by this section: the acquisition,
15 implementation, and maintenance of Public Safety Answering
16 Point (PSAP) equipment and "911" service features, as defined
17 in the Florida Public Service Commission's lawfully approved
18 "911" and related tariffs and/or the acquisition,
19 installation, and maintenance of other "911" equipment,
20 including call answering equipment, call transfer equipment,
21 ANI controllers, ALI controllers, ANI displays, ALI displays,
22 station instruments, "911" telecommunications systems,
23 teleprinters, logging recorders, instant playback recorders,
24 telephone devices for the deaf (TDD) used in the "911" system,
25 PSAP backup power systems, consoles, automatic call
26 distributors, and interfaces (hardware and software) for
27 computer-aided dispatch (CAD) systems; salary and associated
28 expenses for "911" call takers for that portion of their time
29 spent taking and transferring "911" calls; salary and
30 associated expenses for a county to employ a full-time
31 equivalent "911" coordinator position and a full-time

1 equivalent staff assistant position per county for the portion
2 of their time spent administrating the "911" system; training
3 costs for PSAP call takers in the proper methods and
4 techniques used in taking and transferring "911" calls;
5 expenses required to develop and maintain all information (ALI
6 and ANI databases and other information source repositories)
7 necessary to properly inform call takers as to location
8 address, type of emergency, and other information directly
9 relevant to the "911" call-taking and transferring function;
10 and, in a county defined in s. 125.011(1), such expenses
11 related to a nonemergency "311" system, or similar
12 nonemergency system, which improves the overall efficiency of
13 an existing "911" system or reduces "911" emergency response
14 time for a ~~2-year~~ pilot project that ends June 30, 2009 ~~June~~
15 ~~30,-2003~~. However, no wireless telephone service provider
16 shall be required to participate in this pilot project or to
17 otherwise implement a nonemergency "311" system or similar
18 nonemergency system. The "911" fee revenues shall not be used
19 to pay for any item not listed, including, but not limited to,
20 any capital or operational costs for emergency responses which
21 occur after the call transfer to the responding public safety
22 entity and the costs for constructing buildings, leasing
23 buildings, maintaining buildings, or renovating buildings,
24 except for those building modifications necessary to maintain
25 the security and environmental integrity of the PSAP and "911"
26 equipment rooms.
27 7. It is the goal of the Legislature that enhanced
28 "911" service be available throughout the state. Expenditure
29 by counties of the "911" fees authorized by this section
30 should support this goal to the greatest extent feasible
31 within the context of local service needs and fiscal

capability. Nothing in this section shall be construed to prohibit two or more counties from establishing a combined emergency "911" telephone service by interlocal agreement and utilizing the "911" fees authorized by this section for such combined "911" service.

(Redesignate subsequent sections.)

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

And the title is amended as follows:

On page 2, lines 14-18, delete those lines

and insert:

An act relating to tax administration; amending s. 365.171, F.S.; continuing the authorization for certain counties to expend moneys derived from the "911" fee for nonemergency telecommunications; deleting the limitation imposed under a pilot project; providing a short

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2420

SPONSOR: Senator Campbell

SUBJECT: Senior's Services

DATE: April 16, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Cooper | Yeatman | CP | Favorable |
| 2. | Keating MK | Johansen | FT | |
| 3. | | | AP | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

This bill authorizes counties to create, by ordinance, an independent special district to provide funding for seniors' services throughout the county. Upon approval by the electors in the county, the district may annually levy ad valorem taxes, not to exceed 0.5 mills. In addition, the bill:

- provides for an appointed district governing board;
- specifies the powers and functions of the governing board;
- requires each governing board to identify and assess the needs of the seniors in the county served by the district and to provide an annual report and budget;
- requires the governing board to prepare and file a financial report with the governing body of the county;
- provides that a district may be dissolved by a special act of the Legislature or by ordinance by the governing body of the county; and
- authorizes the creation of dependent special districts under certain circumstances.

This bill creates a new unspecified section of Florida Law.

## II. Present Situation:

**Special Districts in Florida**

The Florida Constitution specifically provides for four types of local governments: counties; school districts, municipalities, and special districts. The 67 counties are subdivisions of the state, providing a variety of core services through constitutional officers (county commissioners, sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the court) pursuant

to authority granted in the constitution and consistent with general law.[1] The 67 school districts are coterminous with the boundaries of the county, and are responsible to operate, control and supervise all free public schools within the district.[2] The 408 municipalities exist pursuant to charters established by law and approved by the electorate in a referendum. They possess "home rule" authority to provide traditional municipal services, to the extent consistent with their charters and not inconsistent with general law.[3] The State Constitution limits the property taxing authority of these forms of local government to 10 mills on the assessed value of real estate and tangible personal property in each jurisdiction, respectively.[4]

Special districts have been a part of Florida's history for a long time. In 1822, Florida was governed by a territorial council and one of the first session laws created a special district for establishing and maintaining public roads. Special districts are limited-purpose units of local government. Their property tax millage is limited by law and subject to referendum approval by the affected electorate.[5] Special Districts are subject to the same restrictions on credit,[6] bonding,[7] employment (civil service),[8] elections,[9] public records and meetings,[10] as are counties, school districts, and municipalities. Special districts may also receive state aid, like counties, school districts, and municipalities.[11]

According to the Special District Information Office (SDIO) of the Department of Community Affairs, there are 1,202 special districts in Florida.[12] These districts provide a variety of governmental services pertaining to airports; the arts; beach restoration; children's services; community development; conservation; emergency medical services; environmental protection; expressways and bridges; fire control and rescue; health care; housing; juvenile welfare; libraries; mosquito control; navigation; neighborhood improvement; ports; recreation and parks; soil and water conservation; transportation; water control and supply; and water and sewer services.

Chapter 189, F.S., the Uniform Special District Act of 1989, generally governs the creation and operation of special districts in the state. It also establishes procedures and limitations on the election of district officers, levy of ad valorem taxes and special assessments, bonding of district revenues, budgeting, and reporting requirements.

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[1] Section 1, Art. VIII of the State Constitution.
[2] Section 4(a), Art. IX of the State Constitution.
[3] Section 2, Art. VIII of the State Constitution.
[4] Section 9, Art. VII of the State Constitution.
[5] Section 9, Art. VII of the State Constitution.
[6] Section 10, Art. VII of the State Constitution.
[7] Section 12, Art. VII of the State Constitution.
[8] Section 14, Art. III of the State Constitution.
[9] Section 6, Art. VI of the State Constitution.
[10] Section 24, Art. I of the State Constitution.
[11] Section 8, Art. VII of the State Constitution.
[12] Of this total, 1139 are single-county special districts, and 63 are multiple-county special districts. http://www.floridaspecialdistricts.org/OfficialList/numbr_of.asp 3/13/04

Section 189.403(1), F.S., defines a special district as:

> "...a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers..." The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

Special districts are further delineated as "independent" and "dependent" special districts. Dependent special districts are defined in subsection (2) as a special district that meets at least one of the following criteria:

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

According to the SDIO, there are 551 dependent special districts in the state.[13] These districts are components of county or municipal governments, created by ordinance or special act of the Legislature. As such, these districts are accountable to the respective county or municipal government. If the district levies ad valorem taxes, such taxes are subject to the constitutional millage limitation for the respective jurisdiction.

An independent special district is defined in subsection (3) as "...a special district that is not a dependent special district as defined in subsection (2)." Furthermore, a district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality. According to the SDIO, there are 651 independent special districts in the state.[14]

Section 189.404, F.S., sets forth the legislative intent for creating independent special districts. Subsection (3) requires that general laws or special acts that create or authorize the creation of an independent special district must address the following in their charters:

- The purpose of the district;
- The powers, functions, and duties of the district regarding ad valorem taxation, bond issuance, other revenue-raising capabilities, budget preparation and approval, liens and

[13] Ibid.
[14] Ibid.

foreclosure of liens, use of tax deeds and tax certificates as appropriate for non-ad valorem assessments, and contractual agreements;
- The methods for establishing the district;
- The method for amending the charter of the district;
- The membership and organization of the governing board of the district;
- The maximum compensation of a governing board member;
- The administrative duties of the governing board of the district;
- The applicable financial disclosure, noticing, and reporting requirements;
- If a district has authority to issue bonds, the procedures and requirements for issuing bonds;
- The procedures for conducting any district elections or referenda required and the qualifications of an elector of the district;
- The methods for financing the district;
- If an independent special district has the authority to levy ad valorem taxes, the millage rate that is authorized;
- The method or methods for collecting non-ad valorem assessments, fees, or service charges;
- Planning requirements; and
- Geographic boundary limitations.

Subsection (4) of s. 189.404, F.S., provides that except as otherwise authorized by general law, only the Legislature may create independent special districts. However,

- A municipality may create Community Development Districts established by ordinance in accordance with s. 190.005, F.S., or as otherwise authorized in general law;
- A county may create Children's Services Districts (pursuant to s. 125.901, F.S.), Health Care Districts (pursuant to s. 154.331, F.S.), County Hospital Districts, (pursuant to ch. 155, F.S.), or Community Development Districts (pursuant to s. 190.055, F.S.), or as otherwise authorized by general law;
- The Governor and Cabinet may create Community Development Districts, established by rule in accordance with s. 190.005, F.S., or as otherwise authorized in general law, and Regional Water Supply Authorities, in accordance with s. 373.1962, F.S., or as otherwise authorized in general law;
- Any combination of two or more counties may create a regional special district for a regional jail, established in accordance with s. 950.001, F.S., or as otherwise authorized in general law;
- Any combination of two or more counties or municipalities may create Regional Water Supply Authorities, established in accordance with s. 373.1962, F.S., or as otherwise authorized by general law; and
- Any combination of two or more counties, municipalities, or other political subdivisions may create regional transportation authorities, in accordance with s. 163.567, F.S., or as otherwise authorized in general law.

**Children's Services District**
Section 125.901, F.S., authorizes counties to create, by ordinance, an independent or dependent special district to provide funding for preventative, developmental, treatment, and rehabilitative

services for children throughout the county. Upon approval by the electors in the county, the district may annually levy ad valorem taxes, not to exceed 0.5 mills. In addition, this section creates an appointed governing board for the special district, specifying the powers and functions of the board; requires each board to identify and assess the needs of the children in the county served by the board and to provide an annual written report to the governing body of the county; requires the board to prepare a budget, and prepare and file a financial report with the governing body of the county; and provides dissolution of the district. According to SDIO, there are 9 Children's Services Districts in Florida.[15]

**Health Care District**
Section 154.331, F.S., authorizes counties to create, by ordinance, an independent or dependent special district to provide funding for indigent and other health and mental health care services throughout the county. Upon approval by the electors in the county, the district may annually levy ad valorem taxes, not to exceed 5 mills. In addition, this section creates an appointed governing board for the special district, specifying the powers and functions of the board; requires the board to prepare a budget, and prepare and file a financial report with the governing body of the county; and provides dissolution of the district. According to SDIO, there are five Health Care Districts in Florida.[16]

## III. Effect of Proposed Changes:

This bill authorizes counties to create, by ordinance, an independent district to provide funding for seniors' services throughout the county. These provisions are modeled on similar statutory provisions for Children's Services Districts and Health Care Districts. A dependent special district may also be created under certain cirmumstances.

**Section 1** authorizes each county to create, by ordinance, an independent special district, as defined in sections 189.403(3) and 200.001(8)(e), F.S.,[17] to provide funding for seniors' services throughout the county. The boundaries of such district are to be coterminous with the boundaries of the county. The county governing body must obtain initial approval, by a majority vote of those electors voting on the question to create the district, to levy ad valorem taxes of up to 0.5 mills. The district is subject to the budget adoption process as provided in s. 200.065, F.S. (TRIM).[18] Once the millage is initially approved by the electorate, the district is not required to seek approval of the electorate in future years to levy the previously approved millage.

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[15] Brevard, Broward, Hillsborough, Martin, Miami-Dade, Okeechobee, Palm Beach, Pinellas, and St. Lucie Counties. http://www.floridaspecialdistricts.org/OfficialList/funct_sa.asp

[16] Hardee, Lake, Madison, Orange, and Palm Beach Counties. http://www.floridaspecialdistricts.org/OfficialList/funct_sa.asp

[17] s. 200.001(8)(e), F.S., defines an independent special district as:

> an independent special district as defined in s. 189.403(3) with the exception of a downtown development authority established prior to the effective date of the 1968 State Constitution as an independent body, either appointed or elected, regardless of whether or not the budget is approved by the local governing body, if the district levies a millage authorized as of the effective date of the 1968 State Constitution. Independent special district millage shall not be levied in excess of a millage amount authorized by general law and approved by vote of the electors pursuant to s. 9(b), Art. VII of the State Constitution, except for those independent special districts levying millage for water management purposes as provided in that section and municipal service taxing units as specified in s. 125.01(1)(q) and (r). However, independent special district millage authorized as of the date the 1968 State Constitution became effective need not be so approved, pursuant to s. 2, Art. XII of the State Constitution.

[18] Chapter 200, F.S., governs the method of fixing property tax millage by local taxing authorities. The "Truth in Millage" (TRIM) guidelines set the method for establishing annual millage rates for local governments, set dates for the required

The governing board of the district is to be a council on seniors' services (which may also be known as an elderly advocacy board or similar name), consisting of 10 members. The membership must include:

- The executive director of the area agency on aging or his or her designee who is a director of senior programs;
- The county director of human services or his or her designee who is a director of elderly services;
- One member of the county governing board;
- One non-voting member of the legislative delegation for the county appointed by the delegation chair; and
- One county representative of the Florida League of Cities.

The executive director of the area agency on aging and his or her designee and the county director of human services and his or her designee are permanent positions, while the members from the county governing board, the legislative delegation, and the Florida League of Cities serve 2-year terms.

The other five members are county residents appointed by the Governor for 4 year terms and must represent, to the greatest extent possible, the cultural diversity of the county's population. A minimum of two of these appointments must be 60 years of age or older. Recommendations for these memberships must be provided by the county governing board, with 3 names submitted for each vacancy, determined by category. The length of the terms of the initial appointees must be adjusted to stagger the terms. The Governor is provided authority to remove a member for cause or upon the written petition of the county governing body.

Paragraph (b) clarifies that this act does not prohibit a county from exercising such power as is provided by general or special law to provide seniors' services or to create a special district to provide such services.

Subsection (2) provides that each council on seniors' services is permitted to:

- Provide and maintain in the county such preventive, developmental, treatment, rehabilitative services, and other services for seniors as the council determines are needed for the general welfare of the county;
- Allocate and provide funds for other agencies in the county which are operated for the benefit of seniors;
- Collect information and statistical data and conduct research that will be helpful to the council and the county in deciding the needs of seniors in the county;
- Consult and coordinate with other agencies dedicated to the welfare of seniors to the end that the overlapping of services will be prevented;

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public budget hearing, specify budget advertising requirements, and regulate other important components of the annual ad valorem tax cycle. Taxing authorities must comply with all aspects of the notice requirements or be required to repeat the hearing and notice process. Noncompliance may subject a taxing authority to forfeit state funds.

- Lease or buy real estate, equipment, and personal property and construct buildings as needed to execute the foregoing powers and functions, except that such purchases may not be made or building done unless paid for with cash on hand or secured by funds deposited in financial institutions (bonding is prohibited); and
- Employ, pay, and provide benefits for any part-time or full-time personnel needed to execute the foregoing powers and functions.

Each council on seniors' services is required to:

- Elect a chair and a vice chair from among its members, and elect other officers as deemed necessary by the council;
- Identify and assess the needs of the seniors in the county served by the council and submit to the governing body of each county a written description of:
    - The activities, services, and opportunities that will be provided to seniors;
    - The anticipated schedule for providing those activities, services, and opportunities;
    - The manner in which seniors will be served;
    - The special outreach efforts that will be undertaken to provide services to at-risk, abused, or neglected seniors;
    - The manner in which the council will seek and provide funding for unmet needs; and
    - The strategy that will be used for interagency coordination to maximize existing human and fiscal resources;
- Provide training and orientation to all new members sufficient to allow them to perform their duties;
- Adopt bylaws and rules; and
- Provide a written report to the governing body of the county by January 1 each year, containing:
    - Information on the effectiveness of activities, services, and programs offered by the council, including cost-effectiveness;
    - A detailed anticipated budget for continuation of activities, services, and programs offered by the council, and a list of all sources of requested funding, both public and private;
    - Procedures used for early identification of at-risk seniors who need additional or continued services and methods for ensuring that the additional or continued services are received;
    - A description of the degree to which the council's objectives and activities are consistent with the goals of this section;
    - Detailed information on the various programs, services, and activities available to participants and the degree to which the programs, services, and activities have been successfully used by seniors; and
    - Information on programs, services, and activities that should be eliminated; programs, services, and activities that should be continued; and programs, services, and activities that should be added to the basic format of the seniors' services council.

The council is required to maintain minutes of each meeting, including a record of all votes cast, and make such minutes available to any interested person. Members of the council serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses.

Subsection (3) provides that the fiscal year of the district shall be the same as that of the county. The district is subject to the budget adoption process as provided in s. 200.065, F.S. (TRIM). The adopted budget and final millage rate must be certified and delivered to the governing body of the county as soon as possible following the council's adoption of the final budget and millage rate. District millage may not exceed 0.5 mills. After the budget of the district is certified and delivered to the governing body of the county, it may not be changed or modified by the governing body of the county or any other authority.

All moneys received by the council on seniors' services must be deposited in qualified public depositories, with separate and distinguishable accounts established specifically for the council and may be withdrawn only by checks signed by the chair of the council and countersigned by one other member of the council on seniors' services or by a chief executive officer authorized by the council. The chair and the other member of the council or chief executive officer who signs its checks must be bonded, with the premium paid by the district.

Funds of the district may not be expended except by check, and except expenditures from a petty cash account, which may not at any time exceed $100. All expenditures from petty cash must be recorded on the books and records of the council on seniors' services. Funds of the council on seniors' services, excepting expenditures from petty cash, may not be expended without prior approval of the council.

The district is required to file quarterly reports with the governing body of the county. The report must identify the total expenditures, receipts, cash on hand, investments, deposits, and the total administrative costs of the district.

Subsection (4) provides that any district may be dissolved by a special act of the Legislature, or by ordinance of the county governing body, subject to the approval of the electorate. If any district is dissolved, each county must first obligate itself to assume the debts, liabilities, contracts, and outstanding obligations of the district within the total millage available to the county governing body. Any district may also be dissolved pursuant to section 189.4042, F.S.[19]

Subsection (5) authorizes the county to assume the funding of the district.

Subsection (6) requires districts to comply with all other statutory requirements of general application which relate to the filing of any financial reports or compliance reports.

Subsection (7) authorizes counties to, by ordinance, create a dependent special district to provide preventive, developmental, treatment, and rehabilitative services for seniors. The district is authorized to seek grants from state, federal, and local agencies and accept donations from public and private sources, if the district complies with district membership and functional requirements proscribe by this act and has a budget approved (or may be vetoed) by the governing body of the

[19] Which provides for the merger or dissolution of dependent and independent special districts.

county. If county charter provisions conflict with the membership requirements of this act, the county is provided specific authority to create the district.

Subsection (8) provides that it is the intent of the Legislature that the funds collected pursuant to this section be used to support improvements in seniors' services and that such funds not be used as a substitute for existing resources or for resources that would otherwise be available for seniors' services.

Subsection (9) provides that two or more councils on seniors' services may enter into a cooperative agreement to share administrative costs, including, but not limited to, staff and office space, if a more efficient or effective operation will result. The cooperative agreement must include provisions on apportioning costs between the councils, keeping separate and distinct financial records for each council, and resolving any conflicts that might arise under the cooperative agreement.

Subsection (10) provides that two or more councils on seniors' services may enter into a cooperative agreement to seek grants, to accept donations, or to jointly fund programs serving multi-county areas. The cooperative agreement must include provisions for the adequate accounting of separate and joint funds.

**Section 2** provides that this act shall take effect upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

This bill authorizes counties to create, by ordinance, an independent special district to provide funding for seniors' services throughout the county. Upon approval by the electors in the county, the district may annually levy ad valorem taxes, not to exceed 0.5 mills. These districts are not authorized to levy non-ad valorem assessments.

### B. Private Sector Impact:

This bill authorizes counties to create, by ordinance, an independent special district to provide funding for seniors' services throughout the county. Upon approval by the electors in the county, the district may annually levy ad valorem taxes, not to exceed 0.5 mills.

To the extent that counties exercise this authority, property owners within the county will be subject to increased ad valorem taxes.

### C. Government Sector Impact:

To the extent counties exercise the authority to establish special districts for seniors' services, such districts will be subject to the requirements of this act.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2442

SPONSOR: Banking and Insurance Committee and Senator Margolis

SUBJECT: Life Insurance and Annuity Contracts; Charitable Organizations

DATE: April 19, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Emrich | Deffenbaugh | BI | Fav/CS |
| 2. | Fournier | Johansen | FT | |
| 3. | | | AGG | |
| 4. | | | AP | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

Insurance companies transacting insurance in Florida are required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR). However, there are exceptions to the requirement to obtain a COA which apply to insurers with respect to certain transactions. Committee Substitute for Senate Bill 2442 would add another exception to the certificate of authority requirement, by allowing an insurer domiciled outside of the United States to operate from offices within Florida for transactions involving life insurance policies and annuity contracts sold to non-residents of the United States, provided the insurer meets specified financial and disclosure requirements. The bill makes the following changes:

- requires such insurers to be authorized insurers in their country of domicile for the prior 3 years, or a wholly owned subsidiary thereof, and to have offered the types of insurance it proposes to offer in Florida;
- allows the OIR to waive the above 3-year requirement if the insurer has operated successfully for a period of 1 year and has capitol and surplus of at least $25 million;
- provides the OIR with annual and quarterly financial statements in the English language; maintain a surplus as to policyholders of at least $15 million; have a good reputation as to providing service to insureds; agree to make books and records available to the OIR; provide disclosures in the application and contract that the policy is governed by the laws of a foreign country and, if the insurer becomes insolvent, disclose that the policy is not covered by the Florida Life and Health Guaranty Association;
- provides that the insurer is not exempt from the agent licensure requirements under the Insurance Code; provide that the insurer is subject to the Unfair Trade Practices provisions under ch. 626, F.S., and that the policies written under this provision are exempt from the Florida premium tax requirements; and

- requires the provisions of the Florida Money Laundering Act (ch. 896, F.S.) to apply to all single premium life insurance policies and annuity contracts issued to persons who are not residents of the United States.

The bill also broadens the definition of the term "charitable organization." Under current law, such organizations may purchase life insurance on an insured who consents to the ownership or purchase of that insurance. Under the expanded definition, charitable organizations would include specified tax exempt organizations that could approve for-profit entities to obtain life insurance policies or annuity contracts on the life of individual insureds. Before an entity could qualify as a charitable organization, the insured would have to be an accredited investor or the approving organizations must have total assets in excess of $5 million. The bill would prohibit the assignment or transfer of the life insurance policy with certain exceptions, e.g., in cases of material default, insolvency of either the life insurer or annuity company, or misrepresentation.

This bill substantially amends sections 624.402 and 627.404 of the Florida Statutes.

## II. Present Situation:

**Background - Certificates of Authority to Transact Insurance**

Insurance companies transacting insurance in Florida are required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR).[1] These insurers are known as authorized insurers.[2] To qualify for a COA, a prospective insurer[3] must meet specified financial criteria including maintaining reserves[4] applicable to the kind of insurance transacted by the insurer, as well as maintaining specified assets, deposits, capital, and surplus. Insurers must provide the OIR with specified background information and meet trustworthiness, fitness, and criminal history requirements. According to OIR staff, it takes about 90 days for a company to obtain a COA and the fee is $1,500.

