

CS/SB 1022 by **CM, Garcia**; (Similar to CS/H 0595) Revitalizing Municipalities

CS/SB 590 by **TR, Garcia, Wise (CO-INTRODUCERS) Evers**; (Compare to CS/H 0033) Noncriminal Traffic Infractions

SB 1226 by **Montford**; (Identical to H 1497) Sales Tax Exemptions

CS/SB 1108 by **CM, Altman**; (Similar to CS/H 0939) Exemptions from the Tax on Sales, Use, and Other Transactions

663472	A	S	RCS	CA, Bennett	btw L.10 - 11:	02/13 12:25 PM
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SB 840 by **Diaz de la Portilla**; (Identical to H 0547) Community Redevelopment Agencies

972724	A	S		CA, Ring	btw L.230 - 231:	02/10 10:38 AM
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CS/SB 2088 by **GO, GO**; (Compare to CS/H 0365) Public Retirement Plans

911550	A	S	UNFAV	CA, Ring	Delete L.18 - 40.	02/13 12:25 PM
648338	A	S		CA, Ring	Delete L.99 - 118.	02/10 10:38 AM

CS/SB 232 by **TR, Norman, Oelrich, Fasano**; (Compare to H 0147) Transportation Facility Designations

829098	A	S	RCS	CA, Norman	btw L.55 - 56:	02/13 12:25 PM
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SB 576 by **Bennett**; (Identical to H 0337) Public-private Partnerships

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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Monday, February 13, 2012
TIME: 10:00 a.m.—12:00 noon
PLACE: Pat Thomas Committee Room, 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 1022 Commerce and Tourism / Garcia (Similar CS/H 595, Compare H 1345, S 76)	Revitalizing Municipalities; Providing for the transfer of certain sales tax revenues from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities; providing for a distribution from the Revenue Sharing Trust Fund for Municipalities relating to an increase in sales tax collections over the preceding year to the governing body of an area that receives tax increment revenues pursuant to a designation as a sales tax TIF area; creating the "Municipal Revitalization Act"; authorizing specified governing bodies to create sales tax TIF areas within a county or municipality having a specified population, etc. CM 02/02/2012 Fav/CS CA 02/13/2012 Favorable BC	Favorable Yeas 8 Nays 0
2	CS/SB's 590 & 568 Transportation / Garcia / Wise (Compare CS/H 33, CS/H 343)	Noncriminal Traffic Infractions; (THIS BILL COMBINES S590 & S568) Amending provisions relating to use of a traffic infraction detector when a driver has failed to stop at a traffic control signal pursuant to specified provisions; providing that the owner of a motor vehicle involved in a violation is responsible for paying the uniform traffic citation unless the motor vehicle's owner was deceased on or before the date the uniformed traffic citation was issued; requiring the establishment of minimum yellow light change interval times for intersections where traffic infraction detectors are used; requiring notices of violation for violations at such intersections to contain specific information regarding the yellow light times, etc. TR 02/07/2012 Fav/CS Combined - Lead CA 02/13/2012 Favorable BC	Favorable Yeas 8 Nays 0
3	SB 1226 Montford (Identical H 1497)	Sales Tax Exemptions; Exempting from the sales tax certain separately stated charges imposed on a lessee or licensee of leased or licensed premises, etc. CA 02/13/2012 Favorable BC	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Monday, February 13, 2012, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1108 Commerce and Tourism / Altman (Similar CS/H 939, Compare H 7087)	Exemptions from the Tax on Sales, Use, and Other Transactions; Exempting certain items used to manufacture, produce, or modify aircraft engines and gas turbine engines and parts from the tax on sales, use, and other transactions, etc. CM 02/02/2012 Fav/CS CA 02/13/2012 Fav/CS BC	Fav/CS Yeas 8 Nays 0
5	SB 840 Diaz de la Portilla (Identical H 547)	Community Redevelopment Agencies; Providing reporting requirements for certain community redevelopment agencies; providing for the termination of community redevelopment agencies by the board of county commissioners of certain counties; providing public hearing and notice and termination plan requirements; providing that consent from certain entities is not required for such termination; providing additional redevelopment plan requirements for certain counties; providing requirements for the expenditure of moneys from redevelopment trust funds in certain counties; exempting payment of debt service in such counties from certain approval; providing requirements for the appropriation of certain trust fund moneys in such counties; requiring a forensic audit of agencies in such counties at least every 5 years for certain purposes, etc. CA 02/13/2012 Temporarily Postponed BC	Temporarily Postponed
6	CS/SB 2088 Governmental Oversight and Accountability / Governmental Oversight and Accountability (Compare CS/H 365, CS/S 910)	Public Retirement Plans; Revising provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan; providing for retroactive application; revising the definition of the term "compensation" or "salary" for purposes of police officers' pensions; revising provisions relating to benefits paid by a municipality that has its own pension plan, etc. GO 02/01/2012 Fav/CS CA 02/13/2012 Temporarily Postponed BC	Temporarily Postponed
7	CS/SB's 232, 848 & 870 Transportation / Norman / Oelrich / Fasano (Compare H 147, H 235, H 7039)	Transportation Facility Designations; (THIS BILL COMBINES S232, S848, & S870) Providing honorary designations of certain transportation facilities in specified counties, etc. TR 02/02/2012 Fav/CS Combined - Lead CA 02/13/2012 Fav/CS	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Monday, February 13, 2012, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 576 Bennett (Identical H 337)	Public-private Partnerships; Establishing the Florida Public-Private Partnership Act; providing for private entities to develop and operate public-purpose projects; requiring public entities to adopt and make publicly available specified guidelines for public-private agreements; providing an exemption from the Consultant's Competitive Negotiation Act and any interpretations, regulations, or guidelines of the Department of Management Services; providing requirements and procedures for interim and comprehensive agreements between private and public entities; providing for material default and remedies with respect to projects and agreements; establishing the Public-Private Partnership Advisory Commission, etc. GO 02/01/2012 Favorable CA 02/13/2012 Fav/CS BC	Fav/CS Yeas 8 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 1022

INTRODUCER: Commerce and Tourism Committee and Senator Garcia

SUBJECT: Revitalizing Municipalities

DATE: February 6, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Philo</u>	<u>Hrdlicka</u>	<u>CM</u>	Fav/CS
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 1022 creates the Municipal Revitalization Act and makes associated changes to calculations and distributions under the Revenue Sharing Trust Fund for Municipalities.