There are several exceptions to the requirement to obtain a COA which apply to insurers with respect to specified transactions ranging from surplus lines coverages and reinsurance to captive insurers.[5]

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[1] Section 624.401, F.S.
[2] Section 624.09, F.S. An unauthorized insurer does not have a certificate of authority issued by the OIR.
[3] Insurers are divided into three categories under the Insurance Code: domestic insurers are formed under the laws of Florida; foreign insurers are formed under the laws of any state, district, or territory or commonwealth of the United States, other than Florida; and alien insurers are defined as insurers other than domestic or foreign insurers. Foreign and alien insurers must also meet certain capital, surplus, and operational requirements.
[4] Part I of ch. 625, F.S.
[5] These exemptions pertain to transactions involving surplus lines coverages; specified reinsurance; captive insurance companies; investments by foreign insurers; servicing life or health insurance policies or annuity contracts pertaining to insurers that have withdrawn from Florida; policies covering only subjects of insurance not resident or expressly performed in this state at the time of issuance and lawfully solicited or delivered outside this state; and, investigation or litigation of specified claims under policies written in this state, or liquidation of assets and liabilities of the insurer, all as resulting from

Insurance companies domiciled outside of the United States that do not possess a COA are referred to non-authorized alien insurers. The insurance products offered by these alien insurers may not be sold from offices in Florida, even to non-U.S. residents, without the company obtaining a COA. Currently, there are two alien insurers who are licensed in Florida (have certificates of authority), are domiciled outside of the U.S., and market to non-U.S. residents from offices in Florida.[6]

According to proponents of the bill, obtaining a certificate of authority by alien insurers that want to market products in Florida to non-U.S. residents is both a time-consuming and expensive process.[7] These proponents state that by allowing alien insurers to establish offices in this state to serve non-U.S. residents would be an economic boon to the economy of South Florida. They point to a recent study by the Beacon Council (a public-private economic development consortium in Dade county) which estimates that annual premium income from sales of insurance products to Latin Americans is in the billions of dollars and that, if such products could be sold and serviced from Florida, Florida's economy would experience a substantial economic benefit.

These proponents state that the advantages of marketing such insurance products to non-U.S. residents, compared with the same products issued by authorized Florida insurers, and the costs and restrictions imposed on Florida insurers, prevents Florida from participating in this "offshore" insurance market. Further, the proposed legislation contains numerous prudential safeguards which will afford the OIR the opportunity to regulate those selling these life insurance and annuity products.[8]

**Surplus lines Requirements**

The Florida Insurance Code contains specific financial and other requirements that unauthorized insurers must comply with in order to become eligible surplus lines insurers [9]. Generally, surplus lines insurance is insurance coverage provided by a company that is not licensed in Florida, but that is allowed to do business in the state, as an "eligible" insurer, because the particular coverage offered is not available from insurers authorized to sell insurance in Florida.

The law establishes requirements for approval of eligible surplus lines insurers and licensure of surplus lines agents by the OIR, including the provision that the surplus lines insurer maintain a surplus as to policyholders of $15 million, have been licensed in its state or country of domicile for a least three years, and furnish annual and quarterly financial statements to the OIR.[10] The law also specifies the conditions that must be met before insurance coverage may be exported to

its former authorized operations in Florida. Captive insurers are created and owned by one or more non-insurers, for the primary purpose of providing their owners with coverage, usually at rates lower than those of other insurers.

[6] International Health Insurance Danmark (IHID)A/S, Copenhagen, Denmark, market's accident and health insurance policies; and Citicorp International Insurance Company, Ltd., in Bermuda, offers annuity products.

[7] According to representatives with the OIR, it took about nine months to 2 years to license Citicorp and IHID, respectively, because of the difficulty of completing criminal and other background screenings on the non-resident officers, directors, and owners. Any large expense is attributable to costs associated with lawyers hired to represent the company throughout the COA process.

[8] Life insurance policies and annuity contracts are regulated under part III of ch. 627, F.S.

[9] Section 626.918, F.S.

[10] Section 626.918, F.S.

an eligible surplus lines insurer, also referred to as a nonadmitted insurer. Surplus lines insurance is not subject to Florida regulation of rates or forms and there is no insurance guaranty fund protection if the insurer becomes insolvent.

**Unfair Trade Practices**

Insurance companies are prohibited from engaging in specified unfair methods of competition and unfair or deceptive acts and practices under s. 626.9541, F.S. Twenty seven unfair acts are specified ranging from misrepresentations and false advertising of insurance policies and unfair discrimination to defamation and intimidation. Insurers engaging in such acts may be fined, depending on whether the act is nonwillful or willful, or otherwise sanctioned by the OIR.

**Premium Tax**

Under current law, each insurer must annually on or before March 1, pay to the Department of Revenue a tax on insurance premiums, premiums on title insurance, assessments, and on annuity premiums.[11] These taxes are in an amount of 1.75 percent of the gross amount of specified policies and contracts.[12] Further, insurers are allowed to take specified credits and deductions against the premium tax.

**Charitable Organizations**

Under s. 627.404(2), F.S., a charitable organization that meets the requirements of a not-for-profit organization under s. 501 (c)(3) of the Internal Revenue Code may own or purchase life insurance on an insured who consents to the ownership or purchase of that insurance.[13] The charitable organization would therefore own what is termed an "insurable interest" in the insured, e.g., a lawful and substantial economic interest in the subject of the insurance.

There are currently no provisions in Florida law to allow a not-for-profit organization[14] to approve a separate and independent for-profit entity, e.g., trust, partnership, or limited liability company, to obtain or procure life insurance policies and annuity contracts on the life of an individual insured.

## III. Effect of Proposed Changes:

**Section 1.** Amends s. 624.402, F.S., pertaining to COA exceptions, to insert a new subsection (8). The bill provides that transactions involving life insurance policies or annuity contracts issued by an insurer domiciled outside the United States covering only persons who are not U.S. residents at the time of issuance, are exempt from the requirement to obtain a certificate of

[11] Section 624.509, F.S. There are exceptions to the payment of such taxes for wet marine and transportation insurance under s. 624.510, F.S.
[12] The provision also provides that an amount equal to 1 percent of gross receipts is to be paid on annuity policies or contracts.
[13] Under s. 627.404(1), F.S., an insurer is entitled to rely upon the statements made by an applicant for insurance relative to the insurable interest which such applicant has in the insured.
[14] Or organizations to which charitable contributions could be made under ss. 170 (c)(1) - (3) of the Internal Revenue Code of 1986, as amended. Organizations described in 170 (c) include various public and charitable entities.

authority, provided the insurer meets specified financial and disclosure requirements. These requirements are similar to the provisions in current law that unauthorized insurers must meet to become eligible surplus lines insurers under s. 626.918, F.S. (*See*, discussion above under Present Situation.) The insurer must comply with the following requirements:

- be an authorized insurer in its country of domicile as to the kinds of insurance proposed to be offered and must have been an insurer for not less than the 3 years next preceding, or a wholly owned subsidiary of an authorized insurer or, must be the wholly owned subsidiary of an already eligible authorized insurer as to the kind or kinds of insurance proposed for not less than the 3 years next preceding. However, the OIR may waive the 3-year requirement if the insurer has operated successfully for a period of 1 year and has capitol and surplus of at least $25 million.
- furnish the OIR with its current annual financial statement in English language, and with such additional information the OIR requests.
- maintain a surplus to policyholders of at least $15 million and such surplus must be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of ch. 625;[15] however, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of ch. 625.
- have a "good reputation" as to providing services to policyholders and paying losses and claims.
- furnish the OIR with authenticated copies of its current and quarterly financial statements in the English language.
- agree to make its books and records available for OIR inspection.
- provide the applicant a copy of its most recent quarterly financial statement as well as the date of organization of the insurer; the identity of and rating assigned by each rating organization or, if applicable, that the insurer is unrated; that the insurer does not hold a certificate of authority issued in Florida and that the OIR does not exercise regulatory oversight over the insurer; and the identity and address of the regulatory authority exercising oversight of the insurer.

The bill further provides that the OIR has no responsibility to determine the actual financial condition of the insurer and that if the OIR has reason to believe that the insurer is insolvent or in unsound financial condition, it shall withdraw the insurer's eligibility to issue policies or contracts. The legislation provides that the insurer is not exempt from agent licensure requirements of ch. 626, F.S., and must appoint agents used to sell such policies or contracts as provided by that chapter. The insurer is also subject to the Unfair Trade Practices provisions under part IX of ch. 626, F.S. The measure provides that policies written under this section are exempt from the premium tax specified in s. 624.509, F.S.

Applications for life insurance coverage must contain in 12-point type a statement to the effect that the policy is governed by the laws of a foreign country and, if the insurer becomes insolvent, the policy is not covered by the Florida Life and Health Guaranty Association. All life insurance policies and annuity contracts must contain a disclosure on the first page of the policy

[15] Part II of ch. 625, F.S., provides for investment requirements for domestic insurers and commercially domiciled insurers.

or contract in 10-point type, that the benefits of the policy are governed primarily by the law of a country other than the United States. Finally, it applies the Florida Money Laundering Act (ch. 896, F.S.) to all single premium life insurance policies and annuity contracts issued to persons who are not residents of the United States.

**Section 2.** Amends s. 627.404, F.S., relating to insurable interests, to broaden the definition of the term "charitable organization" for purposes of allowing charitable organizations to own or purchase life insurance on an insured who consents to the ownership or purchase of that insurance, to include:

1. any organization that meets the requirements of s. 501 (c)(3) of the IRS code;
2. any organization to which charitable contributions could be made under s. 170 (c)(1), (c)(2), or (c)(3) of the IRS code; or
3. any trust, partnership, limited liability company, or similar entity that is approved in writing by an organization described in 1. or 2. above to procure the combination of life insurance policies or annuity contracts on the life of an individual insured. Before an entity described in this provision can qualify as a "charitable organization" for the purposes of this provision, either: a) the individual insured must be an "accredited investor" as defined in s. 230.501(a) in Rule 501 Reg D of the Securities Act Rules; or b) the approving organization described above in 1. or 2. must have total assets in excess of $5 million at the time of application for the life insurance policy and annuity contract is made.

The bill prohibits the assignment or transfer of the life insurance policy procured by a trust, partnership, limited liability company, or similar entity, with certain exceptions, e.g., in cases of material default, insolvency of either the life insurer or annuity company, or misrepresentation of the individual insured on the application for either the life insurance policy or annuity contract providing grounds for a contest by the life insurer or annuity company. Further, the charitable organization has an insurable interest in the life of the insured whether the organization originally purchased the insurance or the insurance is later transferred to the charitable organization by the insured.

According to representatives with the OIR, the provisions in this section of the bill would allow charities to approve for-profit entities to obtain life insurance policies and annuity contracts which would have unintended consequences potentially harmful to consumers. For example, under this proposal, an unlicensed viatical provider[16] could persuade a charity to allow it to obtain life insurance policies and annuity contracts on individuals without being subject to any regulation by the office. Currently viatical transactions are regulated by the OIR and the Department of Financial Services under part X of ch. 626, F.S. Further, a fraudulent unlicensed viatical settlement provider could operate as a state sanctioned "charitable organization" so long as it met the provisions of the bill. Officials with the OIR also state that there are no provisions in the bill that authorize the charitable organization to receive the death benefits of the life insurance policies because the for-profit entity owns and controls the subject policies.

[16] A viatical settlement provider is an entity which purchases the life insurance policy and beneficiary rights from the viator. Providers must be licensed by the Office of Insurance Regulation. A viator is the owner of a life insurance policy who enters into a viatical settlement agreement by selling the policy ownership and beneficiary rights in exchange for a cash payment.

**Section 3.** Provides that, except for this section and section 2, which shall take effect upon becoming a law, this act shall take effect July 1, 2004.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

Life insurance policies and annuity contracts sold to non-U.S. residents by an unauthorized alien insurer meeting the criteria of this bill would be exempt from the premium tax. The Office of Insurance Regulation has said that there will be minimal, if any, fiscal impact, but no official estimate of the fiscal impact has been determined.

### B. Private Sector Impact:

The provisions of the bill (section 1 of the bill) would benefit alien insurance companies because such entities could establish offices in Florida to serve non-U.S. residents, without having to obtain a certificate of authority. Authorized insurers currently serving non-U.S. residents may find increased competition for sales.

Proponents of this legislation state that most variable annuity and life insurance products sold in the international market now contain imbedded investment elements. Often these products are customized. Non-U.S. residents generally will be subject to U.S. withholding tax with respect to returns related to the investment elements of these products. The same variable annuity and life insurance products issued by alien or offshore insurers are not subject to the U.S. withholding tax. Consequently, products issued by U.S. insurers are not generally tax efficient for non-resident purchasers.

These proponents also assert that the bill will benefit the economy of South Florida. A recent study by the Beacon Council estimates that annual premium income from sales of insurance products to Latin Americans is in the billions of dollars and that, if such products could be sold and serviced from Florida, Florida's economy would experience substantial economic benefit in terms of jobs created and other benefits.

The bill appears to expand the fundraising ability of not-for-profit entities to facilitate charitable gifts through the coordinated use of life insurance policies and annuity contracts (section 2 of the bill). According to proponents of the charitable organization provisions, the current low cost fixed-yield capital markets serve as the funding mechanism that allow donors to effectively make substantial monetary gifts to favored charities upon their (donors') death.

### C. Government Sector Impact:

According to representatives with the Office of Insurance Regulation, the additional reviews and monitoring responsibilities provided for under section 1 of the bill can be absorbed within existing resources.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 2442

Amendment No. ___ 182158

CHAMBER ACTION

Senate | House

Consideration of this amendment requires a 2/3 vote of members present

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 4:50 pm

Senator Posey moved the following amendment:

**Senate Amendment (with title amendment)**

On page 7, between lines 23 and 24,

insert:

Section 3. Section 627.4554, Florida Statutes, is created to read:

627.4554 Annuity investments by seniors.--

(1) PURPOSE; CONSTRUCTION.--

(a) The purpose of this section is to set forth standards and procedures for recommendations to senior consumers which result in a transaction involving annuity products to appropriately address the insurance needs and financial objectives of senior consumers at the time of the transaction.

(b) Nothing in this section shall be construed to create or imply a private cause of action for a violation of this section.

(2) APPLICATION.--This section applies to any recommendation to purchase or exchange an annuity made to a

1 senior consumer by an insurance agent, or an insurer where no
2 agent is involved, that results in the purchase or exchange
3 recommended.
4 (3) DEFINITIONS.--For purposes of this section:
5 (a) "Annuity" means a fixed annuity or variable
6 annuity that is individually solicited, whether the product is
7 classified as an individual annuity or a group annuity.
8 (b) "Recommendation" means advice provided by an
9 insurance agent, or an insurer if no insurance agent is
10 involved, to an individual senior consumer which results in a
11 purchase or exchange of an annuity in accordance with that
12 advice.
13 (c) "Senior consumer" means a person 65 years of age
14 or older. In the event of a joint purchase by more than one
15 party, a purchaser is considered to be a senior consumer if
16 any of the parties is age 65 or older.
17 (4) DUTIES OF INSURERS AND INSURANCE AGENTS.--
18 (a) In recommending to a senior consumer the purchase
19 of an annuity or the exchange of an annuity that results in
20 another insurance transaction or series of insurance
21 transactions, an insurance agent, or an insurer if no
22 insurance agent is involved, shall have reasonable grounds for
23 believing that the recommendation is suitable for the senior
24 consumer on the basis of the facts disclosed by the senior
25 consumer as to his or her investments and other insurance
26 products and as to his or her financial situation and needs.
27 (b) Before executing a purchase or exchange of an
28 annuity resulting from a recommendation to a senior consumer,
29 an insurance agent, or an insurer if no insurance agent is
30 involved, shall make reasonable efforts to obtain information
31 concerning the senior consumer's financial status, tax status,

1 and investment objectives and such other information used or
2 considered to be reasonable by the insurance agent, or the
3 insurer if no agent is involved, in making the recommendation.
4 (c)1. Except as provided under subparagraph 2., an
5 insurance agent, or an insurer if no insurance agent is
6 involved, shall not have any obligation to a senior consumer
7 under paragraph (a) related to any recommendation if the
8 senior consumer:
9 a. Refuses to provide relevant information requested
10 by the insurer or insurance agent;
11 b. Decides to enter into an insurance transaction that
12 is not based on a recommendation of the insurer or insurance
13 agent; or
14 c. Fails to provide complete or accurate information.
15 2. An insurer or insurance agent's recommendation
16 subject to subparagraph 1. shall be reasonable under all the
17 circumstances actually known to the insurer or insurance agent
18 at the time of the recommendation.
19 (d)1. An insurer or insurance agent shall ensure that
20 a system to supervise recommendations which is reasonably
21 designed to achieve compliance with this section is
22 established and maintained by complying with subparagraphs 3.,
23 4., and 5., or shall establish and maintain such a system,
24 including, but not limited to:
25 a. Maintaining written procedures.
26 b. Conducting periodic reviews of its records that are
27 reasonably designed to assist in detecting and preventing
28 violations of this section.
29 2. A managing general agent and an insurance agency
30 shall adopt a system established by an insurer to supervise
31 recommendations of its insurance agents which is reasonably

1 designed to achieve compliance with this section or shall
2 establish and maintain such a system, including, but not
3 limited to:
4 a. Maintaining written procedures.
5 b. Conducting periodic reviews of records that are
6 reasonably designed to assist in detecting and preventing
7 violations of this section.
8 3. An insurer may contract with a third party,
9 including a managing general agent or an insurance agency, to
10 establish and maintain a system of supervision as required by
11 subparagraph 1. with respect to insurance agents under
12 contract with or employed by the third party.
13 4. An insurer shall make reasonable inquiry to ensure
14 that such third party contracting under subparagraph 3. is
15 performing the functions required under subparagraph 1. and
16 shall take such action as is reasonable under the
17 circumstances to enforce the contractual obligation to perform
18 the functions. An insurer may comply with its obligation to
19 make reasonable inquiry by:
20 a. Annually obtaining a certification from a third
21 party senior manager who has responsibility for the delegated
22 functions that the manager has a reasonable basis to
23 represent, and does represent, that the third party is
24 performing the required functions.
25 b. Based on reasonable selection criteria,
26 periodically selecting third parties contracting under
27 subparagraph 3. for a review to determine whether the third
28 parties are performing the required functions. The insurer
29 shall perform any procedures necessary to conduct the review
30 which are reasonable under the circumstances.
31 5. An insurer that contracts with a third party

1 pursuant to subparagraph 3. and complies with the requirements
2 specified in subparagraph 4. is deemed to have fulfilled its
3 responsibilities under subparagraph 1.
4 6. An insurer, managing general agent, or insurance
5 agency is not required by subparagraph 1. or subparagraph 2.
6 to:
7 a. Review or provide for review of all transactions
8 solicited by an insurance agent; or
9 b. Include in its system of supervision an insurance
10 agent's recommendations to senior consumers of products other
11 than the annuities offered by the insurer, managing general
12 agent, or insurance agency.
13 7. A managing general agent or insurance agency
14 contracting with an insurer pursuant to subparagraph 3. shall
15 promptly, when requested by the insurer pursuant to
16 subparagraph 4., provide a certification as described in
17 subparagraph 4. or provide a clear statement that the managing
18 general agent or insurance agency is unable to meet the
19 certification criteria.
20 8. A person may not provide a certification under
21 sub-subparagraph 4.a. unless the person is a senior manager
22 with responsibility for the delegated functions and has a
23 reasonable basis for making the certification.
24 (5) MITIGATION OF RESPONSIBILITY.--
25 (a) The office may order an insurer to take reasonably
26 appropriate corrective action for any senior consumer harmed
27 by a violation of this section by the insurer or the insurer's
28 insurance agent.
29 (b) The department may order:
30 1. An insurance agent to take reasonably appropriate
31 corrective action for any senior consumer harmed by a

1 violation of this section by the insurance agent.
2 2. A managing general agency or insurance agency that
3 employs or contracts with an insurance agent to sell or
4 solicit the sale of annuities to senior consumers to take
5 reasonably appropriate corrective action for any senior
6 consumer harmed by a violation of this section by the
7 insurance agent.
8 (c) Any applicable penalty under the Florida Insurance
9 Code for a violation of paragraph (4)(a), paragraph (4)(b), or
10 subparagraph (4)(c)2. may be reduced or eliminated, according
11 to a schedule adopted by the office or the department, as
12 appropriate, if corrective action for the senior consumer was
13 taken promptly after a violation was discovered.
14 (6) RECORDKEEPING.--
15 (a) Insurers, managing general agents, insurance
16 agencies, and insurance agents shall maintain or be able to
17 make available to the department or office, as appropriate,
18 records of the information collected from the senior consumer
19 and other information used in making the recommendations that
20 were the basis for insurance transactions for 5 years after
21 the insurance transaction is completed by the insurer. An
22 insurer is permitted, but shall not be required, to maintain
23 documentation on behalf of an insurance agent.
24 (b) Records required to be maintained by this
25 regulation may be maintained in paper, photographic,
26 microprocess, magnetic, mechanical, or electronic media, or by
27 any process that accurately reproduces the actual document.
28 (7) EXEMPTIONS.--Unless otherwise specifically
29 included, this section does not apply to recommendations
30 involving:
31 (a) Direct-response solicitations where there is no

1 recommendation based on information collected from the senior
2 consumer pursuant to this section.
3 (b) Contracts used to fund:
4 1. An employee pension or welfare benefit plan that is
5 covered by the Employee Retirement and Income Security Act;
6 2. A plan described by Sections 401(a), 401(k),
7 403(b), 408(k), or 408(p) of the Internal Revenue Code of
8 1986, as amended, if established or maintained by an employer;
9 3. A government or church plan defined in Section 414
10 of the Internal Revenue Code of 1986, as amended, a government
11 or church welfare benefit plan, or a deferred compensation
12 plan of a state or local government or tax-exempt organization
13 under Section 457 of the Internal Revenue Code of 1986, as
14 amended;
15 4. A nonqualified deferred compensation arrangement
16 established or maintained by an employer or plan sponsor;
17 5. Settlements of or assumptions of liabilities
18 associated with personal injury litigation or any dispute or
19 claim resolution process; or
20 6. Prepaid funeral contracts.
21 (8) APPLICATION TO VARIABLE ANNUITIES.--Compliance
22 with the National Association of Securities Dealers Conduct
23 Rules in effect on January 1, 2004, shall satisfy the
24 requirements under this section for the recommendation of
25 variable annuities. This section does not limit the
26 department's ability to enforce the provisions of this section
27 with respect to insurance agents, insurance agencies, and
28 managing general agents, or the office's ability to enforce
29 the provisions of this section with respect to insurers.
30
31 (Redesignate subsequent sections.)

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 1, line 22, after the semicolon,
4
5 insert:
6 creating s. 627.4554, F.S.; providing a
7 purpose; providing application; providing
8 definitions; specifying duties of insurers and
9 insurance agents relating to making annuity
10 investment recommendations to senior consumers;
11 providing requirements; limiting responsibility
12 of insurers or insurance agents under certain
13 circumstances; requiring a system of compliance
14 and supervision; providing for enforcement by
15 the Office of Insurance Regulation and the
16 Department of Financial Services; authorizing
17 the office and the department to issue orders
18 to mitigate certain responsibilities of
19 insurers or insurance agents; providing for
20 reduction or elimination of certain penalties
21 under certain circumstances; providing
22 recordkeeping requirements; providing an
23 exemption from application for variable
24 annuities;
25
26
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28
29
30
31

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2444

SPONSOR: Senator Margolis

SUBJECT: Property Taxes

DATE: April 16, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Cooper | Yeatman | CP | Favorable |
| 2. | | | RI | Withdrawn |
| 3. | Fournier | Johansen | FT | |
| 4. | | | AGG | |
| 5. | | | AP | |
| 6. | | | | |

## I. Summary:


This bill:

- Expands what does not constitute a "change in ownership" for the purposes of the "Save Our Homes" property assessment limitation, thereby potentially allowing more homeowners to retain or qualify for the benefit;
- Increases certain periods for the provision of evidence and appearance schedule notices for Value Adjustment Board hearings;
- Allows the Department of Revenue (DOR) to change the manual instruction to include all settled court decisions, and periodically update the guidelines for technical changes and other changes in assessment practices;
- Repeals s. 373.516, F.S., an obsolete provision relating to valuation of rights-of-way of railroads;
- Requires that a prospective purchaser of homestead property be notified that the property will be re-assessed at just value following the sale, and consequently, the taxes may be in excess of the taxes levied in the current year; and
- Provides requirements for assessing property that is subject to a low-income housing tax credit.

This bill amends sections 193.155, 194.011, 194.032, and 195.062 of the Florida Statutes, creates sections 193.017 and 689.261 of the Florida Statutes, and repeals section 373.516 of the Florida Statutes.


## II. Present Situation:

**"Save Our Homes" Property Assessment Limitation**

Section 4(c), Art. VII of the State Constitution limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index, not to exceed just value.[1] After any change in ownership, the property is to be assessed at just value as of January 1 of the following year. Section 193.155, F.S., implements this assessment limitation.

Section 193.155(3) defines a "change of ownership" as any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except as provided in this subsection. There is no change of ownership if:

- Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:
  - The transfer of title is to correct an error; or
  - The transfer is between legal and equitable title;
- The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage;
- The transfer occurs by operation of law under s. 732.4015; or
- Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent upon the owner.

**Value Adjustment Board Hearings**

Section 4, Article VII, of the State Constitution requires that all property be assessed at "just" or market value for ad valorem tax purposes. Local governments annually levy the ad valorem tax on real and tangible property as of January 1 of each year, less any authorized exemptions.

Part I of chapter 194, F.S., provides for the administrative review of property taxes. Prior to final budget hearings, property owners must be notified of the assessment of all real and tangible personal property they own. (This is referred to as the "TRIM" notice or process.) A taxpayer that objects to the assessment placed on any taxable property may request an informal conference with the property appraiser. Once the request has been received, the property appraiser or a staff member is required to meet with the taxpayer to discuss the correctness of the assessment. The informal conference is not a prerequisite to the administrative review of property assessments.

If the taxpayer is not satisfied with the facts provided by the property appraiser, he or she may file a petition to the County Value Adjustment Board (VAB). The VAB consists of three members of the governing body of the county and two members of the school board. The VAB is required to render a written decision on filed petitions. These decisions may be appealed in the circuit court. Court proceedings are de novo, and the burden of proof is upon the party initiating the appeal.

Section 194.011, F.S., requires a petitioner to the VAB to provide the property appraiser with a list, summary and copies of evidence to be presented at the hearing at least 10 days before the hearing. The property appraiser is required to provide the petitioner with its list, summary and copies of evidence no later than 5 days after the petitioner provides its required evidence list, summary and documentation.

[1] "Just value" has been interpreted to mean "fair market value." *Walter v. Schuler*, 176 So.2d 81

Section 194.032, F.S., establishes a schedule for VAB hearings. Subsection (2) requires the clerk of the governing body of the county to schedule appearances before the VAB. The clerk is required to notify each petitioner of the scheduled time of his or her appearance no less than 20 calendar days prior to the day of such scheduled appearance.

**DOR Property Assessment Administration**
Chapter 193, F.S., specifies procedures for county property appraisers. Section 195.002, F.S., provides the Department of Revenue (DOR) with the "general supervision of the assessment and valuation of property" to ensure that all property in the state is valued according to its just valuation.

Section 195.062, F.S., requires DOR to prepare and maintain a current manual of instructions for property appraisers and other officials connected with the administration of property taxes. This manual must contain all:

- rules and regulations;
- standard measures of value; and
- forms and instructions relating to the use of forms and maps.

While the standard measures of value are required to be adopted by rule, they do not "have the force or effect of such rules" and are to be used "only to assist tax officers in the assessment of property..." The rule adoption process takes approximately six months to complete. A DOR representative stated that by the time new standard measures of value for tangible personal property are incorporated into updated manuals, they are out-of-date.

In August 2000, the Auditor General conducted a performance audit of the administration of the Ad Valorem Tax Program of DOR. (Report No. 01-003) The report found the following:

> The Department has not complied with law requiring it to maintain a current manual of instructions containing current standard measures of value and uniform market area guidelines for county property appraisers. The Department's existing manual of instructions included standard measures of value that were 18 years old. (p. 3)

**Section 373.516, F.S.**
Section 373.516, F.S., requires the governing board of the South Florida Water Management District to assess benefits to rights-of-way of railroads at $4,000 per mile. In a recent audit of DOR's railroad valuation process, the Auditor General recommended that the Legislature consider repealing this provision, as it is obsolete. Representatives from DOR state that the general counsels for the various water management districts agree with this recommendation.

**Disclosures at Sale**
Prospective property purchasers are required by a variety of state and federal laws to be provided proper notice, prior to a sale, of potential conditions affecting the property or obligations that attach to the property. These disclosures include:

- Notice of Homeowner's Association, etc. - If the buyer is purchasing a residence in a community, before executing the sale of the property, the seller must disclose whether the buyer is
  - obligated to be a member of the community homeowners' association,
  - that there are restrictive covenants governing the use and occupancy of the property, and
  - whether or not the property is subject to special assessments to the respective municipality, county, or special district.[2]
- Condominium Resale – If the property is a condominium that is being resold, the buyer must receive specified condominium documents and other disclosures relating to rental fee obligations, failing which the buyer may cancel the contract.[3]
- Community Development District (CDD)- A prospective purchaser of a residential property in a CDD must be provided, immediately prior to the space reserved in the contract for the signature of the purchaser, a full disclosure of information concerning the public financing and maintenance of improvements to real property within the district.[4]
- Coastal Construction Zone – When property to be sold is partially or totally seaward of the coastal construction control line, the seller must provide the buyer an affidavit, or a survey, delineating the location of the line unless the buyer waives this requirement.[5]
- Radon Gas - Prospective property buyers or renters must be provided information on the potential existence and health risks related to radon gas.[6]
- Energy-Efficiency Rating - A prospective purchaser of property with a building must be provided with an informational brochure, at the time of or prior to the execution of the contract for sale, notifying the purchases of the option for an energy-efficiency rating on the building.[7]
- Lead-Based Paint Hazard - On houses build before 1978, the sale contract or a separate disclosure form must contain a Lead Warning Statement and must identify the presence of any known lead-based paint or lead-based paint hazard.[8]

Buyers of homestead property may be unaware that the taxable value of the property (assessment) will be based on the just value of the property when property changes ownership, not the "limited" assessment enjoyed under "Save Our Homes."

**Florida Housing Finance Corporation / Federal Tax Credit Program for Low-Income Housing**
Florida Housing Finance Corporation (FHFC) is the primary state agency responsible for encouraging the construction of affordable housing in Florida.[9] Currently, the FHFC operates

[2] s. 689.26, F.S.
[3] s. 718.503(2)(c), F.S.
[4] s. 190.009, F.S.
[5] s. 161.57(2), F.S.
[6] s. 404.056(5), F.S.
[7] s. 553.996, F.S.
[8] The Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 *U.S.C.* section 4852b)
[9] Part V, ch. 420, F.S. The FHFC was created within the Department of Community Affairs (DCA) as a public corporation. It is an "entrepreneurial public corporation" that is a separate budget entity and is not subject to control, supervision, or direction by DCA. However, a contractual relationship exists between DCA and FHFC identifying performance measures for FHFC and the role of the Inspector General of DCA in analyzing and verifying the performance of the FHFC. The FHFC is overseen by a board of directors composed of the Secretary of DCA and eight members appointed by the Governor, subject

several housing programs financed by the state and federal governments, to include the Federal Tax Credit Program for Low-Income Housing. This program provides federal tax credits to developers of affordable housing. Each year, the U.S. Department of Treasury awards each state with an allocation authority consisting of the per capita amount ($1.25) and the state's share of the national pool (unused credits from other states). Section 420.5099, F.S., provides that FHFC is the sole issuer of tax credits for Florida. From 1987 through 2001, the program has allocated tax credits for the production of 108,948 affordable rental units, valued at $8.7 billion.

Tax credits may be claimed by owners of residential rental property used for low income housing. The credit amounts are based on the cost of the building and the portion of the project that low income households occupy. The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low-income units is the building's qualified basis. A percentage of the qualified basis may be claimed for 10 years as the low income housing credit. Eligible properties must comply with a number of requirements regarding tenant income levels, gross rents, and occupancy. Projects must be held for low-income use for a minimum of 15 years under federal law. For a project to qualify for the low income housing credit, one of two tests must be met:

- at least 20 percent of the project must be occupied by households with incomes at or below 50 percent of the area median income; or
- at least 40 percent of the project must be occupied by households at or below 60 percent of area median income.

**Ad Valorem Taxation – Assessment of Low-Income Housing**
Article VII, section 4 of the Florida Constitution, requires "a just valuation of all property for ad valorem taxation . . ." However, the Florida Constitution does allow agricultural, high water recharge, and noncommercial recreational property to be classified by the Legislature and assessed solely on the basis of character or use. Additionally, tangible personal property and livestock that is held as inventory may be assessed at a specified percentage of its value or totally exempted from taxation.

The Florida Supreme Court has interpreted "just valuation" to mean fair market value.[10] Such an assessment may be exclusive of reasonable fees and costs of sale.[11]

The Legislature may only grant property tax exemptions that are authorized in the constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[12]

Section 193.011, F.S., directs property appraisers to take into consideration eight factors when deriving a just valuation of property. Briefly, these factors include:

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to confirmation by the Senate. Members of the FHFC Board are appointed for terms of 4 years and the members elect the chair and a vice-chair annually.

[10] *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

[11] *Oyster Pointe Resort Condo. v. Nolte*, 524 So. 2d 415 (Fla. 1988).

[12] *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). See also, *Archer v. Marshall,* 355 So.2d 781, 784. (Fla. 1978). See also, *Am Fi Inv. Corp. v. Kinney,* 360 So.2d 415 (Fla. 1978). *Sparkman v. State*, 58 So.2d 431, 432 (Fla. 1952).

- The present cash value of the property, exclusive of reasonable fees and costs of purchase;
- The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking all legal limitations imposed on the property into consideration;
- The location of the property;
- The quantity or size of the property;
- The cost of the property and the present replacement value of improvements;
- The condition of the property;
- The income from the property; and
- The net proceeds from the sale of the property, exclusive of reasonable fees and costs of the sale.

Sections 420.5093 and 420.5099, F.S., requires that, in considering ad valorem assessment of affordable housing programs, neither the tax credits nor the financing generated by tax credits be considered as income to the property. It also requires property appraisers to recognize the rental income from rent restricted units in a low-income tax credit development.

Sections 12 and 13 of ch. 2002-18, L.O.F., amended ss. 420.5093 and 420.5099, F.S., to further specify that when considering or using the market or cost approaches under s. 193.001, F.S., neither the costs paid for by tax credits nor the costs paid for by additional financing proceeds resulting from the property being in the program may be included in the valuation. These sections further provide that any extended low income housing agreement which is recorded and filed in the county where the property is located shall be deemed a land use regulation during the term of the agreement.

## III. Effect of Proposed Changes:

**Section 1** amends s. 193.155, F.S., to expand what does not constitute a "change in ownership" for the purposes of the "Save Our Homes" property assessment limitation, thereby potentially allowing more homeowners to retain or qualify for the benefit. Specifically, the benefit may be retained if the same person is entitled to the exemption as was previously entitled and the transfer "adds additional owners other than a spouse to the existing ownership and the additional owners do not apply for or claim the homestead exemption."

**Section 2** amends s. 194.011(4)(a), F.S., to require the petitioner's list, summary and copies of evidence to be presented at the VAB be provided at least 15 days, rather than 10 days, before the hearing. This change provides the property appraiser additional time to prepare the list of evidence to be used at the VAB hearing.

The property appraiser's list, summary and copies of evidence to be presented at the VAB is to be provided no later than 5 days *before the hearing if* the petitioner provides its required information, and *if it is requested in writing by the petitioner*. The property appraisers deadline for requested information remains the same as in current law.

**Section 3** amends s. 194.032(2), F.S., to revise the notification time period to 25 calendar days prior to the day of scheduled appearance, rather than 20 calendar days as provided in current law.

**Section 4** amends s. 195.062, F.S., to allow DOR to change the manual of instruction for property appraisers and other officials to include all settled court decisions, and periodically update the guidelines for technical changes and other changes in assessment practices.

**Section 5** repeals s. 373.516, F.S., which requires the governing board of the South Florida Water Management District to assess benefits to rights-of-way of railroads at $4,000 per mile. In a recent audit of DOR's railroad valuation process, the Auditor General recommended that the Legislature consider repealing this provision, as it is obsolete. Representatives from DOR state that the general counsels for the various water management districts agree with this recommendation.

**Section 6** creates s. 689.261, F.S., to require that a prospective purchaser of homestead property be notified that the property will be re-assessed at just value following the sale, and consequently, the taxes may be in excess of the taxes levied in the current year. This disclosure summary must be attached to the contract for sale before executing the contract for sale, unless a substantially similar disclosure is included in the contract for sale.

The bill provides the form with which the disclosure summary must substantially comply. The disclosure summary must state that:

- Ad valorem taxes for years subsequent to the sale may be in excess of the ad valorem taxes assessed at the time of sale;
- The ad valorem taxes are required to be assessed at just value on the property in the year following a change of ownership, as defined in s. 193.155(3), F.S.; and
- In the event of questions concerning valuation and ad valorem taxes, the purchaser should contact his or her county property appraiser or tax collector.

If the disclosure summary is not included in the contract for sale, the contract must refer to and incorporate (by reference) the disclosure summary and all contracts for sale must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary required.

Failure to provide the required disclosure statement would render the contract for sale voidable by the purchaser. To void the contract, the purchaser must deliver to the seller, or seller's agent, a written notice of the purchaser's intent to cancel the contract. This notice to cancel must be made either within 3 days after receipt of the disclosure summary or 3 days prior to closing, whichever occurs first. The purchaser's right to void the contract terminates at closing.

**Section 7** creates s. 193.017, F.S., to provide requirements for assessing property that is subject to a low-income housing tax credit. This new provision is substantially identical to ss. 420.5093(5) & (6) and 420.5099(5) & (6), F.S. Specifically, property used for affordable housing which has received a low-income housing tax credit from the Florida Housing Finance Corporation "shall be assessed under s. 193.011 and consistent with s. 420.5099(5) and (6), pursuant to this section."

This section provides that:

- The tax credits granted and the financing generated by the tax credits may not be considered as income to the property;
- The actual rental income from rent-restricted units in such a property shall be recognized by the property appraiser; and
- Any costs paid for by tax credits and costs paid for by additional financing proceeds received under chapter 420 may not be included in the valuation of the property.

Furthermore, if an extended low-income housing agreement is filed in the official public records of the county in which the property is located, the agreement must be considered a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement.

Finally, any other evidence of the value of the property must be considered only in connection with the actual use of the property for affordable housing or as property subject to a low-income housing tax credit.

**Section 8** provides that the bill will take effect January 1, 2005.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met. Subsection (b) of the provision prohibits, with some exceptions, the Legislature from Aenacting, amending, or repealing any general law if the anticipated effect≅ is to reduce county or municipal aggregate revenue generating authority as it exists on February 1, 1989. "Authority≅ applies to the power to levy a tax; the vote required to levy the tax; the rate which the tax may be levied; and the base against which the tax is levied. The principal exception to these prohibitions is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) exempts certain categories of laws from the enacting conditions contained in the constitutional provision, to include laws having an insignificant fiscal impact. "Insignificant fiscal impact" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents, which is $1.7 million for FY 2004/5; the average fiscal impact, including any offsetting effects over the long term, is also considered.

Section 1 expands what does not constitute a "change in ownership" for the purposes of the "Save Our Homes" property assessment limitation, thereby potentially allowing more homeowners to retain or qualify for the benefit. While the fiscal impact is indeterminate, it is anticipated to be insignificant, and is thereby exempt from the constitutional mandates restriction.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Section 1 expands what does not constitute a "change in ownership" for the purposes of the "Save Our Homes" property assessment limitation, thereby potentially allowing more homeowners to retain the benefit. The Revenue Impact Conference has determined that this will result in property tax revenue losses of $3.8 million in FY 2005/06, and the loss would continue to grow thereafter.

B. Private Sector Impact:

Sellers of homestead property would have to make the disclosure required by this bill.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: PCS for SB 2444

SPONSOR: Senator Margolis

SUBJECT: Property Taxes

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Cooper | Yeatman | CP | Favorable |
| 2. | | | RI | Withdrawn |
| 3. | Fournier | Johansen | FT | |
| 4. | | | AGG | |
| 5. | | | AP | |
| 6. | | | | |

## I. Summary:


This proposed committee substitute:

- Increases the length of time before a hearing that evidence must be provided by both a petitioner to the Value Adjustment Board and the property appraiser, and requires an earlier appearance schedule notice for Value Adjustment Board hearings;
- Allows the Department of Revenue (DOR) to change the manual of instructions to include all settled court decisions and periodically update the guidelines for technical changes and other changes in assessment practices;
- Repeals s. 373.516, F.S., an obsolete provision relating to valuation of rights-of-way of railroads;
- Requires that a prospective purchaser of homestead property be notified that the property will be re-assessed at just value following the sale, and consequently, the taxes may be in excess of the taxes levied in the current year;
- Provides requirements for assessing property that is eligible for low-income housing tax credits;
- Provides that the tax collector is the defendant in any suit involving an application for tax deeds, and allows a person other than the property owner to contest its assessment for property tax purposes if that person is responsible for paying the tax and has the written permission of the property owner;
- Streamlines the process by which lands available for taxes escheat to the county where they are located, provides that submerged sovereignty lands are not considered contiguous property under s. 197.502, and provides that the search of public records required under that section shall be by direct and inverse search. Also, the tax collector is allowed to contract for higher limits of liability for title or abstract companies that perform title searches or abstracts;

- Provides that when land development rights have been restricted or conservation restrictions have been covenanted for land used for an outdoor recreation purpose, normal use and maintenance of the land for that purpose shall not be restricted; and
- Directs the Department of Revenue to use the assessed value of parcels subject to Save Our Homes in determining the level of assessment for the purpose of equalizing required local effort of school funding.

This bill amends sections 193.155, 193.501, 194.011, 194.032, 195.062, 194.181, 197.502, and 1011.62 of the Florida Statutes, creates sections 193.017 and 689.261 of the Florida Statutes, and repeals section 373.516 of the Florida Statutes.

## II. Present Situation:

**Value Adjustment Board Hearings**
Section 4, Article VII, of the State Constitution requires that all property be assessed at "just" or market value for ad valorem tax purposes. Local governments annually levy the ad valorem tax on real and tangible property as of January 1 of each year, less any authorized exemptions.

Part I of chapter 194, F.S., provides for the administrative review of property taxes. Prior to final budget hearings, property owners must be notified of the assessment of all real and tangible personal property they own. (This is referred to as the "TRIM" notice or process.) A taxpayer that objects to the assessment placed on any taxable property may request an informal conference with the property appraiser. Once the request has been received, the property appraiser or a staff member is required to meet with the taxpayer to discuss the correctness of the assessment. The informal conference is not a prerequisite to the administrative review of property assessments.

If the taxpayer is not satisfied with the facts provided by the property appraiser, he or she may file a petition to the County Value Adjustment Board (VAB). The VAB consists of three members of the governing body of the county and two members of the school board. The VAB is required to render a written decision on filed petitions. These decisions may be appealed in the circuit court. Court proceedings are de novo, and the burden of proof is upon the party initiating the appeal.

Section 194.011, F.S., requires a petitioner to the VAB to provide the property appraiser with a list, summary and copies of evidence to be presented at the hearing at least 10 days before the hearing. The property appraiser is required to provide the petitioner with its list, summary and copies of evidence no later than 5 days after the petitioner provides its required evidence list, summary and documentation.

Section 194.032, F.S., establishes a schedule for VAB hearings. Subsection (2) requires the clerk of the governing body of the county to schedule appearances before the VAB. The clerk is required to notify each petitioner of the scheduled time of his or her appearance no less than 20 calendar days prior to the day of such scheduled appearance.

**DOR Property Assessment Administration**
Chapter 193, F.S., specifies procedures for county property appraisers. Section 195.002, F.S., provides the Department of Revenue (DOR) with the "general supervision of the assessment and

valuation of property" to ensure that all property in the state is valued according to its just valuation.

Section 195.062, F.S., requires DOR to prepare and maintain a current manual of instructions for property appraisers and other officials connected with the administration of property taxes. This manual must contain all:

- rules and regulations;
- standard measures of value; and
- forms and instructions relating to the use of forms and maps.

While the standard measures of value are required to be adopted by rule, they do not "have the force or effect of such rules" and are to be used "only to assist tax officers in the assessment of property..." The rule adoption process takes approximately six months to complete. A DOR representative stated that by the time new standard measures of value for tangible personal property are incorporated into updated manuals, they are out-of-date.

In August 2000, the Auditor General conducted a performance audit of the administration of the Ad Valorem Tax Program of DOR. (Report No. 01-003) The report found the following:

> The Department has not complied with law requiring it to maintain a current manual of instructions containing current standard measures of value and uniform market area guidelines for county property appraisers. The Department's existing manual of instructions included standard measures of value that were 18 years old. (p. 3)

**Section 373.516, F.S.**
Section 373.516, F.S., requires the governing board of the South Florida Water Management District to assess benefits to rights-of-way of railroads at $4,000 per mile. In a recent audit of DOR's railroad valuation process, the Auditor General recommended that the Legislature consider repealing this provision, as it is obsolete. Representatives from DOR state that the general counsels for the various water management districts agree with this recommendation.

**Disclosures at Sale**
Prospective property purchasers are required by a variety of state and federal laws to be provided proper notice, prior to a sale, of potential conditions affecting the property or obligations that attach to the property. These disclosures include:

- Notice of Homeowner's Association, etc. - If the buyer is purchasing a residence in a community, before executing the sale of the property, the seller must disclose whether the buyer is
  - obligated to be a member of the community homeowners' association,
  - that there are restrictive covenants governing the use and occupancy of the property, and
  - whether or not the property is subject to special assessments to the respective municipality, county, or special district.[1]

[1] s. 689.26, F.S.

- Condominium Resale – If the property is a condominium that is being resold, the buyer must receive specified condominium documents and other disclosures relating to rental fee obligations, failing which the buyer may cancel the contract.[2]
- Community Development District (CDD)- A prospective purchaser of a residential property in a CDD must be provided, immediately prior to the space reserved in the contract for the signature of the purchaser, a full disclosure of information concerning the public financing and maintenance of improvements to real property within the district.[3]
- Coastal Construction Zone – When property to be sold is partially or totally seaward of the coastal construction control line, the seller must provide the buyer an affidavit, or a survey, delineating the location of the line unless the buyer waives this requirement.[4]
- Radon Gas - Prospective property buyers or renters must be provided information on the potential existence and health risks related to radon gas.[5]
- Energy-Efficiency Rating - A prospective purchaser of property with a building must be provided with an informational brochure, at the time of or prior to the execution of the contract for sale, notifying the purchases of the option for an energy-efficiency rating on the building.[6]
- Lead-Based Paint Hazard - On houses build before 1978, the sale contract or a separate disclosure form must contain a Lead Warning Statement and must identify the presence of any known lead-based paint or lead-based paint hazard.[7]

Buyers of homestead property may be unaware that the taxable value of the property (assessment) will be based on the just value of the property when property changes ownership, not the "limited" assessment enjoyed under "Save Our Homes."