This CS authorizes any municipality having a population of at least 300,000 residents that has designated an enterprise zone (or all of the governing bodies in the case of a county and one or more municipalities having designated an enterprise zone if the county has a population of at least 1,200,000 residents) to adopt a resolution after a public hearing designating a sales tax TIF (tax increment financing) area. The Department of Economic Opportunity is tasked with reviewing and approving the designation, and no more than two sales tax TIF areas may be designated in any one eligible municipality, and no more than four in any eligible county.

This CS also permits the governing body for the enterprise zone where the sales tax TIF area is located to share with the state any annual increase in sales tax collections. The CS amends the provisions relating to the distribution formula under the Municipal Revenue Sharing Program, to require distributions to municipalities that have a sales tax TIF area prior to the final adjustment. The distributions must be made to the appropriate designated local governing body eligible for

distribution. Such percentage distributions are contingent upon, among other things, a 30 percent match by the local governing body.

The CS requires the Department of Revenue to determine monthly, the specific amount payable to each eligible governing body of a designated sales tax TIF area and the aggregate amount of sales tax revenue that is required for distribution, and transfer that amount from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities.

The CS substantially amends ss. 212.20, 218.23, 290.004, 290.0056, and 290.007 of the Florida Statutes.

The CS creates ss. 290.01351, 290.0136, 290.0137, 290.0138, 290.0139, and 290.01391 of the Florida Statutes.

II. Present Situation:

Redevelopment of distressed urban communities is primarily a local government responsibility. Local governments use the state's redevelopment programs in conjunction with other federal and local programs to help package deals for revitalizing distressed urban communities. While Florida's programs do not directly provide a large amount of funds, they are viewed as being useful in helping leverage other funding support and in demonstrating government commitment to revitalization. Florida's programs also are viewed as being useful in helping local governments get community and private sector buy-in on revitalization projects.¹

The Florida Legislature has created or authorized the creation of several programs and mechanisms to encourage businesses to operate in and provide jobs in distressed areas, and assist local governments in financing infrastructure and capital projects that will result in revitalizing business and residential communities and creating jobs. Some of the primary programs and mechanisms are discussed below.

Community Redevelopment Act

The Community Redevelopment Act of 1969, ch. 163, Part III, F.S., was enacted to provide a mechanism to revitalize slum and blighted areas "which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state."² The act authorizes each local government to establish a Community Redevelopment Agency (CRA) to revitalize designated slum and blighted areas upon a "finding of necessity" and a further finding of a need for a CRA to carry out community redevelopment.³

¹Florida Legislature, Office of Program Policy Analysis and Government Accountability, *Locals Find Urban Revitalization Programs Useful; More Centralized Program Information Would Be Helpful*, Report No. 05-32 (May 2005), at 1 (available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0532rpt.pdf>).

² Section 163.335(1), F.S.

³ Section 163.356(1), F.S.

CRA's are funded primarily through tax increment financing (TIF).⁴ As property tax values in the redevelopment area rise above property values in the base year the redevelopment area was created, increment revenues are generated by applying the current millage rate levied by each taxing authority in the area to the increase in value. Each non-exempt taxing authority that levies taxes on property within a community redevelopment area must annually appropriate the amount of increment revenues to the CRA trust fund. These revenues are used primarily to service bonds issued to finance redevelopment projects. CRA's created prior to 2002 may receive TIF contributions for 60 years, while CRA's subsequently created may receive TIF contributions for 40 years.⁵

The Florida Enterprise Zone Program

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 62.⁶ The program is scheduled to be repealed on December 31, 2015.⁷

The Department of Economic Opportunity is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

An enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:⁸

- Describe the community's goal in revitalizing the area;
- Describe how the community's social and human resources—transportation, housing, community development, public safety, and education and environmental concerns—will be addressed in a coordinated fashion;
- Identify key community goals and barriers;
- Outline how the community is a full partner in the process of developing and implementing this plan;
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives;
- Identify the amount of local and private resources available and the private/public partnerships;
- Indicate how local, state, and federal resources will all be utilized;

⁴ See s. 163.387, F.S. For a general overview of tax increment financing, see City of Tampa, Economic and Urban Development Department, *Tax Increment Financing in Florida* (available at http://www.tampagov.net/dept_economic_and_urban_development/information_resources/Tax_Increment_Financing.asp).

⁵ Section 163.387(2)(a), F.S.

⁶ Florida Legislature, Office of Economic and Demographic Research, *Economic Development Financial Reference Manual* (Jan. 11, 2012), at 30 (available at <http://edr.state.fl.us/Content/presentations/local-government/2012economicdevelopmentfinancialreferencemanual.pdf>).

⁷ Section 290.016, F.S.

⁸ Section 290.0057, F.S.

- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

Florida's enterprise zones qualify for (A) state sales tax incentives, (B) state corporate income tax incentives, and (C) local incentives:

A. *State Sales Tax Incentives*

Available state sales tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone:⁹ Provides a refund for sales taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid. If 20 percent or more of the permanent, full time employees of the business are residents of an enterprise zone the refund will be no more than the lesser of \$10,000 or 97 percent of the tax paid per parcel.
- Business Property Used in Enterprise Zones:¹⁰ Provides a refund for sales taxes paid on the purchase of certain equipment (tangible personal property such as office equipment, warehouse equipment, and some industrial machinery and equipment), up to \$5,000 or 97 percent of the sales tax paid. If 20 percent or more of the permanent, full time employees of the business are residents of an enterprise zone the refund will be no more than the lesser of 97 percent of the sales tax paid on the business property or \$10,000. The property must be used exclusively in the enterprise zone for at least 3 years.
- Enterprise Zone Jobs Credit against Sales Tax (Rural):¹¹ For businesses located within a rural enterprise zone, this incentive provides a sales and use tax credit for 30 percent of the actual monthly wages paid to new employees who live within a rural county. If more than 20 percent of the employees are residents of an enterprise zone, the credit is 45 percent of the actual monthly wages paid.
- Enterprise Zone Jobs Credit against Sales Tax (Urban):¹² For businesses located within an enterprise zone, this incentive provides a sales and use tax credit for 20 percent of the actual monthly wages paid to new employees who live within the enterprise zone. If more than 20 percent of the employees are residents of an enterprise zone, the credit is 30 percent of the actual monthly wages paid.
- Community Contribution Tax Credit:¹³ Provides 50 percent sales tax refund for donations made to local community development projects.
- Electrical Energy Used in an Enterprise Zone:¹⁴ Provides 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy. The exemption is only available if the municipality in which the business is located has passed an ordinance to exempt qualified enterprise zone businesses from 50 percent of the municipal utility tax.