**Florida Housing Finance Corporation / Federal Tax Credit Program for Low-Income Housing**
Florida Housing Finance Corporation (FHFC) is the primary state agency responsible for encouraging the construction of affordable housing in Florida.[8] Currently, the FHFC operates several housing programs financed by the state and federal governments, to include the Federal Tax Credit Program for Low-Income Housing. This program provides federal tax credits to developers of affordable housing. Each year, the U.S. Department of Treasury awards each state with an allocation authority consisting of the per capita amount ($1.25) and the state's share of the national pool (unused credits from other states). Section 420.5099, F.S., provides that FHFC is the sole issuer of tax credits for Florida. From 1987 through 2001, the program has allocated tax credits for the production of 108,948 affordable rental units, valued at $8.7 billion.

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[2] s. 718.503(2)(c), F.S.
[3] s. 190.009, F.S.
[4] s. 161.57(2), F.S.
[5] s. 404.056(5), F.S.
[6] s. 553.996, F.S.
[7] The Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 *U.S.C.* section 4852b)
[8] Part V, ch. 420, F.S. The FHFC was created within the Department of Community Affairs (DCA) as a public corporation. It is an "entrepreneurial public corporation" that is a separate budget entity and is not subject to control, supervision, or direction by DCA. However, a contractual relationship exists between DCA and FHFC identifying performance measures for FHFC and the role of the Inspector General of DCA in analyzing and verifying the performance of the FHFC. The FHFC is overseen by a board of directors composed of the Secretary of DCA and eight members appointed by the Governor, subject to confirmation by the Senate. Members of the FHFC Board are appointed for terms of 4 years and the members elect the chair and a vice-chair annually.

Tax credits may be claimed by owners of residential rental property used for low income housing. The credit amounts are based on the cost of the building and the portion of the project that low income households occupy. The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low-income units is the building's qualified basis. A percentage of the qualified basis may be claimed for 10 years as the low income housing credit. Eligible properties must comply with a number of requirements regarding tenant income levels, gross rents, and occupancy. Projects must be held for low-income use for a minimum of 15 years under federal law. For a project to qualify for the low income housing credit, one of two tests must be met:

- at least 20 percent of the project must be occupied by households with incomes at or below 50 percent of the area median income; or
- at least 40 percent of the project must be occupied by households at or below 60 percent of area median income.

**Ad Valorem Taxation – Assessment of Low-Income Housing**
Article VII, section 4 of the Florida Constitution, requires "a just valuation of all property for ad valorem taxation . . ." However, the Florida Constitution does allow agricultural, high water recharge, and noncommercial recreational property to be classified by the Legislature and assessed solely on the basis of character or use. Additionally, tangible personal property and livestock that is held as inventory may be assessed at a specified percentage of its value or totally exempted from taxation.

The Florida Supreme Court has interpreted "just valuation" to mean fair market value.[9] Such an assessment may be exclusive of reasonable fees and costs of sale.[10]

The Legislature may only grant property tax exemptions that are authorized in the constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[11]

Section 193.011, F.S., directs property appraisers to take into consideration eight factors when deriving a just valuation of property. Briefly, these factors include:

- The present cash value of the property, exclusive of reasonable fees and costs of purchase;
- The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking all legal limitations imposed on the property into consideration;
- The location of the property;
- The quantity or size of the property;
- The cost of the property and the present replacement value of improvements;
- The condition of the property;

[9] *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).
[10] *Oyster Pointe Resort Condo. v. Nolte*, 524 So. 2d 415 (Fla. 1988).
[11] *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). See also, *Archer v. Marshall,* 355 So.2d 781, 784. (Fla. 1978). See also, *Am Fi Inv. Corp. v. Kinney,* 360 So.2d 415 (Fla. 1978). *Sparkman v. State*, 58 So.2d 431, 432 (Fla. 1952).

- The income from the property; and
- The net proceeds from the sale of the property, exclusive of reasonable fees and costs of the sale.

Sections 420.5093 and 420.5099, F.S., requires that, in considering ad valorem assessment of affordable housing programs, neither the tax credits nor the financing generated by tax credits be considered as income to the property. It also requires property appraisers to recognize the rental income from rent restricted units in a low-income tax credit development.

Sections 12 and 13 of ch. 2002-18, L.O.F., amended ss. 420.5093 and 420.5099, F.S., to further specify that when considering or using the market or cost approaches under s. 193.001, F.S., neither the costs paid for by tax credits nor the costs paid for by additional financing proceeds resulting from the property being in the program may be included in the valuation. These sections further provide that any extended low income housing agreement which is recorded and filed in the county where the property is located shall be deemed a land use regulation during the term of the agreement.

**Tax Deeds**

Section 194.181, F.S., provides for the parties to a tax suit. In a suit concerning the assessment of property, the plaintiff shall be the taxpayer contesting the assessment or the condominium association, cooperative association, or homeowners' association which operates the units subject to the assessment; or the property appraiser. It further provides that in any suit involving the collection of any tax on property, as well as questions relating to tax certificates or tax deeds, the tax collector shall be the defendant. The tax collector, however, does not issue tax deeds but instead prepares applications for tax deeds. (Under s. 197.542, F.S., tax deeds are issued by the clerk of the circuit court.)

Chapter 197, F.S., is the exclusive method for enforcing liens created through the sale of tax certificates for unpaid ad valorem taxes and special assessments. Section 197.502, F.S., governs the process by which holders of tax certificates for real property obtain tax deeds through the sale of the property on which tax certificates are held. Generally, certificate holders may apply for a tax deed between two to seven years after the certificate was issued. To apply for the deed, certificate holders must pay to the tax collector all amounts required to redeem or purchase all other outstanding tax certificates, including omitted, delinquent and current taxes, and respective interest, applicable to the property.

Upon payment of required outstanding certificates, taxes, and interest, the tax collector must notify the clerk of court that the obligations have been satisfied and that the following persons be notified of the impending sale of the property:

- legal title holders of the property;
- any lienholders against the property;
- any mortgagees of the property;
- any vendee of a recorded contract for deed for the property or any vendee requesting to be notified;
- any other lienholder requesting to be notified;

- any person to whom the property was assessed on the tax roll for the year in which the property was last assessed; and
- any lienholder who has recorded a lien against a mobile home located on the property described in the tax certificate, under certain conditions.

Section 197.522, F.S., provides that the clerk of court is responsible for notifying these persons prior to the sale of the property. The costs to the Clerk of Court are reimbursed by the certificate holder.

Section 197.502(7), F.S., provides for disposing of land when the county holds a tax certificate on the land. During the first 90 days after the land is placed on the list of lands available for taxes, the county may purchase the land for the opening bid. Thereafter, any person, the county, or any other governmental unit may purchase the land from the clerk for the opening bid.

Section 197.582, F.S., provides for the disbursement of proceeds from the sale of property sold to pay delinquent taxes. Subsection (2) requires that if all liens of record of governmental units have been paid in full, the balance of undistributed funds are paid to the persons required to be notified of the tax deed application and persons to be notified that the property is on the list of lands available for purchase.

Ch. 2003-284, L.O.F., created paragraph (h) of s. 197.502(4), F.S., to require that when an individual tax certificate holder applies for a tax deed on land that is either submerged land or common elements in a subdivision, the tax collector must deliver to the clerk of court the names of any owner of property that is contiguous[12] to the property described in the tax certificate. The clerk of court is responsible for notifying these persons prior to the sale of the property.

Section 197.502(7), F.S., which allows the county to purchase land when it is placed on the list of lands available for taxes requires the county to notify property owners of contiguous property available for purchase at public sale, when such property is submerged land or land that is held in common in a subdivision, that the county does not intend to purchase the property.

Section 197.502(8), F.S., provides for property that is offered for public sale but is not purchased in the tax deed process to escheat to the county in which it is located three years from the date the land is offered for sale.

Section 627.7843(3), F.S., which addresses title insurance agents, states that when an ownership and encumbrance report is supplied to a customer it "must provide for a maximum liability for incorrect information of not more than $1,000." This statute anticipates that the customer will receive adequate protection from errors and omissions when they purchase their title insurance. When a county tax collector contracts for an ownership and encumbrance report it is not done in anticipation of the purchase of title insurance, but the tax collector is constrained by the liability cap.

[12] Adjacent, sharing a property boundary.

**Assessment of Lands Used for Outdoor Recreational or Park Purposes**
Generally, property is assessed at its "highest and best use," regardless of the actual use. Chapter 193, F.S., provides several exceptions to that rule for special classes of property, which are assessed on the basis of their classified use. These are:

- S. 193.451, F.S., Annual growing of agricultural crops, nonbearing fruit trees, and nursery stock; taxability.
- S. 193.461, F.S., Agricultural lands, classification and assessment; eradication or quarantine program.
- S. 193.481, F.S., Assessment of mineral, oil, gas, and other subsurface rights.
- S. 193.501, F.S., Assessment of lands subject to a conservation easement, environmentally endangered lands, or lands used for outdoor recreational or park purposes when land development rights have been conveyed or conservation restrictions have been covenanted.
- S. 193.503, F.S, Classification and assessment of historic property used for commercial or certain nonprofit purposes.
- S. 193.505, F.S., Assessment of historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted.
- S. 193.621, F.S., Assessment of pollution control devices.
- S. 193.623, F.S., Assessment of buildings renovations for accessibility of the physically handicapped.
- S. 193.625, F.S., High-water recharge lands; classification and assessment.
- S. 193.703, F.S., Reduction in assessments for living quarters of parents or grandparents.

Under s. 193.501, F.S., if the conservation restriction covenant or conveyance of land used for outdoor recreational purposes extends for at least 10 years, the property appraiser must assess the property based on its present use.

**Computation of District Required Local Effort**
Funds for the operation of public schools include local property taxes levied by school districts. Each year the Legislature prescribes the aggregate required local effort for all school districts collectively as an item in the General Appropriations Act. By statute, this aggregate required local effort millage rate is adjusted in each district to equalize for differences in the prior year's assessment level in each county. Section 1011.62(4)(c), F.S. directs the Department of Revenue to certify to the Commissioner of Education its most recent determination of the assessment level of the prior year's assessment roll for each county, and the Commissioner adjusts the required local effort by an equalization factor. This section further provides that the "assessment level" means the value-weighted mean assessment ratio for the county or state as a whole, as determined pursuant to s. 195.096, F.S.

The Department of Revenue, when calculating the level of assessment for residential properties, does not look at the value as capped under Art. VII, Sec. 4(c) of the Florida Constitution (Save Our Homes), but uses the just value compared to the value established by the department in its sampling to establish level of assessment. This practice has been called into question because it seems to contradict the statutory definition of "assessed value" found in s. 192.001(2), F.S. [13]

[13] (2) 'Assessed value of property' means an annual determination of the just or fair market value of an item or property or the value of the homestead property as limited pursuant to s. 4(c), Art. VII of the State Constitution or, if a property is

## III. Effect of Proposed Changes:

**Section 1** amends s. 194.011(4)(a), F.S., to require a petitioner to provide the evidence to be presented at the VAB at least 15 days, rather than 10 days, before the hearing. This change provides the property appraiser additional time to prepare the list of evidence to be used at the VAB hearing.

The property appraiser's evidence to be presented at the VAB must be provided no later than 7 days *before the hearing if* the petitioner provides his or her required information, and *if it is requested in writing by the petitioner*. The property appraiser's deadline for requested information remains the same as in current law. If the property appraiser does not meet these requirements, the hearing will be rescheduled.

**Section 2** amends s. 194.032(2), F.S., to revise the notification time period to 25 calendar days prior to the day of scheduled appearance, rather than 20 calendar days as provided in current law.

**Section 3** amends s. 195.062, F.S., to allow DOR to change the manual of instruction for property appraisers and other officials to include all settled court decisions, and periodically update the guidelines for technical changes and other changes in assessment practices.

**Section 4** repeals s. 373.516, F.S., which requires the governing board of the South Florida Water Management District to assess benefits to rights-of-way of railroads at $4,000 per mile. In a recent audit of DOR's railroad valuation process, the Auditor General recommended that the Legislature consider repealing this provision, as it is obsolete. Representatives from DOR state that the general counsels for the various water management districts agree with this recommendation.

**Section 5** creates s. 689.261, F.S., to require that a purchaser of residential property be notified that the property will be re-assessed following the sale, which may result in the taxes being in excess of the taxes levied in the current year. This disclosure summary must be attached to the contract for sale at or before executing the contract for sale, unless a substantially similar disclosure is included in the contract for sale.

The bill provides the form with which the disclosure summary must substantially comply. The disclosure summary must state that:

> Buyer should not rely on the seller's current property taxes as the amount of property taxes that the buyer may be obligated to pay in the year subsequent to purchase. A change of ownership or property improvements triggers reassessments of the property that could result in higher property taxes. If you have any questions concerning valuation, contact the county property appraiser's office for information.

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assessed solely on the basis of character or use or at a specific percentage of its value, pursuant to s. 4(a) or (b), Art. VII of the State Constitution, its classified use value or fractional value.

If the disclosure summary is not included in the contract for sale, the contract must refer to and incorporate by reference the disclosure summary and must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the required disclosure summary.

**Section 6** creates s. 193.017, F.S., to provide requirements for assessing property that is subject to a low-income housing tax credit. This new provision is substantially identical to ss. 420.5093(5) & (6), and 420.5099(5) & (6), F.S. Specifically, property used for affordable housing which has received a low-income housing tax credit from the Florida Housing Finance Corporation "shall be assessed under s. 193.011 and consistent with s. 420.5099(5) and (6), pursuant to this section."

This section provides that:

- The tax credits granted and the financing generated by the tax credits may not be considered as income to the property;
- The actual rental income from rent-restricted units in such a property shall be recognized by the property appraiser; and
- Any costs paid for by tax credits and costs paid for by additional financing proceeds received under chapter 420 may not be included in the valuation of the property.

Furthermore, if an extended low-income housing agreement is filed in the official public records of the county in which the property is located, the agreement must be considered a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement.

**Section 7** amends s. 194.181, F.S., to allow persons obligated to pay property tax to contest the assessment of the property, even if they do not own the property, under certain circumstances and with the owner's permission. It also specifies that the tax collector shall be the defendant in questions related to applications for tax deeds, not questions about the deeds themselves.

**Section 8** amends s. 197.502, F.S., to streamline escheatment of property available for taxes by providing self-executing cancellation of all tax certificates, taxes, and other liens including governmental liens. It defines "contiguous" as used in ch. 197, F.S., clarifies that submerged sovereignty lands are not considered contiguous property under s. 197.502, F.S., and provides that the search of public records required under that section shall be by direct and inverse search. Finally, it allows the tax collector to contract for higher limits of liability than are allowed under s. 627.7843(3), F.S., for title or abstract companies that perform title searches or abstracts required under s. 194.502, F.S.

**Section 9** amends s. 193.501, F.S. to clarify that when land development rights have been restricted or conservation restrictions have been covenanted for land used for an outdoor recreational purpose, normal use and maintenance of the land shall not be restricted.

**Section 10** amends 1011.62, F.S., to direct the Department of Revenue to use the assessed value instead of the just value of residential parcels subject to Save Our Homes in determining level of assessment for equalizing required local effort.

**Section 11** provides that section 10 applies to certifications of the 2004 levels of assessment and thereafter, and ratifies previous certifications.

**Section 11** provides that the bill will take effect January 1, 2005.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Sellers of homestead property would have to make the disclosure required by this bill.

### C. Government Sector Impact:

This bill is expected to improve property tax administration by the Department of Revenue and local tax officials, but is not expected to have significant fiscal impacts on the state or local governments.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

1 A bill to be entitled
2 An act relating to property tax; amending s.
3 194.011, F.S.; revising requirements for
4 petitioners and property appraisers with
5 respect to providing evidence lists and
6 documentation for proceedings of the value
7 adjustment board; amending s. 194.032, F.S.;
8 requiring that a petitioner be notified earlier
9 of a scheduled appearance before the value
10 adjustment board; amending s. 195.062, F.S.;
11 authorizing the Department of Revenue to
12 provide additional information in its update of
13 the manual of instructions for property
14 appraisers and other officials; repealing s.
15 373.516, F.S., relating to the assessment of
16 rights-of-way of railroads and other public
17 service corporations; creating s. 689.261,
18 F.S.; requiring a seller to give notice to the
19 prospective purchaser of homestead property
20 concerning ad valorem taxes on the property;
21 specifying the form of notice; creating s.
22 193.017, F.S.; providing for assessment of
23 property used for affordable housing and
24 subject to a low-income housing tax credit;
25 amending s. 194.181, F.S.; authorizing a person
26 other than the taxpayer to contest the
27 assessment of any tax; designating the tax
28 collector as the defendant with respect to
29 questions relating to applications for tax
30 deeds; amending s. 197.502, F.S.; providing for
31 the escheatment of lands available for taxes;





FINANCE AND TAXATION COMMITTEE
DATE: 4/19/04
TIME: 3:15 pm

1 defining the term "contiguous" for purposes of
2 ch. 197, F.S.; providing that submerged
3 sovereignty lands are not contiguous for
4 purposes of certain notice requirements;
5 requiring that a search of official records for
6 purposes of obtaining a tax deed be made by a
7 direct and inverse search; authorizing the tax
8 collector to contract for higher limits of
9 liability than otherwise provided; amending s.
10 193.501, F.S.; clarifying a prohibition on the
11 restriction of the normal use and maintenance
12 of land that is subject to conservation
13 restrictions; amending s. 1011.62, F.S.;
14 prescribing the method by which the Department
15 of Revenue is required to calculate the
16 assessment level for purposes of equalizing the
17 required local effort to fund the operation of
18 schools; specifying that the provisions of the
19 act apply to the assessment level for 2004 and
20 after; ratifying any certification made under
21 prior provisions of law; providing an effective
22 date.
23
24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Subsection (4) of section 194.011, Florida
27 Statutes, is amended to read:
28 194.011 Assessment notice; objections to
29 assessments.--
30 (4)(a) At least 15 ~~10~~ days before the hearing~~,~~ the
31 petitioner shall provide to the property appraiser a list of



**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 evidence to be presented at the hearing, together with copies
2 of all documentation to be considered by the value adjustment
3 board and a summary of evidence to be presented by witnesses.
4 (b) No later than 7 5 days before the hearing, if
5 after the petitioner has provided provides the information
6 required under paragraph (a), and if requested in writing by
7 the petitioner, the property appraiser shall provide to the
8 petitioner a list of evidence to be presented at the hearing,
9 together with copies of all documentation to be considered by
10 the value adjustment board and a summary of evidence to be
11 presented by witnesses. The evidence list must contain the
12 property record card if provided by the clerk. Failure of the
13 property appraiser to timely comply with the requirements of
14 this paragraph shall result in a rescheduling of the hearing.
15 Section 2. Subsection (2) of section 194.032, Florida
16 Statutes, is amended to read:
17 194.032 Hearing purposes; timetable.--
18 (2) The clerk of the governing body of the county
19 shall prepare a schedule of appearances before the board based
20 on petitions timely filed with him or her. The clerk shall
21 notify each petitioner of the scheduled time of his or her
22 appearance no less than 25 20 calendar days prior to the day
23 of such scheduled appearance. Upon receipt of this
24 notification, the petitioner shall have the right to
25 reschedule the hearing a single time by submitting to the
26 clerk of the governing body of the county a written request to
27 reschedule, no less than 5 calendar days before the day of the
28 originally scheduled hearing. A copy of the property record
29 card containing relevant information used in computing the
30 taxpayer's current assessment shall be included with such
31 notice, if said card was requested by the taxpayer. Such

1 request shall be made by checking an appropriate box on the
2 petition form. No petitioner shall be required to wait for
3 more than 4 hours from the scheduled time; and, if his or her
4 petition is not heard in that time, the petitioner may, at his
5 or her option, report to the chairperson of the meeting that
6 he or she intends to leave; and, if he or she is not heard
7 immediately, the petitioner's administrative remedies will be
8 deemed to be exhausted, and he or she may seek further relief
9 as he or she deems appropriate. Failure on three occasions
10 with respect to any single tax year to convene at the
11 scheduled time of meetings of the board shall constitute
12 grounds for removal from office by the Governor for neglect of
13 duties.
14 Section 3. Subsection (1) of section 195.062, Florida
15 Statutes, is amended to read:
16 195.062 Manual of instructions.--
17 (1) The department shall prepare and maintain a
18 current manual of instructions for property appraisers and
19 other officials connected with the administration of property
20 taxes. This manual shall contain all:
21 (a) Rules and regulations.
22 (b) Standard measures of value.
23 (c) Forms and instructions relating to the use of
24 forms and maps.
25
26 Consistent with s. 195.032, the standard measures of value
27 shall be adopted in general conformity with the procedures set
28 forth in s. 120.54, but shall not have the force or effect of
29 such rules and shall be used only to assist tax officers in
30 the assessment of property as provided by s. 195.002.
31 Guidelines may be updated annually to incorporate new market



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1 data, which may be in tabular form, technical changes, changes
2 indicated by established decisions of the Supreme Court, and,
3 if a summary of justification is set forth in the notice
4 required under s. 120.54, other changes relevant to
5 appropriate assessment practices or standard measurement of
6 value. Such new data may be incorporated into the guidelines
7 on the approval of the executive director if after notice in
8 substantial conformity with s. 120.54 there is no objection
9 filed with the department within 45 days, and the procedures
10 set forth in s. 120.54 do not apply.
11 Section 4. Section 373.516, Florida Statutes, is
12 repealed.
13 Section 5. Section 689.261, Florida Statutes, is
14 created to read:
15 689.261 Sale of residential property; disclosure of ad
16 valorem taxes to prospective purchaser.--
17 (1) A prospective purchaser of residential property
18 must be presented a disclosure summary at or before execution
19 of the contract for sale. Unless a substantially similar
20 disclosure summary is included in the contract for sale, a
21 separate disclosure summary must be attached to the contract
22 for sale. The disclosure summary, whether separate or included
23 in the contract, must be in a form substantially similar to
24 the following:
25
26 PROPERTY TAX
27 DISCLOSURE SUMMARY
28
29 BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES
30 AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE
31 OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE



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1 OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS
2 OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF
3 YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE
4 COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
5
6 (2) Unless included in the contract, the disclosure
7 summary must be provided by the seller. If the disclosure
8 summary is not included in the contract for sale, the contract
9 for sale must refer to and incorporate by reference the
10 disclosure summary and include, in prominent language, a
11 statement that the potential purchaser should not execute the
12 contract until he or she has read the disclosure summary
13 required by this section.
14 Section 6. Section 193.017, Florida Statutes, is
15 created to read:
16 193.017 Low-income housing tax credit.--Property used
17 for affordable housing which has received a low-income housing
18 tax credit from the Florida Housing Finance Corporation, as
19 authorized by s. 420.5099, shall be assessed under s. 193.011
20 and, consistent with s. 420.5099(5) and (6), pursuant to this
21 section.
22 (1) The tax credits granted and the financing
23 generated by the tax credits may not be considered as income
24 to the property.
25 (2) The actual rental income from rent-restricted
26 units in such a property shall be recognized by the property
27 appraiser.
28 (3) Any costs paid for by tax credits and costs paid
29 for by additional financing proceeds received under chapter
30 420 may not be included in the valuation of the property.
31

1 (4) If an extended low-income housing agreement is
2 filed in the official public records of the county in which
3 the property is located, the agreement, and any recorded
4 amendment or supplement thereto, shall be considered a
5 land-use regulation and a limitation on the highest and best
6 use of the property during the term of the agreement,
7 amendment, or supplement.
8 Section 7. Subsections (1) and (3) of section 194.181,
9 Florida Statutes, are amended to read:
10 194.181 Parties to a tax suit.--
11 (1) The plaintiff in any tax suit shall be:
12 (a) The taxpayer or other person contesting the
13 assessment of any tax, the payment of which he or she is
14 responsible for under a statute or a person who is responsible
15 for the entire tax payment pursuant to a contract and has the
16 written consent of the property owner, ~~the law~~ or the
17 condominium association, cooperative association, or
18 homeowners' association as defined in s. 723.075 which
19 operates the units subject to the assessment; or
20 (b) The property appraiser pursuant to s. 194.036.
21 (3) In any suit involving the collection of any tax on
22 property, as well as questions relating to tax certificates or
23 applications for tax deeds, the tax collector charged under
24 the law with collecting such tax shall be the defendant.
25 Section 8. Subsection (4), paragraph (a) of subsection
26 (5), and subsection (8) of section 197.502, Florida Statutes,
27 are amended to read:
28 197.502 Application for obtaining tax deed by holder
29 of tax sale certificate; fees.--
30 (4) The tax collector shall deliver to the clerk of
31 the circuit court a statement that payment has been made for



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all outstanding certificates or, if the certificate is held by the county, that all appropriate fees have been deposited, and stating that the following persons are to be notified prior to the sale of the property:

(a) Any legal titleholder of record if the address of the owner appears on the record of conveyance of the lands to the owner. However, if the legal titleholder of record is the same as the person to whom the property was assessed on the tax roll for the year in which the property was last assessed, then the notice may only be mailed to the address of the legal titleholder as it appears on the latest assessment roll.

(b) Any lienholder of record who has recorded a lien against the property described in the tax certificate if an address appears on the recorded lien.

(c) Any mortgagee of record if an address appears on the recorded mortgage.

(d) Any vendee of a recorded contract for deed if an address appears on the recorded contract or, if the contract is not recorded, any vendee who has applied to receive notice pursuant to s. 197.344(1)(c).

(e) Any other lienholder who has applied to the tax collector to receive notice if an address is supplied to the collector by such lienholder.

(f) Any person to whom the property was assessed on the tax roll for the year in which the property was last assessed. ~~The certificate shall be signed by the collector and the collector's seal affixed. The collector may purchase a reasonable bond for errors and omissions of his or her office in making such certificate.~~

(g) Any lienholder of record who has recorded a lien against a mobile home located on the property described in the



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1 tax certificate if an address appears on the recorded lien and
2 if the lien is recorded with the clerk of the circuit court in
3 the county where the mobile home is located.
4 (h) Any legal titleholder of record of property that
5 is contiguous to the property described in the tax
6 certificate, when the property described is either submerged
7 land or common elements of a subdivision, if the address of
8 the titleholder of contiguous property appears on the record
9 of conveyance of the land to that legal titleholder. However,
10 if the legal titleholder of property contiguous to the
11 property described in the tax certificate is the same as the
12 person to whom the property described in the tax certificate
13 was assessed on the tax roll for the year in which the
14 property was last assessed, the notice may be mailed only to
15 the address of the legal titleholder as it appears on the
16 latest assessment roll. As used in this chapter, the term
17 "contiguous" means touching, meeting, or joining at the
18 surface or border, other than at a corner or a single point,
19 and not separated by submerged lands. Submerged lands lying
20 below the ordinary high-water mark which are sovereignty lands
21 are not part of the upland contiguous property for purposes of
22 notification.
23
24 The statement must be signed by the tax collector, with the
25 tax collector's seal affixed. The tax collector may purchase a
26 reasonable bond for errors and omissions of his or her office
27 in making such statement. The search of the official records
28 must be made by a direct and inverse search. "Direct" means
29 the index in straight and continuous alphabetic order by
30 grantor, and "inverse" means the index in straight and
31 continuous alphabetic order by grantee.

1 (5)(a) The tax collector may contract with a title
2 company or an abstract company at a reasonable fee to provide
3 the minimum information required in subsection (4), consistent
4 with rules adopted by the department. If additional
5 information is required, the tax collector must make a written
6 request to the title or abstract company stating the
7 additional requirements. The tax collector may select any
8 title or abstract company, regardless of its location, as long
9 as the fee is reasonable, the minimum information is
10 submitted, and the title or abstract company is authorized to
11 do business in this state. The tax collector may advertise and
12 accept bids for the title or abstract company if he or she
13 considers it appropriate to do so.
14 1. The ownership and encumbrance report must be
15 printed or typed on stationery or other paper showing a
16 letterhead of the person, firm, or company that makes the
17 search, and the signature of the person who makes the search
18 or of an officer of the firm must be attached. The tax
19 collector is not liable for payment to the firm unless these
20 requirements are met.
21 2. The tax collector may not accept or pay for any
22 title search or abstract if no financial responsibility is
23 assumed for the search. However, reasonable restrictions as to
24 the liability or responsibility of the title or abstract
25 company are acceptable. <u>Notwithstanding s. 627.7843(3), the</u>
26 <u>tax collector may contract for higher maximum liability</u>
27 <u>limits.</u>
28 3. In order to establish uniform prices for ownership
29 and encumbrance reports within the county, the tax collector
30 shall ensure that the contract for ownership and encumbrance
31

1 reports include all requests for title searches or abstracts
2 for a given period of time.
3 (8) Taxes shall not be extended against parcels listed
4 as lands available for taxes, but in each year the taxes that
5 would have been due shall be treated as omitted years and
6 added to the required minimum bid. Three years after ~~from~~ the
7 day the land was offered for public sale, the land shall
8 escheat to the county in which it is located, free and clear.
9 All tax certificates, accrued taxes, and liens of any nature
10 against the property shall be deemed canceled as a matter of
11 law and of no further legal force and effect, and the clerk
12 shall execute an escheatment ~~a~~ tax deed vesting title in the
13 board of county commissioners of the county in which the land
14 ~~it~~ is located.
15 Section 9. Subsection (1) of section 193.501, Florida
16 Statutes, is amended to read:
17 193.501 Assessment of lands subject to a conservation
18 easement, environmentally endangered lands, or lands used for
19 outdoor recreational or park purposes when land development
20 rights have been conveyed or conservation restrictions have
21 been covenanted.--
22 (1) The owner or owners in fee of any land subject to
23 a conservation easement as described in s. 704.06(1); land
24 qualified as environmentally endangered pursuant to paragraph
25 (6)(i) and so designated by formal resolution of the governing
26 board of the municipality or county within which such land is
27 located; land designated as conservation land in a
28 comprehensive plan adopted by the appropriate municipal or
29 county governing body; or any land which is utilized for
30 outdoor recreational or park purposes may, by appropriate
31 instrument, for a term of not less than 10 years:



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1 (a) Convey the development right of such land to the
2 governing board of any public agency in this state within
3 which the land is located, or to the Board of Trustees of the
4 Internal Improvement Trust Fund, or to a charitable
5 corporation or trust as described in s. 704.06(3); or
6 (b) Covenant with the governing board of any public
7 agency in this state within which the land is located, or with
8 the Board of Trustees of the Internal Improvement Trust Fund,
9 or with a charitable corporation or trust as described in s.
10 704.06(3), that such land be subject to one or more of the
11 conservation restrictions provided in s. 704.06(1) or not be
12 used by the owner for any purpose other than outdoor
13 recreational or park purposes. <u>If land is covenanted and used</u>
14 <u>for an outdoor recreational purpose, the normal use and</u>
15 <u>maintenance of the land for that purpose, consistent with the</u>
16 <u>covenant, shall not be restricted.</u>
17 Section 10. Paragraph (c) of subsection (4) of section
18 1011.62, Florida Statutes, is amended to read:
19 1011.62 Funds for operation of schools.--If the annual
20 allocation from the Florida Education Finance Program to each
21 district for operation of schools is not determined in the
22 annual appropriations act or the substantive bill implementing
23 the annual appropriations act, it shall be determined as
24 follows:
25 (4) COMPUTATION OF DISTRICT REQUIRED LOCAL
26 EFFORT.--The Legislature shall prescribe the aggregate
27 required local effort for all school districts collectively as
28 an item in the General Appropriations Act for each fiscal
29 year. The amount that each district shall provide annually
30 toward the cost of the Florida Education Finance Program for
31

1 kindergarten through grade 12 programs shall be calculated as
2 follows:
3 (c) Equalization of required local effort.--
4 1. The Department of Revenue shall include with its
5 certifications provided pursuant to paragraph (a) its most
6 recent determination of the assessment level of the prior
7 year's assessment roll for each county and for the state as a
8 whole.
9 2. The Commissioner of Education shall adjust the
10 required local effort millage of each district for the current
11 year, computed pursuant to paragraph (a), as follows:
12 a. The equalization factor for the prior year's
13 assessment roll of each district shall be multiplied by 95
14 percent of the taxable value for school purposes shown on that
15 roll and by the prior year's required local-effort millage,
16 exclusive of any equalization adjustment made pursuant to this
17 paragraph. The dollar amount so computed shall be the
18 additional required local effort for equalization for the
19 current year.
20 b. Such equalization factor shall be computed as the
21 quotient of the prior year's assessment level of the state as
22 a whole divided by the prior year's assessment level of the
23 county, from which quotient shall be subtracted 1.
24 c. The dollar amount of additional required local
25 effort for equalization for each district shall be converted
26 to a millage rate, based on 95 percent of the current year's
27 taxable value for that district, and added to the required
28 local effort millage determined pursuant to paragraph (a).
29 3. Notwithstanding the limitations imposed pursuant to
30 s. 1011.71(1), the total required local-effort millage,
31 including additional required local effort for equalization,



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1 shall be an amount not to exceed 10 minus the maximum millage
2 allowed as nonvoted discretionary millage, exclusive of
3 millage authorized pursuant to s. 1011.71(2). Nothing herein
4 shall be construed to allow a millage in excess of that
5 authorized in s. 9, Art. VII of the State Constitution.
6 4. For the purposes of this chapter, the term
7 "assessment level" means the value-weighted mean assessment
8 ratio for the county or state as a whole, as determined
9 pursuant to s. 195.096, or as subsequently adjusted. <u>However,</u>
10 <u>for those parcels studied pursuant to s. 195.096(3)(a)1. which</u>
11 <u>are receiving the assessment limitation set forth in s.</u>
12 <u>193.155, and for which the assessed value is less than the</u>
13 <u>just value, the department shall use the assessed value in the</u>
14 <u>numerator and the denominator of such assessment ratio.</u> In the
15 event a court has adjudicated that the department failed to
16 establish an accurate estimate of an assessment level of a
17 county and recomputation resulting in an accurate estimate
18 based upon the evidence before the court was not possible,
19 that county shall be presumed to have an assessment level
20 equal to that of the state as a whole.
21 5. If, in the prior year, taxes were levied against an
22 interim assessment roll pursuant to s. 193.1145, the
23 assessment level and prior year's nonexempt assessed valuation
24 used for the purposes of this paragraph shall be those of the
25 interim assessment roll.
26 Section 11. <u>The amendment made by this act to section</u>
27 <u>1011.62(4)(c)4., Florida Statutes, applies to the</u>
28 <u>certifications of the 2004 and later levels of assessment. It</u>
29 <u>is the intent of the Legislature that the use of just value</u>
30 <u>instead of assessed value for property assessed pursuant to</u>
31 <u>section 193.155, Florida Statutes, for the calculation of such</u>



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levels for any certification made pursuant to section 1011.62(4)(c)4. or former section 236.081(4)(c)4., Florida Statutes, prior to the 2004 tax roll is validated and ratified.

Section 12. This act shall take effect January 1, 2005.



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Proposed CS

Bill No. SB 2444

Amendment No. ___

SENATE AMENDMENT

1

431908

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 12:30

Senator Posey moved the following amendment:

**Senate Amendment (with title amendment)**

On page 15, ~~before line 1~~, between lines 4 & 5,

insert:

Section 12. Subsection (4) is added to section 196.196, Florida Statutes, to read:

196.196 Determining whether property is entitled to charitable, religious, scientific, or literary exemption.--

(4) Property used by a not-for-profit fraternal or benevolent organization for a bar or restaurant is exempt from ad valorem taxation when the profit from such operation is used exclusively for exempt charitable, educational, literary, scientific, or religious purposes.

(Redesignate subsequent sections.)

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

And the title is amended as follows:

Proposed CS

Bill No. SB 2444

Amendment No. ___

431908

On page 2, line 21, after the semicolon,

insert:

amending s. 196.196, F.S.; exempting property owned by a not-for-profit fraternal or benevolent organization and used as a bar or restaurant from ad valorem taxation under certain circumstances;

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2528

SPONSOR: Banking and Insurance Committee and Senator Wise

SUBJECT: Insurance Premium Taxes

DATE: April 16, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Johnson | Deffenbaugh | BI | Fav/CS |
| 2. | Fournier | Johansen | FT | |
| 3. | | | AGG | |
| 4. | | | AP | |
| 5. | | | RC | |
| 6. | | | | |

## I. Summary:

Committee Substitute for Senate Bill 2528 reduces the insurance premium tax liability for title insurance companies by allowing such insurers to exempt up to 70 percent of total gross insurance premium when the premium is retained by or paid under contract to affiliated or nonaffiliated agencies. As a result, the premium tax base for a title insurer could be reduced to 30 percent of gross receipts on title insurance premium written if the insurer pays out 70 percent of the premium in commissions, which is typical in current practice.

The Revenue Estimating Conference projected that the bill's impact on the General Revenue Fund would be $7.4 million recurring loss. The first year impact is estimated to be a $3.0 million loss, based on the January 1, 2005 effective date.

This bill substantially amends sections 624.509 and 627.7711 of the Florida Statutes.

## II. Present Situation:

### Insurance Premium Tax

The insurance premium tax is paid by insurance companies on insurance premiums received at the following rates: 1.75 percent on gross premiums minus reinsurance and return premiums; 1 percent on annuity premiums; 1.6 percent on self-insurers; and 5 percent on surplus lines premiums. Title insurance premiums are subject to the 1.75 percent tax rate. Insurers are allowed credits, deductions, and exemptions against insurance premium tax for:

- Community Contributions (s. 624.5105, F.S.)
- Corporate Income and Emergency Excise Taxes (s. 624.509(4), F.S.)
- Florida Employees' Salaries (s. 624.509(5), F.S.)

- Capital Company Investment Credits (s. 288.99, F.S.)
- Municipal Firefighters' Pension Funds (s. 175.141, F.S.)
- Municipal Police Officers' Pension Funds (s. 185.12, F.S.)
- Capital Investment Tax Credits (s. 220.191(2), F.S.)
- Child Care Credits (s. 624.5107, F.S.)
- Workers' Compensation Assessment Credit (s. 440.51, F.S.)
- Florida Health Insurance Guaranty Association Assessment (s. 631.711, F.S.)
- Exemption for Annuity Premiums (624.509(8), F.S.)

After certain distributions to the Insurance Regulatory Trust Fund, the remainder of premium tax revenue is deposited into General Revenue. The tax on surplus lines and independently procured coverage is distributed 24.3 percent to the Insurance Regulatory Trust Fund and 75.7 percent to General Revenue.

**Title Insurance Overview**

Title insurance insures owners of real property against loss by encumbrance, defective titles, invalidity, or adverse claim to title.[1] Title insurance differs from traditional property and casualty (P&C) insurance in that instead of insuring against certain risks that may occur in the future -- e.g., hurricanes, floods, and car accidents -- the title insurer insures against whether a past event has clouded the ownership interest or lien interest in real property that the insured believes to exist when the title insurance policy is issued.

Because of the difference in the type of risk insured, the relationship between losses and expenses in title insurance differs from traditional P&C insurance. In P&C insurance, insurers ordinarily expend the majority of their revenues to pay for losses (claims) and loss adjustment while title insurers are likely to expend only a small portion of their revenues to pay for losses and loss adjustment. A greater part of title insurance revenue pays for activities such as conducting title searches and examinations, reviewing public documents, handling funds in escrow, preparing closing documents, and conducting closings, usually performed by the title insurance agents. The primary goal of a title search is to establish that all previous liens have been satisfied, that property boundaries are clear and unobstructed, and that any easements are well defined and included in the description of the property, thereby reducing the likelihood of loss by determining potential defects in the title prior to issuance of the policy. The activities of title insurance agents also include most of the same activities as P&C insurance agents, such as marketing and producing policies.

**Regulation of Title Insurance**

Part XIII of ch. 627, F.S., governs title insurance contracts. Title insurance is generally purchased as part of the initial purchase or refinance of real property. A title search examines ownership of a parcel of property through its years of ownership.

[1] Section 624.608, F.S. (2003)

Under the current law, the percentage of such title insurance premium required to be retained by the title insurer cannot be less than 30 percent.[2] Subject to this limitation, a title insurer is allowed to pay the remaining 70 percent of the premium as a commission to the title insurance agent. The Financial Services Commission has adopted rules which establish the premium rates that can be charged in Florida for title insurance contracts and the minimum insurer premium retention for the risk associated with the title insurance.[3] The minimum amount of premium required to be retained by the insurer, as a percentage of total premium written, varies from 30 to 40 percent contingent upon the total dollar value of the title insurance written. For example, a title insurer is generally required to retain 30 percent of the premium if the amount of the written premium is $1 million or less.

Section 627.7711, F.S., defines the word "premium" to mean the charge made by a title insurer for a title insurance policy, including the charge for the performance of primary title services by a title insurer or agent, and the assumption of the risks associated with such a policy, and upon which charge a premium tax is paid under s. 624.509. However, the definition also provides that with respect to any law, "the word 'premium' does not include a commission." However, for purposes of the premium tax, the law has historically been interpreted as including the gross amount collected for title insurance, without deduction for any portion of the premium paid to the insurance carrier, agent, or agency as a commission, as for other types of insurance. Staff of the Office of Insurance Regulation report that commissions paid to a title insurance agent are typically 70 percent of the total price paid for such insurance, i.e., the maximum amount allowable by law.

## III. Effect of Proposed Changes:

**Section 1** amends s. 624.509, F.S., to revise the calculation of insurance premium tax for title insurance companies. The 1.75 percent premium tax would no longer apply to the portion of the gross receipts retained by or paid under contract to the affiliated and nonaffiliated title insurance agents. However, the deduction for this amount may not exceed 70 percent of the total title insurance premium gross receipts received by the insurer through affiliated and nonaffiliated agencies. Currently, 100 percent of the total title insurance premium gross receipts are subject to the insurance premium tax prior to any credits.

**Section 2** amends s. 627.7711, F.S., to revise the definition of "premium" for purposes of title insurance contracts. The bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by section 1, since the title insurance company is allowed to exempt up to 70 percent of the insurance premium gross receipts from the premium tax.

**Section 3** provides that the bill takes effect January 1, 2005.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

[2] Section 627.782, F.S. (2003)
[3] Rule 4-186.003, F.A.C.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Title insurance companies would benefit from the reduction of the premium tax base since they would no longer be required to pay a 1.75-percent insurance premium tax on 70 percent of the gross receipts from the sale of title insurance. The exempted percentage of title insurance premiums is an allowance for that portion of the title insurance premium paid as commission to an insurance company, agent, or agency. According to the Office of Insurance Regulation, commissions paid to agents are typically 70 percent of the total price charged to consumers for title insurance, and the title insurance company retains the remaining 30 percent of the premium to cover the title risk.

C. Government Sector Impact:

The Revenue Estimating Conference projected that the bill's impact on the General Revenue Fund would be $7.4 million recurring loss. The first year impact is estimated to be a $3.0 million loss, based on the January 1, 2005 effective date.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2580

SPONSOR: Military and Veterans' Affairs, Base Protection, and Spaceports Committee and Senator Diaz de la Portilla

SUBJECT: Specialty License Plates

DATE: April 20, 2004 REVISED: _____ _____ _____ _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Davis | Meyer | TR | Fav/2 amendments |
| 2. | Vickers | Krasovsky | MS | Favorable/CS |
| 3. | Keating TMK | Johansen AWJ | FT | |
| 4. | | | ATD | |
| 5. | | | AP | |
| 6. | | | | |

## I. Summary:

The committee substitute directs the Department of Highway Safety and Motor Vehicles (DHSMV) to issue two specialty license plates: (1) an Adopt A Best Friend license plate; and (2) a Florida National Guard license plate. In addition to applicable motor vehicle registration taxes and fees, a $25 annual use fee will be charged for each of these new specialty license plates. In the case of the Adopt A Best Friend license plate, the annual use fees will be distributed to the Florida No More Homeless Pets Association, Inc., to address the problem of homeless pets in Florida. In the case of the Florida National Guard license plate, the annual use fees will be distributed to the Florida National Guard Foundation to provide financial assistance to Guard members and their families.

According to the DHSMV, the organizations seeking Legislative approval of these specialty license plate concepts have not completed the statutory requirements for eligibility established in s. 320.08053, F.S.

This CS substantially amends ss. 320.08056 and 320.08058 of the Florida Statutes.

## II. Present Situation:

The Florida Legislature created the first specialty license plates in 1986, one commemorating the seven astronauts who died when the space shuttle Challenger exploded after lift-off, and one for each of the nine universities then in the State university system. Since then, the Legislature has authorized 78 more specialty license plates.

**Specialty License Plate Requirements**

Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from $15 to $25, paid in addition to required license taxes and service fees, are distributed to an organization or organization in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Section 320.08053, F.S., provides an organization seeking authorization to establish a specialty license plate must submit the following:

- A request for the particular license plate with a description of the proposed plate in general terms.
- The results of a scientific sample survey of Florida motor vehicle owners that indicates at least 15,000 motor vehicle owners intend to purchase the proposed specialty license plate at the increased costs.
- An application fee, not to exceed $60,000, to defray the DHSMV's cost for reviewing the application and developing the specialty license plate, if authorized.
- A marketing strategy outlining both the short and long term marketing plans and a financial analysis outlining the anticipated revenue and the planned expenditures of the requested specialty license plate.

The required documentation and fees must be submitted at least 90 days before the convening of the next regular session of the Florida Legislature. If a specialty license plate is approved by law, the organization must submit a proposed art design for the specialty plate to the DHSMV no later than 60 days after the act becomes a law. If the specialty license plate is not approved by the Legislature, then the application fee will be refunded to the requesting organization.

Section 320.08056, F.S., provides that the DHSMV is responsible for developing the specialty license plates and must begin production and distribution within one year after approval of the specialty license plate by the Legislature. Specialty license plates must bear the design required by law for the appropriate specialty plate, and the designs and colors must be approved by DHSMV. In addition, the specialty license plate must bear the imprint of numerals from 1 to 999, inclusive, capital letters "A" through "Z", or a combination thereof. The word "Florida" must appear at either the top or the bottom of the plate, depending upon the design and may bear an appropriate slogan.

The DHSMV is authorized to annually retain the first proceeds derived from the annual use fees collected in an amount sufficient to defray each specialty plates pro rata share of the DHSMV's costs directly related to issuing the specialty license plate.