⁹ Section 212.08(5)(g), F.S.

¹⁰ Section 212.08(5)(h), F.S.

¹¹ Section 212.096(2), F.S.

¹² See s. 212.096, F.S.

¹³ Section 212.08(5)(p), F.S.

¹⁴ Section 212.08(15), F.S.

B. State Corporate Income Tax Incentives

Available state corporate income tax incentives for enterprise zones include:

- Enterprise Zone Jobs Credit against Corporate Income Tax (Urban and Rural):¹⁵ Provides a sales and use tax credit to qualified businesses located in an enterprise zone for 20 percent of the actual monthly wages paid to new employees who live within the enterprise zone. The percentage of the actual monthly wages paid could be greater than 20 percent under certain circumstances or if the business is located in a rural enterprise zone.
- Enterprise Zone Property Tax Credit:¹⁶ Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- Community Contribution Tax Credit:¹⁷ Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

C. Local Incentives

In addition to state incentives, some local governments offer the following local incentives as part of the Enterprise Zone Development Plan:¹⁸

- Reduction of occupational license fees.
- Ad valorem tax exemption on improved property.
- Local option economic development property tax exemption.
- Utility tax abatement.
- Façade/Commercial Rehabilitation Grants or Loans.
- Local funds for capital projects.
- Reduced building permit fees or land development fees.
- Reduction of specific local government regulations in the area.

Approximately \$19.975 million worth of local incentives were provided between October 2009 and September 2010. This amount represents an increase of approximately \$8.397 million more than the previous reporting period.¹⁹

Revenue Sources Available to Fund Local Infrastructure

Additional revenue sources available to fund local infrastructure include (A) impact fees, (B) special assessments, (C) Local Discretionary Sales Surtaxes, and (D) local option fuel taxes:²⁰

¹⁵ Section 220.181, F.S.

¹⁶ Section 220.182, F.S.

¹⁷ Sections 220.183, F.S. *See also* s. 624.5105, F.S.

¹⁸ Executive Office of the Governor, Office of Tourism, Trade & Economic Development, *Florida Enterprise Zone Annual Report, October 1, 2009 – September 30, 2010* (March 2011), at 15 (available at <http://floridaenterprisezones.com/Zones/Org1/uploads/2011EZAnnualReport.pdf>) *see also* s. 290.0135, F.S.

¹⁹ *Id.*

²⁰ Florida Legislature, Office of Economic and Demographic Research, *Economic Development Financial Reference Manual* (Jan. 11, 2012), at 5-8 (available at <http://edr.state.fl.us/Content/presentations/local-government/2012economicdevelopmentfinancialreferencemanual.pdf>).

A. *Impact Fees*²¹

- Charges imposed by local governments against new development to provide for capital facilities' costs made necessary by population growth.
- The majority of county and municipal government-imposed impact fees generate revenues to fund physical environment and transportation infrastructure.
- Revenue collections have decreased significantly in recent years due to the housing bust and local governments' efforts to freeze, reduce, or repeal impact fees in light of economic conditions.

B. *Special Assessments*²²

- Charges imposed by local governments against property to fund the construction and maintenance of capital facilities and certain services.
- The majority of county and municipal government-imposed special assessments generate revenues to fund local services rather than capital facilities.
- Although still trending positive, revenue collections have slowed in recent years.

C. *Local Discretionary Sales Surtaxes*²³

- Eight separate levies that can be imposed by county governments or school districts to fund a variety of local infrastructure, public health, or public safety needs depending on the particular levy. The total tax rate varies by county from 1.5 percent to 3.5 percent.
- Proceeds from the following surtaxes generate revenues to fund physical environment and transportation infrastructure:
 - Charter County and Regional Transportation System Surtax.
 - Local Government Infrastructure Surtax.
 - Small County Surtax.
 - School Capital Outlay Surtax.
- As a sole method of authorization for several different surtaxes, voter approval in a countywide referendum may limit increased utilization of this funding.

D. *Local Option Fuel Taxes*²⁴

- Three separate levies, totaling a maximum of 12 cents per gallon on motor fuel (i.e., gasoline), that can be imposed by county governments to fund transportation infrastructure needs.

Revenue Sources Available to Fund Local Economic Development Efforts

Other revenue sources are available to fund local economic development efforts, including (A) convention development taxes, (B) local business tax, and (C) local option tourist development tax:²⁵

A. *Convention Development Taxes*²⁶

²¹ *Id.* at 5.

²² *Id.* at 6.

²³ *Id.* at 7 (citing s. 212.055, F.S.).

²⁴ *Id.* at 8 (citing ss. 336.021 and 336.025, F.S.).

²⁵ *Id.* at 9-11.

- Three county governments (Duval, Miami-Dade, and Volusia) are eligible to levy a tax on transient rental transactions. The maximum tax rates are either 2 or 3 percent depending on the particular levy.
- Generally, the tax proceeds may be used for capital construction of convention centers and other tourist-related facilities as well as tourism promotion. However, the authorized uses vary by levy.

*B. Local Business Tax*²⁷

- County and municipal governments are eligible to levy the tax for the privilege of engaging in or managing any business, profession, or occupation within their respective jurisdictions.
- Although the tax proceeds are considered general revenue for the county or municipality, county business tax revenues may be used for overseeing and implementing a comprehensive economic development strategy.²⁸

*C. Local Option Tourist Development Tax*²⁹

- Eligible county government may impose up to five separate taxes on transient rental transactions. The ordinance levying and imposing the tax must be approved in a referendum election by a majority of the electors voting in such election.
- Generally, the tax proceeds may be used for capital construction of tourist-related facilities, tourist promotion, and beach and shoreline maintenance. However, the authorized uses vary by levy.