The DHSMV must discontinue the issuance of an approved specialty plate if less than eight thousands plates (including annual renewals) are issued by the end of the fifth year or during any

subsequent 5-year period. The DHSMV is authorized to discontinue the issuance and distribution of specialty plates if the organization no longer exists or if the organization has stopped providing services authorized to be funded. To date, only three specialty license plates have ever been discontinued for lack of sales. These specialty license plates are the Girl Scouts plate, the Orlando Predators plate and the Tampa Bay Storm plate.

Annual use fees or any interest earned from those fees may not be used for commercial or for-profit activities, or for general administrative expenses (except as specifically authorized or to pay the cost of the audit or report required to ensure the proceeds are used as authorized).

Section 320.08058, F.S., lists the approved specialty license plates and specifies funding requirements.

Section 320.08062, F.S., requires all organizations receiving annual use fee proceeds from the DHSMV to be responsible for ensuring proceeds are used in accordance with ss. 320.08056 and 320.08058, F.S. Each organization is either subject to an audit or is required to annually attest, under penalties of perjury, that such proceeds were used correctly.

The Legislature has authorized 88 specialty license plates to date. Sales of specialty license plates generated more than $24 million in annual use fee revenues in 2002, and more than $24.5 million in 2003. Since the program's inception in 1986, the DHSMV has collected annual use fees totaling more than $225 million.

**Military-Related License Plates**

Section 320.08056(4)(d), F.S., creates the Florida Salutes Veterans license plate and provides for a $15 annual use fee. The proceeds from the use fee are deposited into the State Homes for Veterans Trust Fund and used solely for the purpose of constructing, operating, and maintaining domiciliary and nursing homes for veterans and for limited promoting and marketing of the plate.

Section 320.08056(4)(cc), F.S., creates the United States Marine Corp license plate and provides for a $15 annual use fee. The first $50,000 collected annually from the use fee are deposited into the State Homes for Veterans Trust Fund and used solely for the purpose of constructing, operating, and maintaining domiciliary and nursing homes for veterans. Any additional funds collected annually are deposited into the Marine Corps Scholarship Foundation, Inc., and used to fund scholarships and assist Marine Corps Junior ROTC and Young Marine programs in Florida.

Section 320.08056(4)(mm), F.S., creates the Military Services licenses plates for the United States Army, Navy, Air Force and Coast Guard and provides for a $15 annual use fee. The proceeds from the use fee are deposited into the State Homes for Veterans Trust Fund and must be used solely to construct, operate, and maintain domiciliary and nursing homes for veterans, subject to planning and budgeting requirements of chapter 216, F.S.

Specialty license plates are distinguished from other types of specialized license plates by the fact that anyone may obtain one by simply paying an additional annual use fee, and by the fact that annual use fees are dedicated to supporting a particular cause or organization. *The*

*Legislature has also created a number of specialized license plates that are not specialty plates (s. 320.089, F.S.). These plates differ because the purchaser must be eligible by his or her status to obtain the plate, and because ownership of these plates does not require payment of an annual use fee that is distributed for charitable purposes.* These types of "status plates" are referred to in the statutes as special plates.

Currently, Florida has the Florida Salutes Veterans, U.S. Marine Corps and Military Services license plates to acknowledge military personnel, all available to the general public. In addition, there are 9 special license plates available to qualified recipients. They are listed below:

- Disabled Veterans,
- EX-POW, Medal of Honor (Air Force, Army, Navy, and Marines),
- National Guard,
- Paralyzed Veterans,
- Pearl Harbor Survivor,
- Purple Heart,
- U.S. Reserve, and
- U.S. Paratroopers.

## III. Effect of Proposed Changes:

The CS provides that notwithstanding the provisions of s. 320.08053, F.S., the DHSMV is to issue an Adopt A Best Friend specialty license plate. In addition to applicable motor vehicle registration taxes and fees, a $25 annual use fee will be charged for this new specialty license plate. The CS authorizes the DHSMV to retain the first $60,000 in proceeds to cover its costs related to the development and issuance of the specialty license plate. Thereafter, the annual use fees will be distributed to the Florida No More Homeless Pets Association, Inc., to fund activities that address the problem of homeless pets in Florida. The CS stipulates that 25 percent of the funds received through this license plate will used by the Florida No More Homeless Pets Association for the promotion, marketing, and administration of the license plate.

In addition, the CS provides that notwithstanding the provisions of s. 320.08053, F.S., the DHSMV is to issue a Florida National Guard specialty license plate. In addition to applicable motor vehicle registration taxes and fees, a $25 annual use fee will be charged for this new specialty license plate. The CS authorizes the DHSMV to retain the first $60,000 in proceeds to cover its costs related to the development and issuance of the specialty license plate. Thereafter, the annual use fees will be distributed to the Florida National Guard Foundation. The Florida National Guard Foundation, Inc., is a tax-exempt public organization under section 501(3)(c) of the Internal Revenue Code. The Foundation is the direct support organization of the Florida National Guard and provides financial support to Guard members and their families.

According to the DHSMV, the organizations seeking Legislative approval of these specialty license plate concepts have not completed the statutory requirements for eligibility established in s. 320.08053, F.S.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

Persons who apply for the Adopt A Best Friend specialty license plate or a Florida National Guard specialty license plate would have to pay $25 for the annual use fee, in addition to the taxes and fees required under s. 320.08, F.S., and a $2 processing fee. The $25 use fee for the Adopt A Best Friend specialty license plate shall be distributed to the Florida No More Homeless Pets Association, Inc. and the $25 use fee for the Florida National Guard specialty license plate shall be distributed to the Florida National Guard Foundation. The $2 processing fee is deposited into the State Transportation Trust Fund of the Department of Transportation. The fiscal impact is indeterminate.

### B. Private Sector Impact:

Persons who apply for the Adopt A Best Friend license plate and the Florida National Guard license plate would have to pay $25 for the annual use fees in addition to applicable motor vehicle registration taxes and fees.

Current law provides an application fee, not to exceed $60,000, be paid to the DHSMV to defray the administrative costs of reviewing and developing the new specialty license plate. The DHSMV has indicated $60,000 has not been collected from the applicants to defray these costs and the required documentation has not been submitted. The committee substitute provides that the DHSMV shall retain all annual use fee revenues from both specialty license plates until all start-up costs are recovered, not to exceed $60,000 per specialty license plate.

### C. Government Sector Impact:

The DHSMV estimates it will incur $59,460 in costs associated with the development and issuance of each of these specialty license plates. More specifically, these costs include $15,000 in personnel costs, $7,560 in computer programming costs and $36,900 in license plate costs. Specialty license plates cost the DHSMV $2.46 each under the current contract. The DHSMV provides a standard order of 15,000 plates is generally used.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/ SB 2874

SPONSOR: Comprehensive Planning Committee and Senator Bennett

SUBJECT: Financing of Public Facilities

DATE: April 20, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Herrin | Yeatman | CP | Fav/CS |
| 2. | Fournier | Johansen | FT | |
| 3. | | | ATD | |
| 4. | | | AP | |
| 5. | | | RC | |
| 6. | | | | |

## I. Summary:

This committee substitute (CS) creates the "Florida Impact Fee Act." It codifies case law with regard to the imposition of impact fees and authorizes a local government to adopt an impact fee ordinance in accordance with the provisions of this act. It requires certain record keeping procedures, specifies that an impact fee ordinance must allow for credits against impact fees, and must provide a process for refunding impact fees under certain circumstances. It allows an impact fee ordinance to provide for an optional appeals process to the local government of the amount of an impact fee or an interpretation of the fee and the ordinance may also allow for voluntary binding arbitration. It does not repeal existing laws or ordinances, but requires an impact fee ordinance that does not comply with the act's provisions to do so by October 1, 2005. The CS also includes legislative findings, intent, and definitions.

In addition, the CS allows a county to levy a real estate transfer surtax on certain documents if the county does not increase the rate of any impact fee imposed pursuant to the act beyond the rate imposed on January 1, 2003. The rate of the surtax may not exceed 5 cents on each $100 or fractional part thereof. The grantor of the real estate shall pay the surtax. However, a surtax may not be levied on the document that conveys a specific interest in real property for the first time following July 1, 2004. The levy of the surtax is subject to a referendum or an extraordinary vote of the governing board of the county. The CS specifies procedures relevant to the levy of the surtax and collecting such surtax.

This CS creates unspecified new sections of the Florida Statutes and s. 201.032 of the Florida Statutes.

## II. Present Situation:

**Impact Fees**

Local governments impose impact fees, as a condition of development approval, to provide public facilities that are necessitated by development projects. These fees are assessed against new development or a change in use that results in an increased need for public facilities. Section 163.3202(3), F.S., encourages "the use of innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning." Impact fees are imposed for a variety of facilities, including transportation; parks and recreation; police and corrections; fire and emergency management; libraries; schools; and water and sewer. The concurrency provisions of ch. 163, F.S, require that public facilities be in place concurrent with the impacts of development. In local fiscal year ending September 30, 2001, thirty-three of Florida's counties imposed impact fees and collected $385,440,873.

Although the Florida Statutes do not specifically authorize local governments to impose impact fees, there are several provisions that affect the imposition of certain impact fees. Section 191.009(4), F.S., provides that an independent special fire control district that has been authorized to impose an impact fee by special act or general law may establish a schedule of impact fees, in compliance with standards set by law for new construction, to pay for the cost of new facilities and construction. These fees must be kept separate from the other revenues of the district and used exclusively to acquire, purchase, or construct the facilities needed to provide fire protection and emergency services to new construction. The district's board is required to maintain adequate records to ensure the fees are only expended for permissible facilities and equipment.

Under s. 380.06, F.S., which governs developments of regional impact (DRI), if the development order for a DRI requires a developer to contribute land or a public facility, to construct or expand such facility, or to pay for the acquisition or expansion or construction, and the developer is also subject to an impact fee imposed by local ordinance, the local government has to establish and implement a procedure for the developer to receive a credit of the development order fee towards the impact fee for the same need. Also, if the local government imposes or increases an impact fee after the development order for a DRI has been issued, the developer may petition the local government for a credit for any contribution required by the development order towards the impact fee for the same need. This section authorizes the local government and a developer to enter into "capital contribution front-ending agreements" as part of a development order for a DRI that allows a developer or his or her successor to be reimbursed for voluntary contributions paid in excess of his or her fair share.

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] 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.[2] Municipalities have those governmental, corporate, and proprietary powers that enable

[1] Art. VIII, § 1(f), Fla. Const.
[2] Art. VIII, § 1(g), Fla. Const.

them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.[3] Section 125.01, F.S., enumerates the powers and duties of county government, unless preempted on a particular subject by general or special law. Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Given these powers, local governments may impose a variety of revenue sources for funding services and improvements without express statutory authorization.[4] Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.

There have been a number of court decisions that address impact fees.[5] In *Hollywood, Inc. v. Broward County*[6], the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if it offsets needs that are sufficiently attributable to the new development and the fees collected are adequately earmarked for the benefit of the residents of the new development.[7] In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[8] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.[9]

The Florida Supreme Court addressed the issue of impact fees in *St. Johns County v. Northeast Builders Association, Inc*[10]. The Fifth District Court of Appeal certified as a question of great public importance whether a county could impose an impact fee on new residential construction to be used for new public facilities. The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development."[11] Also, the ordinance provided for a system of credits to feepayers for land contributions or the construction of educational facilities. This ordinance required funds not expended within 6 years to be returned, along with interest on those funds, to the current landowner upon application.[12]

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[3] Art. VIII, § 2(b), Fla. Const.
[4] The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution, general law, or special law regarding the power at issue. Counties and municipalities cannot levy a tax without express statutory authorization because the constitution specifically prevents them from doing so. However, local governments may levy special assessments and a variety of fees absent any general law prohibition provided such home rule source meets the relevant legal sufficiency tests.
[5] *See, e.g.,* Contractors & Builders Ass'n v. City of Dunedin, 329 So. 2d 314 (Fla. 1976); Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County, 446 So. 2d 140 (Fla. 4th DCA 1983).
[6] 431 So. 2d 606 (Fla. 4th DCA 1983).
[7] *See id.* at 611.
[8] *See id.* at 611-12.
[9] *See id.* at 614.
[10] 583 So. 2d 635 (Fla. 1991).
[11] *See id.* at 637, *citing*, St. Johns County, Fla., Ordinance 87-60, § 10(B) (Oct. 20, 1987).
[12] *See id.* at 637.

The court applied the dual rational nexus test and found the county met the first prong of the test, but not the second. The builders in *Northeast Builders Association, Inc.* argued that many of the residences in the new development would have no impact on the public school system. The court found the county's determination that every 100 residential units would result in the addition of forty-four students in the public school system was sufficient and, therefore, concluded the first prong of the test was satisfied. However, the court found that the ordinance did not restrict the use of the funds sufficiently ensure the such fees would be spent to the benefit of those who paid the fees.[13]

As developed under case law, a legally sufficient impact fee does the following:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportional share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The feepayers receive credit for the contributions towards the cost of the increased capacity for public facilities.

**Documentary Stamp Tax**

The documentary stamp tax levied under ch. 201, F.S., is actually two taxes imposed on different bases at different tax rates. Section 201.02, F.S., imposes the tax on deeds and other documents related to real property at the rate of 70 cents per $100.[14] Sections 201.07 and .08, F.S., imposes the tax on certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements at a tax of 35 cents per $100.[15] Revenue from the documentary stamp tax is divided between the General Revenue Fund and various trust funds, primarily to acquire and manage public lands or support affordable housing. In FY 2003/4, the state will collect an estimated $2.3 billion in documentary stamp tax revenue, with $987 million going to the General Revenue Trust Fund.

Florida first enacted a documentary stamp tax in 1931, at the rate of 10 cents per $100 of consideration. In 1957, the tax on documents relating to realty (mainly deeds) was raised to 20 cents, and the tax has been assessed at two separate rates on deeds and notes ever since. Major rate increases occurred in 1957, 1963, 1979, 1981, 1985, 1987, 1990, 1991, and 1992. In 1983, the Legislature authorized Miami-Dade County to levy a discretionary surtax on deeds of up to 45 cents for each $100 except for deeds on single family residences.

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[13] *See id.* at 639.

[14] It is estimated that in FY 2004/05, the value of 1 cent levy for each $100 of consideration on deeds will generate $14.1 million. See 2004 FLORIDA TAX HANDBOOK, p. 50.

[15] It is estimated that in FY 2004/05, the value of 1cent levy for each $100 of consideration on corporate shares, bonds, certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements will generate $21.1 million. See 2004 FLORIDA TAX HANDBOOK, p.50.

Taxes on documentation of the recording or transfer of certain intangibles are levied by 39 states and the District of Columbia. Although most of these states levy documents recording taxes only on real estate, many, including Florida, have a more general tax levied on the transfer of deeds.

## III. Effect of Proposed Changes:

**Section 1** provides the act may be cited as the "Florida Impact Fee Act."

**Section 2** provides legislative findings regarding the planning and financing of public facilities. It provides the following statements of legislative intent for the act:

- Ensure that adequate public facilities are available to serve new growth and development.
- Promote orderly growth and development by codifying the minimum standards for the adoption of an impact fee ordinance as provided for in case law.
- Ensure that new growth and development is not required to pay more than its proportionate share of the cost of any public facilities necessary to accommodate a development project.
- Ensure the funds collected are expended to provide a benefit for those who have paid the fee.

**Section 3** defines the following terms as used in the act: developer, development, development order, impact fee, local government, proportionate share, public facility, system improvement, and system improvement costs. The definition of "impact fee" excludes any charge or fee to connect to a municipal-owned utility.

**Section 4** authorizes a local government to impose an impact fee as a condition of a development order in accordance with the provisions of the act. It specifies the local government must follow certain notice and hearing provisions. An ordinance may exempt all or part of a development from impact fees, but must provide criteria for such an exemption. It prohibits the use of impact fees to remedy existing deficiencies.

The CS allows a local government to impose an impact fee only if it can show a rational nexus between the need for additional public facilities and the development. The impact fee ordinance must require the fees to be expended only for the category of system improvements for which the fees were collected and those improvements must provide a benefit to those who have paid the fee. An impact fee may not exceed the proportionate share of the cost of system improvements needed to serve the new development.

Under this CS, an impact fee ordinance must include a schedule of impact fees for each public facility. The ordinance must include a process for a developer to receive a certification of the application of an impact fee schedule or individual assessment to a development project. This certification must establish that the fee may not be increased for 1 year for that development project or longer as determined by the local government to accommodate a longer construction period. The ordinance must also include a provision for credits against the payment of impact fees. These provisions must allow for a developer to receive credit for the present value of any construction of system improvements or contribution or dedication of land or money required by the local government.

In addition, the CS requires an impact fee ordinance to provide a process for refunding impact fees that have been collected but not encumbered within a reasonable period of time, not to exceed 8 years. These unencumbered fees or any excess impact fee, plus interest earned on those monies, must be refunded to the current owner.

**Section 5** provides that an impact fee ordinance must require the collected fees to be maintained in one or more interest-bearing accounts. Accounting records must be maintained for each category of system improvements and the interest on those fees are considered funds of the account on which it is earned and are subject to the same restrictions as impact fees are under this act. Local governments are required to keep records that identify the amount of any impact fees collected and how those fees were encumbered or expended during the preceding year for each category of system improvements.

**Section 6** allows a local government that imposes an impact fee to provide for a separate administrative appeal to its governing body, or other body designated in the ordinance, of a determination of the amount of an impact fee or an interpretation of the fee. An administrative appeal under this section does not affect the availability of other legal remedies. This CS also allows an impact fee ordinance to provide for voluntary binding arbitration.

**Section 7** specifies that this act does not prevent or prohibit agreements between property owners or developers and local governments regarding the construction or installation of system improvements and the provision of credits or reimbursements for those system improvement costs.

**Section 8** provides the act does not repeal any existing laws or ordinances authorizing impact fees. However, an existing ordinance that does not comply with the act must be brought into compliance by October 1, 2005.

**Section 9** creates s. 201.032, F.S., to allow counties to impose a real estate transfer surtax (tax) on deeds, under specified conditions.

Subsection (1) provides that subject to the restrictions in subsections (9) and (10), the governing authority of a county may levy a tax on deeds, as are taxed under s. 201.02, at a rate not exceeding 5 cents on $100 of consideration. The seller is responsible to pay the tax. However, such deeds sold for the first time after July 1, 2004 are exempt from the tax. Subsequent transactions on the same property or interests are subject to the tax.

Subsection (2) provides that the tax may be levied pursuant to an ordinance approved in a referendum or enacted by an extraordinary vote of the governing authority of the county. However, a public hearing on the issue must be held at least 2 weeks before the formal adoption of the ordinance.

Subsection (3) requires the county to notify the Department of Revenue (DOR) within 10 days after final adoption by ordinance or referendum of an imposition, termination, or rate change of the tax. The notice must specify the period during which the surtax will be in effect and the rate of the tax and must include a copy of the ordinance, and any other information as the department may require by rule. Failure to timely provide such notification to the department will result in

the delay of the effective date of the tax for a period of 1 year. A surtax or an increase or decrease in the rate of the surtax must take effect on January 1 and must terminate on December 31.

Subsection (4) provides that if the tax is conditioned to take effect upon referendum approval, the county governing authority must place on the ballot a statement that includes a brief general description of the projects to be funded by the tax and that conforms to the requirements of s. 101.161, and this subsection.

Subsection (5) restricts the use of tax proceeds to the provision of infrastructure necessary to implement adopted local government comprehensive plans. "Infrastructure" is defined as "any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto."

Subsection (6) allows the tax proceeds to be pledged to pay principal and interest on bonds issued for the provision of this infrastructure. The county must continue to levy the surtax as long as any bonds are outstanding.

Subsection (7) requires DOR to administer the surtax pursuant to s. 201.11, F.S. Section 201.15, F.S., which subjects tax proceeds to the General Revenue Service Charge, does not apply to this tax. In addition, DOR may retain up to 1 percent of the tax proceeds to pay the department's cost of collection and enforcement.

Subsection (8) restricts using tax proceed for operating costs. In addition, a county that levies a surtax must, within 90 days after the close of its fiscal year, submit to the Department of Financial Services a financial report that contains information showing the use of the tax proceeds.

Subsection (9) provides that if a county does not impose an impact fee pursuant to section 4 of this CS and chooses to levy the tax authorized by this section, the county may not levy any impact fee until the ordinance imposing this tax has been rescinded and all obligations against which the surtax revenues have been pledged are satisfied.

Similarly, subsection (10) provides that if a county imposes this tax, the county may not increase the rate of any impact fee imposed pursuant to **section 4 of this CS** beyond the rate imposed on January 1, 2003, and may not impose an additional impact fee until the ordinance imposing this tax has been rescinded and all obligations against which the surtax revenues have been pledged are satisfied.

Subsection (11) requires the Department of Revenue to adopt forms to be used when the surtax is paid. If the seller is exempted from the tax, he or she must record an affidavit verifying that he or she is exempt. At the time of recording, the clerk of the court must collect and remit the surtax proceed to the Department of Revenue for distribution to the county levying the surtax. The clerk is authorized to retain 1 percent of the surtax paid as a service charge.

Subsection (12) authorizes the Department of Revenue to adopt emergency rules to implement and enforce the provisions of this act. These emergency rules will remain in effect until the adoption of permanent rules.

Subsection (13) provides that the surtax does not apply to a deed, transfer, or conveyance between spouses or former spouses pursuant to an action for dissolution of their marriage if the property is or was their marital home. Furthermore, any surtaxes paid pursuant to this section must be refunded in those cases in which a deed, transfer, or conveyance occurred 1 year before a dissolution of marriage.

**Section 10** provides that this act will take effect July 1, 2004.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

If all counties levied the real estate transfer surtax authorized by this CS on all deeds, $70.5 million could be raised statewide. However, this estimate does not consider the "first sale" exemption; consequently, the statewide capacity of the surtax will be reduced. (See Technical Deficiencies, below.)

### B. Private Sector Impact:

The second conveyance of an interest in real property following July 1, 2004 is subject to the real estate transfer surtax authorized in this CS. In order to levy this surtax, the county must not increase its impact fee beyond the rate imposed on December 31, 2003. Thus, new construction in a county that levies the surtax will not be subject to increased impact fees.

### C. Government Sector Impact:

A local government imposing an impact fee that does not comply with the requirements of this act, which are intended to codify existing case law, must bring the ordinance into compliance with the act by October 1, 2005. The adoption or modification of a local government ordinance is subject to certain notice and hearing provisions.

The DOR will be required to administer the collection of the surtax, which will require adoption of forms to be used when the surtax is paid. The respective Clerks of Court must collect and remit the surtax proceeds to DOR for distribution to the county levying the surtax. DOR and the respective Clerks of Court are authorized to retain service charges to offset the costs of their responsibilities.

## VI. Technical Deficiencies:

The bill provides an exemption from the local option documentary stamp surcharge authorized in section 9 (s. 201.032(1), F.S.) for "a document that conveys a specific interest in real property in this state for the first time following July 1, 2004." It is unclear how this will be interpreted.

According to the DOR, it will be difficult, if not impossible, to determine whether a document conveying an interest in Florida real property is the first to convey that interest following the effective date of this act. Auditors would be required to review the history of recorded documents. There are instances in which taxable documents are not recorded and transfer history is not reliably known. Taxpayers would be required to prove that the document is the first following the effective date of this act.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 3110

SPONSOR: Senator Alexander

SUBJECT: Hardee Co. Economic Development Authority

DATE: April 16, 2004 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Keating MK | Johansen OM | FT | |
| 2. | | | AGG | |
| 3. | | | AP | |
| 4. | | | RC | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

The bill creates the Hardee County Economic Development Authority (authority) in accordance with s. 211.3103(3)(b)3., F.S. The purpose of the authority is to solicit, rank, and fund projects that provide economic development opportunities and infrastructure within the geographic boundaries of Hardee County and to otherwise maximize the use of federal, local, and private resources as provided by s. 211.3103(5), F.S. The bill provides for membership and powers of the authority. In addition, the bill provides that the rural area of critical economic concern distribution of the phosphate rock tax to Hardee County is to be distributed to the authority instead. The bill also provides procedures for application for grants-in-aid from the authority.