Economic Development Incentives Report - Annual Survey of Local Governments

In 2010,³⁰ the Legislature required local governments that have granted economic incentives in excess of \$25,000 during the local fiscal year to report to the Legislative Committee on Intergovernmental Relations or its successor,³¹ annually by January 15, the economic incentives given to businesses during the local fiscal year. Municipalities having annual revenues less than \$250,000 are exempt from this requirement.

According to the Office of Economic and Demographic Research (EDR), 38 counties and 36 municipalities completed the survey for local FY 2009-10.³² The survey results are as follows:

- Reporting counties issued \$84.4 million in incentives for economic development (\$29.6 million in direct incentives³³ to 125 businesses; \$40.5 million in indirect incentives³⁴ to 62

²⁶ *Id.* at 9 (citing ss. 212.0305(4)(a) and 212.0305(4)(c)-(e), F.S.).

²⁷ *Id.* at 10 (citing ch. 205, F.S. and reporting that several bills (SB 760, HB 1063, and HB 4025) have been filed for the 2012 legislative session that would repeal the local business tax effective July 1, 2012).

²⁸ *Id.* (citing s. 205.033(7), F.S.).

²⁹ *Id.* at 11 (citing 212.0104(3), F.S.).

³⁰ Chapter 201-147, ss. 1 and 2, L.O.F. (codified at ss. 125.045(5) and 166.021(8)(e), F.S.).

³¹ The Legislative Committee on Intergovernmental Relations was not funded in FY 2010-11 and the committee ceased operations on June 30, 2010. Several of the committee's work products regarding local government finance have been continued by the Office of Economic and Demographic Research (EDR). Florida Legislature, Online Sunshine (available at http://www.leg.state.fl.us/cgi-bin/View_Page.pl?Directory=committees/joint/lcir/&File=index_css.html&Tab=committees).

³² See Florida Legislature, Office of Economic and Demographic Research, *Economic Development Incentives*, available at <http://edr.state.fl.us/Content/local-government/economic-development-incentives/index.cfm>.

businesses; \$12.7 million in fee or tax based incentives to 111 businesses; and \$1.5 million in below market leases/deeds).

- Reporting municipalities issued \$60.7 million in incentives for economic development (\$9.0 million in direct incentives to 71 businesses; \$1.5 million in indirect incentives to 29 businesses; \$36.8 million in fee or tax based incentives to 185 businesses; and \$13.3 million in below market leases/deeds to 45 businesses).
- Indirect incentives given to local government entities or organizations supporting and promoting business investment or development in the amount of \$40.5 million were the most popular incentive issued by counties.
- Municipalities issued the most incentives in the form of fee and tax credits in the amount of \$36.8 million.

Municipal Revenue Sharing Program

The Revenue Sharing Act of 1972, located in Part II of ch. 218, F.S., was enacted to ensure a minimum level of revenue parity across units of local government. The act created the Revenue Sharing Trust Fund for Municipalities (trust fund), which currently receives:

- 1.3409 percent of sales and use tax collections = 71.86 percent of total program funding.³⁵
- The net collections from the one-cent municipal fuel tax on motor fuel = 28.11 percent of total program funding.³⁶
- 12.5 percent of the state alternative fuel user decal fee collections = 0.03 percent of total program funding.³⁷

An allocation formula serves as the basis for the distribution of these revenues to each municipality that meets strict eligibility requirements. Municipalities must use the funds derived from the one-cent municipal fuel tax for transportation-related expenditures. Additionally, there are statutory limitations on the use of the funds as a pledge for bonded indebtedness.

Program Administration

The program is administered by DOR. Monthly distributions must be made to eligible municipal governments as prescribed in ss. 218.215 and 218.23, F.S. The program is comprised of state sales taxes, municipal fuel taxes, and state alternative fuel user decal fees that are collected and transferred to the trust fund.

Once each fiscal year, DOR must compute apportionment factors for use during the fiscal year.³⁸ The computation must be made prior to July 25 of each fiscal year and must be based upon

³³ “Direct incentives” are monetary assistance provided to a business from the county or municipality or through an organization authorized by the county or municipality. Such incentives include, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies. Sections 125.045(5)(a)1. and 166.021(8)(e)1.a., F.S.

³⁴ “Indirect incentives” are in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development. Sections 125.045(5)(a)2. and 166.021(8)(e)1.b., F.S.

³⁵ Florida Legislature, Office of Economic and Demographic Research, *2011 Local Government Financial Information Handbook* (Oct. 2011), at 79 (citing s. 212.20(6)(d)5., F.S.) (available at <http://edr.state.fl.us/content/local-government/reports/lgfih11.pdf>).

³⁶ *Id.* (citing s. 206.605(1), F.S.).

³⁷ *Id.* (citing s. 206.879(1), F.S.).

³⁸ *Id.* at 80 (citing s. 218.26, F.S.).

information submitted and certified to DOR before June 1. Except in the case of error, the apportionment factors must remain in effect for the fiscal year. It is the duty of the local government to submit the certified information required for the program's administration to DOR in a timely manner. A local government's failure to provide timely information authorizes DOR to utilize the best information available or, if no such information is available, to take any necessary action, including partial or entire disqualification. Additionally, the local government waives its right to challenge DOR's determination as to the jurisdiction's share of program revenues.

Section 218.23(1), F.S., sets forth the requirements for a municipal government to be eligible to participate in revenue sharing beyond the minimum entitlement in a fiscal year.

Distribution of Proceeds

Subsection (3) of s. 218.23, F.S., provides a distribution formula for determining the amount of distribution to a unit of local government. The distribution formula is as follows:

- First - A municipal government's entitlement shall be computed on the basis of the "apportionment factor" provided in s. 218.245, F.S., which shall apply to all trust fund receipts available for distribution.
- Second - The revenue to be shared via the formula in any fiscal year is adjusted so that no municipality receives less than its guaranteed entitlement, which is equal to the aggregate amount received from the state in fiscal year 1971-72 under then-existing statutory provisions.
- Third - the revenue to be shared via the formula in any fiscal year is adjusted so that no county receives less than its guaranteed entitlement plus the second guaranteed entitlement for counties (this step is not applicable to municipalities).
- Fourth - The revenue to be shared via the formula in any fiscal year is adjusted so that all municipalities receive at least their minimum entitlement, which means the amount of revenue necessary for a municipality to meet its obligations as the result of pledges, assignments, or trusts entered into that obligated trust fund monies.³⁹
- Fifth - Any remaining trust fund monies shall be distributed to eligible municipalities that qualify to receive additional monies beyond the guaranteed entitlement in proportion to the total remainder.⁴⁰

Additional distributions are provided under ss. 212.20(6) and 218.245(3), F.S.