This bill creates a new section of law.

## II. Present Situation:

Section 211.3103, F.S., provides for the levy of an excise tax upon every person engaged in the business of severing phosphate rock from the soils or waters of Florida for commercial use. During Special Session E, chapter 2003-423, Laws of Florida, amended s. 211.3103, F.S., to increase the tax rate paid for the severance of phosphate rock, change the distribution of the severance tax on phosphate rock, and provide for the use of funds distributed to counties that have been designated a rural area of critical economic concern. Beginning July 1, 2004, the tax rate shall be the base rate of $1.62 per ton severed. Beginning July 1, 2005, and annually thereafter, the tax rate shall be the base rate times the base rate adjustment for the tax year. The base rate adjustment is calculated based on the change in the unadjusted annual producer price index for the prior calendar year in relation to the unadjusted annual producer price index for calendar year 1999. However, the tax rate shall not be less than $1.56 per ton severed. Beginning

July 1, 2004, revenue collections from the excise tax on phosphate rock will be distributed as follows:

- First $10 million to the Conservation and Recreation Lands Trust Fund (CARL). Of the remaining revenues:
  - 40.1% to the General Revenue Fund
  - 16.5% to the County where mined
  - 9.3% to the Phosphate Research Trust Fund
  - 10.7% to the Minerals Trust Fund
  - 10.4% to the Non-mandatory Land Reclamation Trust Fund (NMLRTF)
  - 13.0% to counties that have been designated a Rural Area of Critical Economic Concern

Estimated phosphate tax revenue collections for fiscal year 2004-05[1] are $50.1 million. Estimated distributions of the $50.1 million are as follows:

| | |
|---|---|
| CARL | $10.0 million |
| General Revenue Fund | $16.1 million |
| Counties where mined | $ 6.6 million |
| NMLRTF | $ 4.2 million |
| Phosphate Research TF | $ 3.7 million |
| Minerals TF | $ 4.3 million |
| Rural Area of Critical Economic Concern | $ 5.2 million |

Payment to counties that have been designated a rural area of critical economic concern pursuant to s. 288.0656, F.S., shall be made to the counties by the Department of Revenue unless the Legislature, by special act, creates a local authority to promote and direct the economic development of the county. If such authority exists, payments shall be made to that authority.

Counties designated as a rural area of critical economic concern that mine phosphate are Hamilton County (designated April, 2003) and Hardee County (designated January, 2001). In fiscal year 2002-03, Hamilton County received $299,432 and Hardee County received $1,540,102 in phosphate excise tax revenues. The rural area of critical economic concern distribution began in fiscal year 2003-04.

Subsection (5) of section 211.3103, F.S., provides that funds distributed to counties that have been designated a rural area of critical economic concern, must be used for:

- Planning, preparing, and financing of infrastructure projects for job creation and capital investment, especially those related to industrial and commercial sites. Infrastructure investments may include certain specified public or public-private partnership facilities.

- Maximize the use of federal, local, and private resources, including, but not limited to, those available under the Small Cities Community Development Block Grant Program.

[1] March 12, 2004 General Revenue Estimating Conference

- Projects that improve inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth, if such projects are related to specific job creation or job retention opportunities.

Section 288.0656, F.S., created the Rural Economic Development Initiative, known as REDI, in the Office of Tourism, Trade and Economic Development of the Executive Office of the Governor. Subsection (7) authorizes the Governor to designate up to three rural areas of critical economic concern within the state. The three regions are:

- Calhoun, Franklin, Gadsden, Holmes, Jackson, Liberty, and Washington Counties;

- DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, and the cities of Pahokee, Belle Glade, and South Bay, and the area around Immokalee included within the Round II Federal Rural Enterprise Community; and

- Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor and Union Counties.

Counties designated as a rural area of critical economic concern are provided the following benefits:

- Provides communities with support for economic development efforts and authorization for waivers of criteria, requirements, or similar provisions of any economic development initiatives authorized by statute.

- Legislation provides counties located in rural areas of critical economic concern with special consideration when dealing with state agencies or qualifying for certain programs.

- State agencies designing programs include the rural area of critical concern designation as a factor in future program decisions.

## III. Effect of Proposed Changes:

**Section** 1 of the bill creates the Hardee County Economic Development Authority (authority) in accordance with s. 211.3103(3)(b)3., F.S. The purpose of the authority is to solicit, rank, and fund projects that provide economic development opportunities and infrastructure within the geographic boundaries of Hardee County and to otherwise maximize the use of federal, local, and private resources as provided by s. 211.3103(5), F.S., and for its administrative and other costs as provided by this act.

**Section 2** of the bill provides the following definitions as used in this act:

- "Authority" means the Hardee County Economic Development Authority.

- "Clerk" means the clerk of the court servicing in the capacity of chief financial officer of the county.

- "Commission" means the Board of County Commissioners of Hardee County.
- "County" means Hardee County.

**Section 3** of the bill provides that the authority shall consist of nine members serving staggered terms and selected in the following manner:

- The President of the Hardee County Farm Bureau or the president's designee for an initial term of 3 years;
- The Secretary of the Florida Department of Community Affairs or the secretary's designee for an initial term of 2 years;
- The chairman of Enterprise Florida or the chairman's designee for an initial term of 2 years;
- The chairman of the Florida Phosphate Council or the chairman's designee for an initial term of 3 years;
- The president of the Hardee County Chamber of Commerce or the president's designee for an initial term of 3 years; and
- Four members appointed by the commission.

After completion of the initial term, each appointed member shall serve a term of 3 years. The members shall select a chair from their members for a period of 2 years and may elect such other officers as they designate in the written bylaws of the authority. Each member of the authority shall serve without compensation, except that members who reside outside the county may be reimbursed for travel and per diem expenses as provided by general law.

**Section 4** of the bill provides powers of the authority. Specifically, the authority shall:

- Adopt rules in conformance with chapter 120, F.S., the Administrative Procedures Act.
- Meet not less frequently than once each quarter, beginning with the first quarter of calendar year 2005, and hold public hearings and other meetings.
- Establish procedures for the solicitation and awarding of grants.
- Direct the clerk to expend funds upon receipt of any voucher signed by not fewer than 2 members of the authority.
- Perform the duties required by this act and any rules adopted in accordance with this act.

The authority may:

- Appropriate funds that have been paid by the state, the first such payment to occur in calendar year 2006, to the clerk, in the distribution of the tax on severance of phosphate rock pursuant to s. 211.3103, F.S., for the administrative costs, including payroll costs and other expenses as provided by this act, of the authority and for economic development and infrastructure projects in the county.

- Conduct the business of the authority and receive funds on its behalf, including those transferred by the state and any others that may have been made by loan, gift, or agent.

- Sue and be sued.

- Approve or amend and approve time and costs sheets submitted by specified county employees for payment as well as travel and per diem expenses submitted by a member of the authority.

- Establish written bylaws for its internal governance.

- Enter into contracts, inter-local agreements, and other written documents necessary to conduct the business of the authority.

- Perform any other acts reasonable and necessary to implement and enforce the provisions of this act.

**Section 5** of the bill authorizes the commission to direct the county manager to appoint one or more staff persons to assist the authority in conducting its business. In addition, the county attorney or his or her designee is directed to assist the authority.

**Section 6** of the bill directs the clerk to deposit phosphate excise tax revenues and any funds received by the authority through loan, gift, or grant into a restricted, interest-bearing account for the sole use of the authority. The clerk shall provide a quarterly statement of account to the chair and shall disburse funds only upon receipt of a voucher, signed by the chair and at least one other member as provided in the bylaws, authorizing the disbursement. The clerk may charge the authority any statutory fees available to the clerk's office for the administration of the account on behalf of the authority.

**Section 7** of the bill provides procedures for application for grants-in-aid from the authority. Upon receipt of completed applications, the authority shall review and evaluate each application for completeness and eligibility. The bill also provides criteria by which the authority shall evaluate each grant. The authority shall develop priority listing of all projects applications and grant funds shall be awarded in accordance with the final priority listing of the applications. All grant awards that have been approved shall be formalized through a grant award agreement.

**Section 8** of the bill provides for severability.

**Section 9** of the bill provides for an effect date upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

The rural area of critical economic concern distribution of the severance tax on phosphate rock to Hardee County is estimated to be $5.0 million in fiscal year 2003-04. In fiscal years 2004-05 and 2005-06, the total rural area of critical economic concern distribution is estimated to be $5.2 million, which is to be shared between Hardee County and Hamilton County. Beginning in January, 2006, this distribution will be made to the Hardee County Economic Development Authority instead to the Board of County Commissioners of Hardee County.

### B. Private Sector Impact:

Persons awarded grants-in-aid from the Hardee Economic Development Authority will benefit both their own businesses and the community by providing economic development and infrastructure projects designated by the authority as important to Hardee County.

### C. Government Sector Impact:

The bill provides that effective January 1, 2006, the rural area of critical economic concern distribution of the severance excise tax on phosphate rock to the Board of County Commissioners of Hardee County shall be made to the Hardee County Economic Development Authority instead. As a result, the Board of County Commissioners of Hardee County will no longer have these revenues to include in their annual budget.

## VI. Technical Deficiencies:

The bill requires a technical amendment to change the word "fun" to "fund."

## VII. Related Issues:

None.

## VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 3110

Amendment No. ___ 660694

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 11:25 am

Senator Margolis moved the following amendment:

**Senate Amendment**

On page 1, line 27, delete the word "fun"

and insert: fund

Senate Committee On

# FINANCE AND TAXATION

Gwen Margolis, Chair
Burt L. Saunders, Vice Chair

## Late Filed Amendments

Tuesday, April 20, 2004
3:30 p.m. – 5:30 p.m.
Room 37 LL

***(Please bring this packet to the committee meeting. Duplicate materials will not be available.)***

Bill No. CS for SB 2188

Amendment No. ___ 114136

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 1:15 pm

Senator Geller moved the following amendment:

**Senate Amendment**

On page 10, lines 4-5, delete those lines

and insert: a minimum, every 5 years within 12 months after the approval of the revised regional water supply plan. Amendments to incorporate the work plan do not count toward the limitation on the frequency of adoption of amendments to a comprehensive plan.

Bill No. CS for SB 2188

Amendment No. ___ 283866

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 1:15 pm

Senator Geller moved the following amendment:

**Senate Amendment (with title amendment)**

On page 11, line 9, through

page 19, line 17, delete those lines

and insert:

(d)1. The department, in cooperation with the Department of Agriculture and Consumer Services, the Department of Environmental Protection, water management districts, and regional planning councils, shall provide assistance to local governments in the implementation of this paragraph and rule 9J-5.006(5)(l), Florida Administrative Code. Implementation of those provisions shall include a process by which the department may authorize ~~up-to-five~~ local governments to designate all or portions of lands classified in the future land use element as predominantly agricultural, rural, open, open-rural, or a substantively equivalent land use, as a rural land stewardship area within which planning and economic incentives are applied to encourage the implementation of innovative and flexible planning and

1 development strategies and creative land use planning
2 techniques, including those contained herein and in rule
3 9J-5.006(5)(l), Florida Administrative Code. Assistance may
4 include, but is not limited to:
5 a. Assistance from the Department of Environmental
6 Protection and water management districts in creating the
7 geographic information systems land cover database and aerial
8 photogrammetry needed to prepare for a rural land stewardship
9 area;
10 b. Support for local government implementation of
11 rural land stewardship concepts by providing information and
12 assistance to local governments regarding land acquisition
13 programs that may be used by the local government or
14 landowners to leverage the protection of greater acreage and
15 maximize the effectiveness of rural land stewardship areas;
16 and
17 c. Expansion of the role of the Department of
18 Community Affairs as a resource agency to facilitate
19 establishment of rural land stewardship areas in smaller rural
20 counties that do not have the staff or planning budgets to
21 create a rural land stewardship area.
22 2. The department shall encourage participation by
23 local governments of different sizes and rural characteristics
24 in establishing and implementing rural land stewardship areas.
25 It is the intent of the Legislature that rural land
26 stewardship areas be used to further the following broad
27 principles of rural sustainability: restoration and
28 maintenance of the economic value of rural land; control of
29 urban sprawl; identification and protection of ecosystems,
30 habitats, and natural resources; promotion of rural economic
31 activity; maintenance of the viability of Florida's

agricultural economy; and protection of the character of rural areas of Florida. Rural land stewardship areas may be multicounty in order to encourage coordinated regional stewardship planning.

3. A local government, in conjunction with a regional planning council, a stakeholder organization of private land owners, or another local government, shall notify may-apply-to the department in writing of its intent requesting consideration-for-authorization to designate a rural land stewardship area and-shall-describe-its-reasons-for-applying for-the-authorization-with-supporting-documentation-regarding its-compliance-with-criteria-set-forth-in-this-section.

4.--In-selecting-a-local-government,-the-department shall,-by-written-agreement:

a.--Ensure-that-the-local-government-has-expressed-its intent-to-designate-a-rural-land-stewardship-area-pursuant-to the-provisions-of-this-subsection-and-clarify-that-the-rural land-stewardship-area-is-intended.

b.--Ensure-that-the-local-government-has-the-financial and-administrative-capabilities-to-implement-a-rural-land stewardship-area.

5. The written notification agreement shall describe include the basis for the designation, authorization-and provide-criteria-for-evaluating-the-success-of-the authorization including the extent to which the rural land stewardship area enhances rural land values, controls,-control urban sprawl, provides necessary open space for agriculture and protection of the natural environment, promotes rural economic activity, and maintains rural character and the economic viability of agriculture. The-department-may terminate-the-agreement-at-any-time-if-it-determines-that-the

1 ~~local-government-is-not-meeting-the-terms-of-the-agreement.~~
2 4.~~6.~~ A rural land stewardship area shall be not less
3 than 10,000 ~~50,000~~ acres and shall ~~not-exceed-250,000-acres-in~~
4 ~~size,-shall~~ be located outside of municipalities and
5 established urban growth boundaries, and shall be designated
6 by plan amendment. The plan amendment designating a rural
7 land stewardship area shall be subject to review by the
8 Department of Community Affairs pursuant to s. 163.3184 and
9 shall provide for the following:
10 a. Criteria for the designation of receiving areas
11 within rural land stewardship areas in which innovative
12 planning and development strategies may be applied. Criteria
13 shall at a minimum provide for the following: adequacy of
14 suitable land to accommodate development so as to avoid
15 conflict with environmentally sensitive areas, resources, and
16 habitats; compatibility between and transition from higher
17 density uses to lower intensity rural uses; the establishment
18 of receiving area service boundaries which provide for a
19 separation between receiving areas and other land uses within
20 the rural land stewardship area through limitations on the
21 extension of services; and connection of receiving areas with
22 the rest of the rural land stewardship area using rural design
23 and rural road corridors.
24 b. Goals, objectives, and policies setting forth the
25 innovative planning and development strategies to be applied
26 within rural land stewardship areas pursuant to the provisions
27 of this section.
28 c. A process for the implementation of innovative
29 planning and development strategies within the rural land
30 stewardship area, including those described in this subsection
31 and rule 9J-5.006(5)(l), Florida Administrative Code, which

1 provide for a functional mix of land uses and which are
2 applied through the adoption by the local government of zoning
3 and land development regulations applicable to the rural land
4 stewardship area.
5 d. A process which encourages visioning pursuant to s.
6 163.3167(11) to ensure that innovative planning and
7 development strategies comply with the provisions of this
8 section.
9 e. The control of sprawl through the use of innovative
10 strategies and creative land use techniques consistent with
11 the provisions of this subsection and rule 9J-5.006(5)(l),
12 Florida Administrative Code.
13 5.~~7.~~ A receiving area shall be designated by the
14 adoption of a land development regulation. Prior to the
15 designation of a receiving area, the local government shall
16 provide the Department of Community Affairs a period of 30
17 days in which to review a proposed receiving area for
18 consistency with the rural land stewardship area plan
19 amendment and to provide comments to the local government.
20 6.~~8.~~ Upon the adoption of a plan amendment creating a
21 rural land stewardship area, the local government shall, by
22 ordinance, assign to the area a certain number of credits, to
23 be known as "transferable rural land use credits," which shall
24 not constitute a right to develop land, nor increase density
25 of land, except as provided by this section. The total amount
26 of transferable rural land use credits assigned to the rural
27 land stewardship area must correspond to the 25-year or
28 greater projected population of the rural land stewardship
29 area. Transferable rural land use credits are subject to the
30 following limitations:
31 a. Transferable rural land use credits may only exist

1 within a rural land stewardship area.
2 b. Transferable rural land use credits may only be
3 used on lands designated as receiving areas and then solely
4 for the purpose of implementing innovative planning and
5 development strategies and creative land use planning
6 techniques adopted by the local government pursuant to this
7 section.
8 c. Transferable rural land use credits assigned to a
9 parcel of land within a rural land stewardship area shall
10 cease to exist if the parcel of land is removed from the rural
11 land stewardship area by plan amendment.
12 d. Neither the creation of the rural land stewardship
13 area by plan amendment nor the assignment of transferable
14 rural land use credits by the local government shall operate
15 to displace the underlying density of land uses assigned to a
16 parcel of land within the rural land stewardship area;
17 however, if transferable rural land use credits are
18 transferred from a parcel for use within a designated
19 receiving area, the underlying density assigned to the parcel
20 of land shall cease to exist.
21 e. The underlying density on each parcel of land
22 located within a rural land stewardship area shall not be
23 increased or decreased by the local government, except as a
24 result of the conveyance or use of transferable rural land use
25 credits, as long as the parcel remains within the rural land
26 stewardship area.
27 f. Transferable rural land use credits shall cease to
28 exist on a parcel of land where the underlying density
29 assigned to the parcel of land is utilized.
30 g. An increase in the density of use on a parcel of
31 land located within a designated receiving area may occur only

through the assignment or use of transferable rural land use credits and shall not require a plan amendment.

h. A change in the density of land use on parcels located within receiving areas shall be specified in a development order which reflects the total number of transferable rural land use credits assigned to the parcel of land and the infrastructure and support services necessary to provide for a functional mix of land uses corresponding to the plan of development.

i. Land within a rural land stewardship area may be removed from the rural land stewardship area through a plan amendment.

j. Transferable rural land use credits may be assigned at different ratios of credits per acre according to the natural resource or other beneficial use characteristics of the land and according to the land use remaining following the transfer of credits, with the highest number of credits per acre assigned to the most **preserve** environmentally valuable land and a lesser number of credits to be assigned to open space and agricultural land.

k. The use or conveyance of transferable rural land use credits must be recorded in the public records of the county in which the property is located as a covenant or restrictive easement running with the land in favor of the county and either the Department of Environmental Protection, Department of Agriculture and Consumer Services, a water management district, or a recognized statewide land trust.

7.~~9.~~ Owners of land within rural land stewardship areas should be provided incentives to enter into rural land stewardship agreements, pursuant to existing law and rules adopted thereto, with state agencies, water management

1 districts, and local governments to achieve mutually agreed
2 upon conservation objectives. Such incentives may include,
3 but not be limited to, the following:
4 a. Opportunity to accumulate transferable mitigation
5 credits.
6 b. Extended permit agreements.
7 c. Opportunities for recreational leases and
8 ecotourism.
9 d. Payment for specified land management services on
10 publicly owned land, or property under covenant or restricted
11 easement in favor of a public entity.
12 e. Option agreements for sale to public entities or
13 private land conservation entities **government**, in either fee
14 or easement, upon achievement of conservation objectives.
15 8. ~~10.~~ The department shall report to the Legislature
16 on an annual basis on the results of implementation of rural
17 land stewardship areas authorized by the department, including
18 successes and failures in achieving the intent of the
19 Legislature as expressed in this paragraph. ~~It-is-further-the~~
20 ~~intent-of-the-Legislature-that-the-success-of-authorized-rural~~
21 ~~land-stewardship-areas-be-substantiated-before-implementation~~
22 ~~occurs-on-a-statewide-basis.~~
23 (e) The Legislature finds that mixed-use, high-density
24 development is appropriate for urban infill and redevelopment
25 areas. Mixed-use projects accommodate a variety of uses,
26 including residential and commercial, and usually at higher
27 densities that promote pedestrian-friendly, sustainable
28 communities. The Legislature recognizes that mixed-use,
29 high-density development improves the quality of life for
30 residents and businesses in urban areas. The Legislature finds
31 that mixed-use, high-density redevelopment and infill benefits

1 residents by creating a livable community with alternative
2 modes of transportation. Furthermore, the Legislature finds
3 that local zoning ordinances often discourage mixed-use,
4 high-density development in areas that are appropriate for
5 urban infill and redevelopment. The Legislature intends to
6 discourage single-use zoning in urban areas which often leads
7 to lower-density, land-intensive development outside an urban
8 service area. Therefore, the Department of Community Affairs
9 shall provide technical assistance to local governments in
10 order to encourage mixed-use, high-density urban infill and
11 redevelopment projects.
12 (f) The Legislature finds that a program for the
13 transfer of development rights is a useful tool to preserve
14 historic buildings and create public open spaces in urban
15 areas. A program for the transfer of development rights allows
16 the transfer of density credits from historic properties and
17 public open spaces to areas designated for high-density
18 development. The Legislature recognizes that high-density
19 development is integral to the success of many urban infill
20 and redevelopment projects. The Legislature intends to
21 encourage high-density urban infill and redevelopment while
22 preserving historic structures and open spaces. Therefore, the
23 Department of Community Affairs shall provide technical
24 assistance to local governments in order to promote the
25 transfer of development rights within urban areas for
26 high-density infill and redevelopment projects.
27
28
29 ========== T I T L E A M E N D M E N T ==========
30 And the title is amended as follows:
31 On page 2, lines 5 through 28, delete those lines

1 and insert:
2 intervals; requiring the Department of
3 Community Affairs, in cooperation with other
4 specified state agencies, to provide assistance
5 to local governments in implementing provisions
6 relating to rural land stewardship areas;
7 providing for multicounty rural land
8 stewardship areas; revising requirements,
9 including the acreage threshold for designating
10 a rural land stewardship area; providing that
11 transferable rural land use credits may be
12 assigned at different ratios according to the
13 natural resource or other beneficial use
14 characteristics of the land; providing
15 legislative findings regarding mixed-use,
16 high-density urban infill and redevelopment
17 projects; requiring the Department of Community
18 Affairs to provide technical assistance to
19 local governments; providing legislative
20 findings regarding a program for the transfer
21 of development rights and urban infill and
22 redevelopment; requiring the Department of
23 Community Affairs to provide technical
24 assistance to local governments;
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12a

Bill No. SB 2218

Amendment No. ___ 761368

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 1:30pm

Senator Margolis moved the following **amendment to amendment** (542762):

**Senate Amendment**

On page 1, lines 17 & 20, and on page 2, lines 5 & 6, delete the words "Department of Revenue"

and insert: Agency for Workforce Innovation

Bill No. SB 2218

Amendment No. ___

264606

12b

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 1:30 pm

Senator Margolis moved the following **amendment to amendment** (542762):

**Senate Amendment**

On page 2, line 10, delete the word "department"

and insert: Department of Revenue

Bill No. SB 2218

Amendment No. ___

115230

13

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 7:50 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 & 28,

insert:

Section 10. Paragraph (e) of subsection (2) of section 212.055, Florida Statutes, as amended by section 91 of chapter 2003-402, Laws of Florida, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.--It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative

procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

(e) School districts, counties, and municipalities receiving proceeds under the provisions of this subsection may pledge such proceeds for the purpose of servicing new bond indebtedness incurred pursuant to law. Local governments may use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue any bonds through the provisions of this subsection. ~~In no case may a jurisdiction issue bonds pursuant to this subsection more frequently than once per year.~~ Counties and municipalities may join together for the issuance of bonds authorized by this subsection.

(Redesignate subsequent sections.)

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

And the title is amended as follows:

On page 2, line 2, after the semicolon ";"

insert:

amending s. 212.055, F.S.; relating to the local government infrastructure surtax; deleting a limitation on issuing bonds;

Bill No. SB 2218

Amendment No. ___ 102826

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/19/04

TIME: 8:55 am

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 & 28,

insert:

Section 10. (1) The taxes levied under sections 202.12(1), 202.19(7), 202.15, and 203.01, Florida Statutes, shall not be levied on the actual cost of operating a substitute communications system, as defined in s. 202.11, Florida Statutes, during the period from the effective date of this act through December 31, 2005.

(2) The Department of Revenue shall not make assessments of tax on the costs of operating a substitute communications system for the period October 1, 2001 through the effective date of this act. No refunds shall be made of any tax that has been remitted to the Department of Revenue on the costs of operating a substitute communications system prior to the effective date of this act.

(Redesignate subsequent sections.)

1 ========== T I T L E  A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 2, line 2, after the semicolon ";"
4
5 insert:
6 relating to the tax on communications services
7 levied under s. 202.12, and the tax on
8 communications services levied under s. 202.19,
9 F.S.; providing a short title; specifying the
10 period during which the actual cost of
11 operating a substitute communications system
12 shall be exempt from such taxes;
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Bill No. SB 2218

Amendment No. ___ 023252

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 12 noon

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 & 28,

insert:

Section 10. Section 1 of chapter 67-930, Laws of Florida, as amended by chapters 93-286 and 94-344, Laws of Florida, is amended to read:

Section 1. All cities and towns~~,~~ in counties that have ~~of the state having~~ a population of not fewer ~~less~~ than ~~three hundred thirty thousand (330,000)~~ and not more than ~~three hundred forty thousand (340,000)~~, and in counties having a population of more than ~~nine hundred thousand (900,000)~~, according to the latest official decennial census, whose charter specifically provides now or whose charter is so amended prior to January 1, 1968, for the levy of the exact tax as herein set forth, are ~~hereby~~ given the right, power, and authority by ordinance to impose, levy, and collect a tax within their corporate limits, to be known as a municipal resort tax, upon the rent of every occupancy of a room or

rooms in any hotel, motel, apartment house, rooming house, or tourist or trailer camp, as the same are defined in ~~part I,~~ chapter 212, Florida Statutes, and upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises, at any place of business required by law to be licensed by the state hotel and restaurant commission or by the state beverage department. For counties with a population between 170,000 and 180,000, with no municipality in such counties having a population greater than 20,000, according to the latest official decennial census, and each municipality in such counties having a charter limiting ad valorem taxes to 2 mills, may impose, levy, and collect a tax within the corporate limits, to be known as a municipal resort tax, which shall be levied upon the rent of every occupancy of a room or rooms in any hotel, motel, apartment house, rooming house, or tourist or trailer camp, as defined in chapter 212, Florida Statutes, at a rate not to exceed 2 percent. ~~, provided,~~ However, this tax does ~~shall~~ not apply to those sales the amount of which is less than 50 ~~fifty~~ cents or ~~(50¢) nor~~ to sales of food or beverages delivered to a person's home under a contract providing for deliveries on a regular schedule when the price of each meal is less than $10 ~~ten dollars~~. A municipality may not commence imposition of the tax after the effective date of this act unless imposition is approved by the electors of the municipality by referendum. Once a municipality qualifies and imposes the tax, it shall continue to qualify pursuant to this section for as long as the ordinance remains valid.

Section 11. Section 6 of chapter 67-930, Laws of Florida, is amended to read:

1 Section 6. Any funds received under and by virtue of
2 the municipal resort tax imposed or levied under the authority
3 of this act shall be used for the following purposes only:
4 creating and maintenance of convention and publicity bureaus,
5 cultural and art centers, enhancement of tourism, publicity
6 and advertising purposes, transportation improvements,
7 including, but not limited to, sidewalks, pathways and bike
8 lanes, and beach restoration, artificial reef construction,
9 stormwater management, land acquisition, and for the future
10 cost, purchase, building, designing, engineering, planning,
11 repairing, reconditioning, altering, expanding, maintaining,
12 servicing and otherwise operating auditoriums, community
13 houses, convention halls, convention buildings or structures,
14 and other related purposes, including relief from ad valorem
15 taxes heretofore levied for such purposes.
16 Section 12. This act shall take effect upon becoming a
17 law.
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20 ========== T I T L E A M E N D M E N T ==========
21 And the title is amended as follows:
22 On page 2, line 2, after the semicolon ";"
23
24 and insert:
25 amending s. 1 of chapter 67-930, Laws of
26 Florida, as amended; authorizing additional
27 municipalities to levy the municipal resort tax
28 on transient rentals; limiting the tax rate;
29 requiring referendum approval before the tax
30 may be newly imposed; amending s. 6 of chapter
31 67-930, Laws of Florida; authorizing additional

uses of municipal resort tax revenues;

SENATE AMENDMENT 16

Bill No. SB 2218

Amendment No. ___ 211558

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 12:15 pm

Senator Margolis moved the following amendment:

**Senate Amendment**

In title, on page 1, line 2, delete the words "tax administration"

and insert:

taxation

17

Bill No. CS for SB 2188

Amendment No. ___ 032504

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 1:05 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 21, between lines 9 & 10,

insert:

Section 8. Subsection (16) of section 718.103, Florida Statutes, is amended to read:

718.103 Definitions.--As used in this chapter, the term:

(16) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include an owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy, nor does it include a cooperative association which creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part

Bill No. SB 2218

Amendment No. ___ 611224

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 1:30 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 & 28,

insert:

Section 10. Effective January 1, 2005, subsection (1) of section 212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.--

(1) Notwithstanding any other provision of law and for the purpose of compensating persons granting licenses for and the lessors of real and personal property taxed hereunder, for the purpose of compensating dealers in tangible personal property, for the purpose of compensating dealers providing communication services and taxable services, for the purpose of compensating owners of places where admissions are collected, and for the purpose of compensating remitters of any taxes or fees reported on the same documents utilized for

the sales and use tax, as compensation for the keeping of prescribed records, filing timely tax returns, and the proper accounting and remitting of taxes by them, such seller, person, lessor, dealer, owner, and remitter (except dealers who make mail order sales) shall be allowed 2.5 percent of the amount of the tax due and accounted for and remitted to the department, in the form of a deduction in submitting his or her report and paying the amount due by him or her; the department shall allow such deduction of 2.5 percent of the amount of the tax to the person paying the same for remitting the tax and making of tax returns in the manner herein provided, for paying the amount due to be paid by him or her, and as further compensation to dealers in tangible personal property for the keeping of prescribed records and for collection of taxes and remitting the same. However, if the amount of the tax due and remitted to the department for the reporting period exceeds $1,200, no allowance shall be allowed for all amounts in excess of $1,200. The executive director of the department is authorized to negotiate a collection allowance, pursuant to rules promulgated by the department, with a dealer who makes mail order sales. The rules of the department shall provide guidelines for establishing the collection allowance based upon the dealer's estimated costs of collecting the tax, the volume and value of the dealer's mail order sales to purchasers in this state, and the administrative and legal costs and likelihood of achieving collection of the tax absent the cooperation of the dealer. However, in no event shall the collection allowance negotiated by the executive director exceed 10 percent of the tax remitted for a reporting period.

(a) The Department of Revenue may deny the collection

1 allowance if a taxpayer files an incomplete return or if the
2 required tax return or tax is delinquent at the time of
3 payment.
4 1. An "incomplete return" is, for purposes of this
5 chapter, a return which is lacking such uniformity,
6 completeness, and arrangement that the physical handling,
7 verification, review of the return, or determination of other
8 taxes and fees reported on the return may not be readily
9 accomplished.
10 2. The department shall adopt rules requiring such
11 information as it may deem necessary to ensure that the tax
12 levied hereunder is properly collected, reviewed, compiled,
13 reported, and enforced, including, but not limited to: the
14 amount of gross sales; the amount of taxable sales; the amount
15 of tax collected or due; the amount of lawful refunds,
16 deductions, or credits claimed; the amount claimed as the
17 dealer's collection allowance; the amount of penalty and
18 interest; the amount due with the return; and such other
19 information as the Department of Revenue may specify. The
20 department shall require that transient rentals and
21 agricultural equipment transactions be separately shown. Sales
22 made through vending machines as defined in s. 212.0515 must
23 be separately shown on the return. Sales made through
24 coin-operated amusement machines as defined by s. 212.02 and
25 the number of machines operated must be separately shown on
26 the return or on a form prescribed by the department. If a
27 separate form is required, the same penalties for late filing,
28 incomplete filing, or failure to file as provided for the
29 sales tax return shall apply to said form.
30 (b) The collection allowance and other credits or
31 deductions provided in this chapter shall be applied

1 proportionally to any taxes or fees reported on the same
2 documents used for the sales and use tax.
3 (c) A dealer entitled to the collection allowance
4 provided in this section may elect to forego the collection
5 allowance and direct that the said amount be deposited into
6 the Educational Enhancement Trust Fund. Such election must be
7 made with the timely filing of a return and cannot be
8 rescinded once made. When a dealer who makes such election
9 files a delinquent return, underpays the tax, or files an
10 incomplete return, the amount deposited into the Education
11 Enhancement Trust Fund shall be the collection allowance
12 remaining after resolution of liability for all of the tax,
13 interest, and penalty due on that return or underpayment of
14 tax. The provisions of this paragraph shall not apply to s.
15 212.0305 and to any other tax, fee, or levy that is
16 administered, collected, and enforced pursuant to the
17 procedures under chapter 212.
18 Section 11. Notwithstanding the provisions of chapter
19 120, Florida Statutes, to the contrary, the Department of
20 Revenue may adopt rules to carry out the amendments made to s.
21 212.12, F.S.
22 Section 12. The sum of $236,465 is appropriated from
23 the General Revenue Fund to the Department of Revenue for the
24 purpose of administering the amendments to s. 212.12, made by
25 this act.
26 Section 13. The Department of Revenue shall retain all
27 of the dealer collection allowance revenues directed to be
28 deposited into the Educational Enhancement Trust Fund until
29 the $236,465 General Revenue Appropriation is recovered. The
30 $236,465 retained by the department shall be deposited into
31 the General Revenue Fund.

1

2 (Redesignate subsequent sections.)

3

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

6 And the title is amended as follows:

7 On page 2, line 2, after the semicolon ";"

8

9 insert:

10 amending s. 212.12, F.S., authorizing a dealer

11 to elect to forego the collection allowance and

12 direct that the collection allowance be

13 deposited to the Educational Enhancement Trust

14 Fund; providing exceptions; providing for rules

15 by the Department of Revenue; providing an

16 appropriation; providing for costs recovery;

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Bill No. SB 2218

Amendment No. ___ 824828

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 1:30 pm

Senator Margolis moved the following amendment:

**Senate Amendment (with title amendment)**

On page 12, between lines 27 & 28,

insert:

Section 10. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

(Redesignate subsequent sections.)

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

And the title is amended as follows:

On page 2, line 2,

insert:

1 providing severability;

2

Bill No. SB 2302

Amendment No. ___ 092754

CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 12:45 pm

Senator Posey moved the following **substitute for amendment** (285520):

**Senate Amendment (with title amendment)**

On page 1, line 20, delete everything after the enacting clause

and insert:

Section 1. (1) This section may be cited as the "Florida Substitute Communications Systems Tax Relief Act."

(2) The taxes levied under sections 202.12(1), 202.19(7), 202.15, and 203.01, Florida Statutes, shall not be levied on the actual cost of operating a substitute communications system, as defined in s. 202.11, Florida Statutes, during the period from the effective date of this act through December 31, 2005.

(3) The Department of Revenue shall not make assessments of tax on the costs of operating a substitute communications system for the period October 1, 2001 through the effective date of this act. No refunds shall be made of any tax that has been remitted to the Department of Revenue on

1 the costs of operating a substitute communications system
2 prior to the effective date of this act.
3 Section 2. (1) The Florida Communications Policy Task
4 Force is created and housed for administrative purposes within
5 the Public Service Commission. The task force shall operate
6 independently of the commission.
7 (2)(a) The task force shall consist of nine members,
8 three appointed by the Governor, three appointed by the
9 President of the Senate, and three appointed by the Speaker of
10 the House of Representatives. Members shall serve at the
11 pleasure of the appointing official. Any vacancy shall be
12 filed in the same manner as the original appointment.
13 (b) Any non-legislative member shall possess expertise
14 in state or national telecommunications policy, taxation, law
15 or technology.
16 (c) A person who works directly for or who performs
17 contract work for a telecommunications company or any entity
18 or agency that has appeared before the Commission on a
19 docketed telecommunications matter in the past two years may
20 not be appointed.
21 (d) Members shall serve without compensation but shall
22 be entitled to reimbursement of travel and per diem expenses
23 pursuant to s. 112.061, Florida Statutes, relating to
24 completing their duties and responsibilities under this
25 section.
26 (3) The task force shall review and evaluate existing
27 national and state regulatory and tax policies relating to the
28 communications industry and make recommendations to the
29 Legislature on the following:
30 (a) The scope of substitute communications services
31 that should be subject to the communications services tax

1 levied under sections 202.12(1), 202.19(7), 202.15, and
2 203.01, Florida Statutes, 2003.
3 (b) The legal or regulatory actions that will impact
4 the implementation of the Tele-Competition and Innovation Act
5 of 2003.
6 (c) The adequacy of the implementation of Lifeline
7 Assistance under the 2003 Act.
8 (d) The impact on competition by emerging technologies
9 including voice over Internet protocol, wireless, and any
10 other developing technology that provides similar end-to-end
11 communications service.
12 (e) The impact on private competitors of local
13 governmental entities, or their affiliates, that provide
14 communications services to the public.
15 (f) Any other legal, regulatory, or technological
16 development during the course of the study that impacts
17 Florida's communications policies.
18 (4) The task force shall hold its organizational
19 meeting by July 15, 2004. It shall select a chair and vice
20 chair and shall meet at the call of the chair at the time and
21 place designated by the chair or as often as necessary to
22 accomplish the purposes of this section. A quorum is necessary
23 for the purpose of conducting official business of the task
24 force. The task force shall use accepted rules of procedure to
25 conduct its meetings and shall keep a complete record of each
26 meeting.
27 (5) The Public Service Commission shall provide
28 administrative support and staff for the technical and
29 regulatory issues addressed by the task force. The Department
30 of Revenue shall provide staff for the tax issues addressed by
31 the task force.

1 (6) The task force shall report its findings and
2 recommendations to the Governor, the President of the Senate,
3 and the Speaker of the House of Representatives by January 15,
4 2005. The task force shall be dissolved by June 30, 2005.
5 Section 3. This act shall take effect upon becoming a
6 law.
7
8
9 ========== T I T L E A M E N D M E N T ==========
10 And the title is amended as follows:
11 On page 1, delete everything before the enacting clause
12
13 and insert:
14 An act relating to communications services, the
15 tax on communications services levied under s.
16 202.12, and the tax on communications services
17 levied under s. 202.19, F.S.; providing a short
18 title; specifying the period during which the
19 actual cost of operating a substitute
20 communications system shall be exempt from such
21 taxes; creating the Florida Communications
22 Policy Task Force, providing for membership;
23 providing a purpose; requiring reporting,
24 providing for staffing and administrative
25 support; providing an effective date.
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CHAMBER ACTION

Senate | House

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 1:25 pm

Senator Margolis moved the following **amendment to amendment** (092754):

**Senate Amendment (with title amendment)**

On page 4, between lines 4 and 5,

insert:

Section 3. Effective July 1, 2004, paragraph (a) of subsection (13) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency telephone number "911."--

(13) "911" FEE.--

(a) Following approval by referendum as set forth in paragraph (b), or following approval by a majority vote of its board of county commissioners, a county may impose a "911" fee to be paid by the local exchange subscribers within its boundaries served by the "911" service. Proceeds from the "911" fee shall be used only for "911" expenditures as set forth in subparagraph 6. The manner of imposing and collecting said payment shall be as follows:

1. At the request of the county subscribing to "911"

1 service, the telephone company shall, insofar as is
2 practicable, bill the "911" fee to the local exchange
3 subscribers served by the "911" service, on an individual
4 access line basis, at a rate not to exceed 50 cents per month
5 per line (up to a maximum of 25 access lines per account bill
6 rendered). However, the fee may not be assessed on any pay
7 telephone in this state. A county collecting the fee for the
8 first time may collect the fee for no longer than 36 months
9 without initiating the acquisition of its "911" equipment.
10 2. Fees collected by the telephone company pursuant to
11 subparagraph 1. shall be returned to the county, less the
12 costs of administration retained pursuant to paragraph (c).
13 The county shall provide a minimum of 90 days' written notice
14 to the telephone company prior to the collection of any "911"
15 fees.
16 3. Any county that currently has an operational "911"
17 system or that is actively pursuing the implementation of a
18 "911" system shall establish a fund to be used exclusively for
19 receipt and expenditure of "911" fee revenues collected
20 pursuant to this section. All fees placed in said fund, and
21 any interest accrued thereupon, shall be used solely for "911"
22 costs described in subparagraph 6. The money collected and
23 interest earned in this fund shall be appropriated for "911"
24 purposes by the county commissioners and incorporated into the
25 annual county budget. Such fund shall be included within the
26 financial audit performed in accordance with s. 218.39. A
27 report of the audit shall be forwarded to the office within 60
28 days of its completion. A county may carry forward on an
29 annual basis unspent moneys in the fund for expenditures
30 allowed by this section, or it may reduce its fee. However, in
31 no event shall a county carry forward more than 10 percent of

1 the "911" fee billed for the prior year. The amount of moneys
2 carried forward each year may be accumulated in order to allow
3 for capital improvements described in this subsection. The
4 carryover shall be documented by resolution of the board of
5 county commissioners expressing the purpose of the carryover
6 or by an adopted capital improvement program identifying
7 projected expansion or replacement expenditures for "911"
8 equipment and service features, or both. In no event shall the
9 "911" fee carryover surplus moneys be used for any purpose
10 other than for the "911" equipment, service features, and
11 installation charges authorized in subparagraph 6. Nothing in
12 this section shall prohibit a county from using other sources
13 of revenue for improvements, replacements, or expansions of
14 its "911" system. A county may increase its fee for purposes
15 authorized in this section. However, in no case shall the fee
16 exceed 50 cents per month per line. All current "911" fees
17 shall be reported to the office within 30 days of the start of
18 each county's fiscal period. Any fee adjustment made by a
19 county shall be reported to the office. A county shall give
20 the telephone company a 90-day written notice of such fee
21 adjustment.
22 4. The telephone company shall have no obligation to
23 take any legal action to enforce collection of the "911" fee.
24 The telephone company shall provide quarterly to the county a
25 list of the names, addresses, and telephone numbers of any and
26 all subscribers who have identified to the telephone company
27 their refusal to pay the "911" fee.
28 5. The county subscribing to "911" service shall
29 remain liable to the telephone company for any "911" service,
30 equipment, operation, or maintenance charge owed by the county
31 to the telephone company.

1

2 As used in this paragraph, "telephone company" means an
3 exchange telephone service provider of "911" service or
4 equipment to any county within its certificated area.
5 6. It is the intent of the Legislature that the "911"
6 fee authorized by this section to be imposed by counties will
7 not necessarily provide the total funding required for
8 establishing or providing the "911" service. For purposes of
9 this section, "911" service includes the functions of database
10 management, call taking, location verification, and call
11 transfer. The following costs directly attributable to the
12 establishment and/or provision of "911" service are eligible
13 for expenditure of moneys derived from imposition of the "911"
14 fee authorized by this section: the acquisition,
15 implementation, and maintenance of Public Safety Answering
16 Point (PSAP) equipment and "911" service features, as defined
17 in the Florida Public Service Commission's lawfully approved
18 "911" and related tariffs and/or the acquisition,
19 installation, and maintenance of other "911" equipment,
20 including call answering equipment, call transfer equipment,
21 ANI controllers, ALI controllers, ANI displays, ALI displays,
22 station instruments, "911" telecommunications systems,
23 teleprinters, logging recorders, instant playback recorders,
24 telephone devices for the deaf (TDD) used in the "911" system,
25 PSAP backup power systems, consoles, automatic call
26 distributors, and interfaces (hardware and software) for
27 computer-aided dispatch (CAD) systems; salary and associated
28 expenses for "911" call takers for that portion of their time
29 spent taking and transferring "911" calls; salary and
30 associated expenses for a county to employ a full-time
31 equivalent "911" coordinator position and a full-time

1 equivalent staff assistant position per county for the portion
2 of their time spent administrating the "911" system; training
3 costs for PSAP call takers in the proper methods and
4 techniques used in taking and transferring "911" calls;
5 expenses required to develop and maintain all information (ALI
6 and ANI databases and other information source repositories)
7 necessary to properly inform call takers as to location
8 address, type of emergency, and other information directly
9 relevant to the "911" call-taking and transferring function;
10 and, in a county defined in s. 125.011(1), such expenses
11 related to a nonemergency "311" system, or similar
12 nonemergency system, which improves the overall efficiency of
13 an existing "911" system or reduces "911" emergency response
14 time for a ~~2-year~~ pilot project that ends June 30, 2009 ~~June~~
15 ~~30,-2003~~. However, no wireless telephone service provider
16 shall be required to participate in this pilot project or to
17 otherwise implement a nonemergency "311" system or similar
18 nonemergency system. The "911" fee revenues shall not be used
19 to pay for any item not listed, including, but not limited to,
20 any capital or operational costs for emergency responses which
21 occur after the call transfer to the responding public safety
22 entity and the costs for constructing buildings, leasing
23 buildings, maintaining buildings, or renovating buildings,
24 except for those building modifications necessary to maintain
25 the security and environmental integrity of the PSAP and "911"
26 equipment rooms.
27 7. It is the goal of the Legislature that enhanced
28 "911" service be available throughout the state. Expenditure
29 by counties of the "911" fees authorized by this section
30 should support this goal to the greatest extent feasible
31 within the context of local service needs and fiscal

capability. Nothing in this section shall be construed to prohibit two or more counties from establishing a combined emergency "911" telephone service by interlocal agreement and utilizing the "911" fees authorized by this section for such combined "911" service.

(Redesignate subsequent sections.)

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

And the title is amended as follows:

On page 4, line 25, after the semicolon ";"

and insert:

amending s. 365.171, F.S.; continuing the authorization for certain counties to expend moneys derived from the "911" fee for nonemergency telecommunications; deleting the limitation imposed under a pilot project;

1

Bill No. CS for SB 2528

Amendment No. ___ 963096

CHAMBER ACTION

Senate | House

Consideration of this amendment requires a 2/3 vote of members present

FINANCE AND TAXATION COMMITTEE

DATE: 4/20/04

TIME: 1:25 pm

Senator Posey moved the following amendment:

**Senate Amendment**

On page 3, line 9, delete the number "2005"

and insert: 2007