Authorized Use of Funds

Several statutory restrictions exist regarding the authorized use of municipal revenue sharing proceeds. Funds derived from the municipal fuel tax on motor fuel shall be used only for the purchase of transportation facilities and road and street rights-of-way; construction, reconstruction, and maintenance of roads, streets, bicycle paths, and pedestrian pathways; adjustment of city-owned utilities as required by road and street construction; and construction, reconstruction, transportation related public safety activities, maintenance, and operation of transportation facilities. Municipalities are authorized to expend these funds in conjunction with other municipalities, counties, state government, or the federal government in joint projects.

³⁹ Section 218.21(7), F.S.

⁴⁰ 2011 Local Government Financial Information Handbook, at 82.

According to DOR, municipalities may assume that 28.11 percent of their estimated 2012 fiscal year distribution is derived from the municipal fuel tax. Therefore, at least that proportion of each municipality’s revenue sharing distribution must be expended on the transportation-related purposes discussed above.⁴¹

Municipalities are restricted as to the amount of program funds that can be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness, and there shall be no other use restriction on these shared revenues.⁴² Municipalities may assign, pledge, or set aside as trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness, an amount up to 50 percent of the funds received in the prior year.⁴³ Consequently, it is possible that some portion of a municipality’s growth monies will become available as a pledge for bonded indebtedness.

According to DOR, the following is the estimated statewide distributions to municipal governments under the Municipal Revenue Sharing Program for FY 2011-12:⁴⁴

	Guaranteed	Distributions s. 212.20(6)(d)5., F.S.	Growth Money	Distributions s. 218.245(3), F.S	Yearly Total
Statewide Totals	\$124,683,365	\$122,327,637	\$24,800,089	\$45,800,000	\$317,611,090

III. Effect of Proposed Changes:

Section 1 amends subparagraph 212.20(6)(d)5., F.S., to state that the amounts required under s. 290.0138(2), F.S., as created in the CS, shall also be distributed monthly to the Revenue Sharing Trust Fund for Municipalities (trust fund).

Section 2 creates paragraph 218.23(3)(e), F.S., relating to the distribution formula, to require adjustments for municipalities that have a sales tax increment financing (TIF) area and are eligible for distribution under ss. 290.0137 and 290.0138, F.S., prior to the final adjustment.

Section 3 amends s. 290.004, F.S., to provide definitions for the following terms: “base year,” “bond,” “compliance period,” “retail development project,” “retail development project developer,” “sales tax TIF area,” “tax increment revenues,” and “TIF.”

Section 4 creates subsection 290.0056(11), F.S., to authorize a governing body or the enterprise zone development agency to exercise additional powers for the purpose of financing public improvements that will foster job growth and enhance the base of retailers within an enterprise zone, unless otherwise prohibited by ordinance. These additional powers include:

- Entering into cooperative contracts and agreements with a county, municipality, or governmental agency for services and assistance;

⁴¹ *Id.*

⁴² *Id.* at 83 (citing s. 218.25(1), F.S.).

⁴³ *Id.* (citing s. 218.25(4), F.S.).

⁴⁴ *Id.* at 90.

- Expending tax increment revenues to acquire, own, convey, construct, maintain, improve, and manage property and facilities, and grant and acquire licenses, easements, and options with respect to such property;
- Expending tax increment revenues to complete public improvements within the sales tax TIF area, including (but not limited to) the construction of streetscape improvements; installation of landscaping enhancements within the public right-of-way; construction of street lighting systems; installation of water and sewer service mains; and construction of on-street and off-street public parking facilities; and
- Entering into a retail development agreement with a retail project developer to underwrite public improvements or services identified above.

Section 5 amends s. 290.007, F.S., which addresses state incentives that are available in enterprise zones to encourage revitalization, to include the designation of a sales tax TIF area.

The Municipal Revitalization Act

Section 6 creates s. 290.01351, F.S., to establish the Municipal Revitalization Act (act), which shall include ss. 290.0136-290.01391, F.S., as created in the CS.

Legislative Intent

Section 7 creates s. 290.0136, F.S., to provide that the legislative intent of this act is to foster the revitalization of counties and municipalities and support job-creating retail development projects within enterprise zones by authorizing the governing bodies to designate sales tax TIF areas subject to the review and approval of the Department of Economic Opportunity. By so authorizing the governing bodies, the counties or municipalities may receive from the state a portion of an annual increase in sales tax collections generated by the development of a retail development project and will further the revitalization of such counties and municipalities. By authorizing such receipt of funds, the Legislature intends to provide financing for public improvements that will foster job growth for the residents of economically distressed areas and enhance the base of retailers operating within the enterprise zone and serving local residents and international visitors.

Designation of Sales Tax TIF Area

Section 8 creates s. 290.0137, F.S., to authorize by resolution the designation of a sales tax TIF area within municipalities that have a population of at least 300,000 residents and that are located within a designated enterprise zone, or a county population of at least 1,200,000 in the case of a county and one or more municipalities having been designated an enterprise zone.

The resolution creating a sales tax TIF area must include findings that the designation of the sales tax TIF area is essential to furthering a retail development project; will provide needed retail amenities within the enterprise zone; will result in the development of a retail development project that will create no fewer than 500 new jobs and at least \$1 million in sales tax increment revenue annually; and will enhance health and general welfare of the residents of the subject enterprise zone. The resolution must also fix the geographic boundaries of the sales tax TIF area within which the governing body may expend tax increment revenues; establish the term of the life of the sales tax TIF area (which term may not extend more than 40 years after the date the sales tax TIF area is approved by DEO); and establish the base year for determination of sales tax receipts.

No more than two sales tax TIF areas may be designated in any one eligible municipality, and no more than four in any eligible county. Municipal sales tax TIF areas shall count against the maximum number of county sales tax TIF areas. A sales tax TIF area may not be located within one-quarter mile of any other designated sales tax TIF area, and may not exceed 5 square miles in total land mass.

A designated sales tax TIF area may not include areas designated or to be designated as an “urban infill and redevelopment area” or “community redevelopment area”; any facility financed or partially financed with bonds whose debt is serviced with proceeds collected under the authority of the tourist development tax; or any facility conducting gaming activities.

The powers conferred by the act upon counties without a home rule charter may not be exercised within the boundaries of a municipality within such county unless the governing body of the municipality expresses its consent by a specifically enumerated resolution. In any county that has a home rule charter, the powers conferred by the act shall be exercised exclusively by the governing body of the county, but the county may by specifically enumerated resolution delegate those powers to the governing body of a municipality within the county.

Before the governing body adopts any resolution designating a sales tax TIF area, it must provide public notice. A copy of the resolution must be transmitted to DEO, which shall determine whether the designation complies with the requirements of the act. In so doing, DEO must consider whether the designation captures taxable spending that would not otherwise occur in the community rather than redistributing current spending; supports and enhances the tourism industry; and supports a retail development project that will meet the jobs, taxes, and fees requirements. If DEO determines compliance with the requirements, it must provide written notice to the local governing body, which in turn must remit a copy of its resolution and DEO’s notice to DOR.

Distribution Percentage & DOR Duties

Section 9 creates s. 290.0138, F.S., to address the calculation of tax increment revenue contributions to eligible governing bodies. The governing body is eligible for distribution from the Revenue Sharing Trust Fund for Municipalities in the amount of the increased collections of the state tax on sales, use, and other transactions realized during any month by the municipality over the same monthly period of the base year, as follows:

- 85 percent of the increased collections of \$85,000 or less;
- 75 percent of the increased collections greater than \$85,000 but \$425,000 or less;
- 50 percent of the increased collections greater than \$425,000 but \$675,000 or less; and
- 25 percent of the increased collections greater than \$675,000 but \$1 million or less.

DOR must determine monthly the specific amount payable to each eligible governing body and the aggregate amount of sales tax revenue that is required for distribution, and to transfer that amount from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities, in accordance with s. 212.20(6)(d)5., F.S., created in the CS. All amounts transferred must be distributed as provided in s. 218.23(3)(e), F.S., created in the CS. The total distribution provided to an eligible governing body may not exceed the total tax increment revenue contribution set forth in the retail development project agreement, as specified in s. 290.0139, F.S.

Percentage distributions to each governing body are contingent upon a contribution by the local governing body equal to 30 percent of the percent of distributions of sales tax revenues discussed immediately above. Such matching contribution may be provided by a cash deposit to the local redevelopment trust fund, a commitment to underwrite any project within the sales tax TIF area; or approval of an economic development ad valorem tax exemption. The percentage distributions are also contingent on the total private investment in a retail development project equal to an amount not less than three times the state contribution, and an annual transmittal of an employment certificate by the retail development project developer to DEO and DOR attesting to the total number of full-time and part-time jobs created by the project (with certain requirements and conditions). Each governing body receiving a percentage distribution must establish a separate redevelopment trust fund for each designated sales tax TIF area. Funds allocated to and deposited in this fund may only be used to underwrite any eligible public improvements approved by the enterprise zone governing body.

Retail Development Project Agreement

Section 10 creates s. 290.0139, F.S., to provide that a retail development project developer proposing to use tax increment revenues to expend tax increment revenues on behalf of a governing body or enterprise zone development agency may enter into a retail development project agreement with the governing body. The agreement must set forth the goals and objectives of the project; requirements for leasing retail space within the project which will advance the governing body's or enterprise zone development agency's goals and objectives; the terms and conditions to which tax increment revenue or bond proceeds will be advanced to pay for costs incurred in the sales tax TIF area; goals for the hiring of enterprise zone residents for the new jobs created by the project; such matters as may be required in connection with the issuance of bonds to support the project; and such other matters as the governing body may determine to be necessary and appropriate.

A retail project development agreement must be approved by resolution of the governing body following a public hearing advertised in a newspaper not less than 10 days before the date of the hearing. It also must be transmitted to DEO for review and determination that it complies with the requirements of the act.

Issuance of Bonds

Section 11 creates s. 290.01391, F.S., to authorize the governing body, if authorized or approved by resolution after a public hearing, to use tax increment revenues to support the issuance of sales tax increment revenue bonds to finance the authorized public improvements. Such bonds may not be committed for any projects identified following the tenth year after the established base year. Any such bonds or other obligations issued to finance a project must mature by the end of the fortieth fiscal year after the fiscal year in which sales tax increment revenues are first deposited into the local sales tax TIF area trust fund or at the expiration of any agreement between the governing body and the retail project developer, whichever is later. However, any refunding bonds may not mature later than the final maturity date of any bonds or other obligations being paid or retired with the proceeds of such refunding bonds.

Bonds issued under the act may not be deemed to constitute a debt, liability, obligation, or pledge of the faith and credit of the public body or the state or any political subdivision thereof, but shall be payable solely from the revenues provided therefor. All such bonds must contain on

their face a statement to that effect. They must be authorized by resolution of the governing body and may:

- Be issued in one or more series and may bear such date or dates;
- Be payable upon demand or mature at such time or times;
- Bear interest at such rate or rates;
- Be in such denomination or denominations;
- Be in such form either with or without coupon or registered;
- Carry such conversion or registration privileges;
- Have such rank or priority;
- Be executed in such manner;
- Be payable in such medium of payment at such place or places;
- Be subject to such terms of redemption (with or without premium);
- Be secured in such manner; and
- Have such other characteristics as may be provided by the resolution or ordinance authorizing their issuance.

These bonds may be sold either at a public or private sale and for such price as the designated governing body may determine will effectuate the purposes of this section. If the public officials whose signatures appear on any bond or coupons issued under the act cease to be such officials before the delivery of such bonds, the signatures are nevertheless valid and sufficient for all purposes.

Bonds issued under the act are declared to be issued for an essential public and governmental purpose. In any suit, action, or proceeding involving the validity or enforceability of these bonds, any bond that recites in substance that it has been issued by the governing body for a purpose authorized under this section is conclusively presumed to have been issued for that purpose. Further, any project financed by the bond is also conclusively presumed to have been planned and carried out in accordance with the intended purposes of this section.

If the enterprise zone program is not extended beyond the date set forth in s. 290.016, F.S. (i.e., December 31, 2015), and bonds issued pursuant to this section remain outstanding, DOR must continue to collect and remit tax increment revenues generated by the retail development project to service the outstanding bond obligations.

Section 12 provides that the act shall take effect on July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. **Trust Funds Restrictions:**

Any annual increases in sales tax collections in a designated sales tax TIF area that are shared with the state shall be transferred from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities for distribution to eligible governing bodies as provided in the CS. Such distributions are contingent upon, among other things, a 30 percent match by the local governing body.

Each governing body receiving distributions under this act is required to establish a separate redevelopment trust fund for each designated sales tax TIF area. Those funds may only be used to underwrite any eligible public improvements approved by the enterprise zone governing body.

V. **Fiscal Impact Statement:**

A. **Tax/Fee Issues:**

Any increase in sales tax collections shared by a governing body will be transferred from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities and distributed to eligible designated governing bodies in an amount determined by DOR.

The Revenue Estimating Conference has not yet determined the impact of this CS though it is scheduled for discussion at the February 10, 2012 meeting.

B. **Private Sector Impact:**

One industry analyst estimates that, given the CS's population and geographic parameters, it would allow for the creation of a total of up to 18 sales tax TIF areas (4 each in Broward, Miami-Dade, and Palm Beach Counties; an additional 4 in Hillsborough County and the City of Tampa combined; and two in the city of Jacksonville). Assuming all 18 areas were created and all received a maximum monthly contribution of \$533,500 under the CS, their trust funds would receive a total of \$115,236,000 annually. The state would retain \$100,764,000 of the first \$1 million of the incremental sales tax revenues collected monthly in each area and all of any incremental sales tax revenues collected over \$1 million monthly.⁴⁵

However, based on a number of factors, the analyst suggests that only between 4 and 6 sales tax TIF areas would actually be created (3 in Miami-Dade County, and possibly one each in Broward County and the cities of Tampa and Jacksonville). Assuming the creation of 4 to 6 areas, the maximum amount of the incremental revenues deposited into their trust funds on an annual basis would be in the range of \$25,736,000 to \$38,412,000, while the state would retain from \$25,504,000 to \$33,588,000. The state would also retain all incremental revenues generated that exceed \$1 million per month.⁴⁶

⁴⁵ Miami Economic Associates, Inc., *Financial Impact on the State of Florida—Proposed Municipal Revitalization Act* (Jan. 2012), at 4 (on file with the Senate Committee on Community Affairs).

⁴⁶ *Id.* at 4-5.

C. Government Sector Impact:

Certain local entities with a specified population that are located within a designated enterprise zone will be authorized to designate a sales tax TIF area by resolution. The governing body designating a sales tax TIF area is granted certain additional powers, including the power to issue bonds to finance authorized public improvements.

DOR will be required to determine monthly, the specific amount payable to each eligible governing body and the aggregate amount of sales tax revenue that is required for distribution, and transfer that amount from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities. (*See Related Issues section below.*)

DEO will be required to review and approve the designation of a sales tax TIF area.

VI. Technical Deficiencies:

The following technical deficiencies will need to be addressed:

- Terminology used in the CS should be reviewed to provide consistent use throughout. For example, variations of the terms “retail development project agreement” and “retail development project developer” appear throughout the CS.
- The provisions applying to counties (e.g., lines 347-48 of the CS) are potentially unclear. If the intent of the CS is to allow the provisions herein to apply to municipalities and counties, then amendments may be needed to address possible distributions into the Revenue Sharing Trust Fund for Counties (as opposed to only the Revenue Sharing Trust Fund for Municipalities). Should this be the case, both the title of the CS and the act created therein may need to be amended.

VII. Related Issues:

The CS requires DOR to determine the monthly aggregate amount of sales tax revenue that is required for distribution to an eligible governing body. DOR has expressed concern that Florida businesses may currently file and pay sales and use tax using a single tax return for each location or by filing one tax return for each county in which the business is located, and that businesses with locations in multiple counties may use a consolidated tax return reporting tax collections for each county in which the business operates. DOR does not currently collect tax information at a boundary level lower than a county (within a city or within an enterprise zone), and does not collect sales tax information necessary to calculate the “increased sale tax collections” within a municipality as proposed by the CS.⁴⁷ DOR states that this issue cannot be resolved through rulemaking.⁴⁸

⁴⁷ DOR, *SB 1022 Agency Analysis* (Dec. 29, 2011), at 5-6 (on file with the Senate Committee on Community Affairs).

⁴⁸ *Id.* at 6-7.

VIII. Additional Information:

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

CS by Commerce and Tourism on February 2, 2012:

The committee substitute does the following:

- Requires state and local safeguards to accompany tax increment revenue contributions to the governing body of a designated TIF area, including:
 1. A 30 percent match of state funds by local governing body;
 2. A review of designation by DEO to confirm that it:
 - a. Captures new taxable spending (to avoid cannibalization of existing sales and revenues);
 - b. Supports the tourism industry; and
 - c. Supports the retail development project that will generate not less than 500 full-time jobs and \$1 million in new sales tax revenues;
 3. Public advertising and notice requirements prior to designation or issuance of bonds whose debt service is paid with sales tax increment; and
 4. Use of proceeds limited to public infrastructure investment.
- Requires minimum private sector expenditure of three times the state contribution;
- Precludes areas/projects accessing other public incentives from utilizing this financing mechanism, for example:
 1. Gaming facilities;
 2. Facilities receiving professional sports facilities franchise tax proceeds; and
 3. Ad valorem CRAs.
- Provides further limits on fiscal impact through:
 1. Increases to population eligibility thresholds:
 - a. County population threshold now 1.2 million residents (previously 1.1 million); and
 - b. City population threshold now 300,000 residents (previously 250,000);
 2. Limits on number of sales TIF areas that can be designated:
 - a. County, maximum of four; and
 - b. City, maximum of two (count against the county cap where eligible city located in eligible county);
 3. Introduces a proximity limitation; and
 4. Limits on period when sales tax increment revenues can be bonded.
- Introduces accountability provisions to ensure that job commitments are met:
 1. Reporting requirement by retail project developer; and
 2. Penalty for failure to achieve minimum job target.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Garcia

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1 A bill to be entitled
 2 An act relating to revitalizing municipalities;
 3 amending s. 212.20, F.S.; providing for the transfer
 4 of certain sales tax revenues from the General Revenue
 5 Fund to the Revenue Sharing Trust Fund for
 6 Municipalities; amending s. 218.23, F.S.; providing
 7 for a distribution from the Revenue Sharing Trust Fund
 8 for Municipalities relating to an increase in sales
 9 tax collections over the preceding year to the
 10 governing body of an area that receives tax increment
 11 revenues pursuant to a designation as a sales tax TIF
 12 area; amending s. 290.004, F.S.; providing
 13 definitions; amending s. 290.0056, F.S.; revising
 14 provisions relating to the enterprise zone development
 15 agency; providing powers of the governing body upon
 16 the designation of a sales tax TIF area; amending s.
 17 290.007, F.S.; providing designation of sales tax TIF
 18 areas as an economic incentive in enterprise zones;
 19 creating ss. 290.01351, 290.0136, 290.0137, 290.0138,
 20 290.0139, and 290.01391, F.S.; creating the "Municipal
 21 Revitalization Act"; providing legislative intent and
 22 purposes; authorizing specified governing bodies to
 23 create sales tax TIF areas within a county or
 24 municipality having a specified population; providing
 25 requirements, processes, and limitations relating to
 26 such sales tax TIF areas; providing that the governing
 27 body for an enterprise zone where a sales tax TIF area
 28 is located is eligible for specified percentage
 29 distributions of increased state sales tax collections

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30 under certain circumstances; requiring the Department
 31 of Revenue to determine the amount of increased sales
 32 tax collections to be distributed to each eligible
 33 designated enterprise zone redevelopment agency and to
 34 transfer the aggregate amount due to all such agencies
 35 to the Revenue Sharing Trust Fund for Municipalities
 36 for distribution; providing requirements and
 37 conditions relating to such distributions of increased
 38 sales tax collections to governing bodies; authorizing
 39 certain retail development project developers to enter
 40 into retail development project agreements with
 41 governing bodies designating sales tax TIF areas;
 42 providing requirements, limitations, and conditions
 43 relating to such retail development project
 44 agreements; granting specified powers to a governing
 45 body for a sales tax TIF area for the purpose of
 46 providing financing and fostering certain
 47 improvements, including issuing sales tax increment
 48 revenue bonds; providing for the issuance of tax
 49 increment revenue bonds and the use of such bonds;
 50 providing an effective date.

51
 52 Be It Enacted by the Legislature of the State of Florida:

53
 54 Section 1. Paragraph (d) of subsection (6) of section
 55 212.20, Florida Statutes, is amended to read:
 56 212.20 Funds collected, disposition; additional powers of
 57 department; operational expense; refund of taxes adjudicated
 58 unconstitutionally collected.-

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59 (6) Distribution of all proceeds under this chapter and s.
60 202.18(1)(b) and (2)(b) shall be as follows:

61 (d) The proceeds of all other taxes and fees imposed
62 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
63 and (2)(b) shall be distributed as follows:

64 1. In any fiscal year, the greater of \$500 million, minus
65 an amount equal to 4.6 percent of the proceeds of the taxes
66 collected pursuant to chapter 201, or 5.2 percent of all other
67 taxes and fees imposed pursuant to this chapter or remitted
68 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
69 monthly installments into the General Revenue Fund.

70 2. After the distribution under subparagraph 1., 8.814
71 percent of the amount remitted by a sales tax dealer located
72 within a participating county pursuant to s. 218.61 shall be
73 transferred into the Local Government Half-cent Sales Tax
74 Clearing Trust Fund. Beginning July 1, 2003, the amount to be
75 transferred shall be reduced by 0.1 percent, and the department
76 shall distribute this amount to the Public Employees Relations
77 Commission Trust Fund less \$5,000 each month, which shall be
78 added to the amount calculated in subparagraph 3. and
79 distributed accordingly.

80 3. After the distribution under subparagraphs 1. and 2.,
81 0.095 percent shall be transferred to the Local Government Half-
82 cent Sales Tax Clearing Trust Fund and distributed pursuant to
83 s. 218.65.

84 4. After the distributions under subparagraphs 1., 2., and
85 3., 2.0440 percent of the available proceeds shall be
86 transferred monthly to the Revenue Sharing Trust Fund for
87 Counties pursuant to s. 218.215.

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88 5. After the distributions under subparagraphs 1., 2., and
89 3., 1.3409 percent of the available proceeds, plus the amount
90 required under s. 290.0138(2), shall be transferred monthly to
91 the Revenue Sharing Trust Fund for Municipalities pursuant to s.
92 218.215. If the total revenue to be distributed pursuant to this
93 subparagraph is at least as great as the amount due from the
94 Revenue Sharing Trust Fund for Municipalities and the former
95 Municipal Financial Assistance Trust Fund in state fiscal year
96 1999-2000, no municipality shall receive less than the amount
97 due from the Revenue Sharing Trust Fund for Municipalities and
98 the former Municipal Financial Assistance Trust Fund in state
99 fiscal year 1999-2000. If the total proceeds to be distributed
100 are less than the amount received in combination from the
101 Revenue Sharing Trust Fund for Municipalities and the former
102 Municipal Financial Assistance Trust Fund in state fiscal year
103 1999-2000, each municipality shall receive an amount
104 proportionate to the amount it was due in state fiscal year
105 1999-2000.

106 6. Of the remaining proceeds:

107 a. In each fiscal year, the sum of \$29,915,500 shall be
108 divided into as many equal parts as there are counties in the
109 state, and one part shall be distributed to each county. The
110 distribution among the several counties must begin each fiscal
111 year on or before January 5th and continue monthly for a total
112 of 4 months. If a local or special law required that any moneys
113 accruing to a county in fiscal year 1999-2000 under the then-
114 existing provisions of s. 550.135 be paid directly to the
115 district school board, special district, or a municipal
116 government, such payment must continue until the local or

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117 special law is amended or repealed. The state covenants with
 118 holders of bonds or other instruments of indebtedness issued by
 119 local governments, special districts, or district school boards
 120 before July 1, 2000, that it is not the intent of this
 121 subparagraph to adversely affect the rights of those holders or
 122 relieve local governments, special districts, or district school
 123 boards of the duty to meet their obligations as a result of
 124 previous pledges or assignments or trusts entered into which
 125 obligated funds received from the distribution to county
 126 governments under then-existing s. 550.135. This distribution
 127 specifically is in lieu of funds distributed under s. 550.135
 128 before July 1, 2000.

129 b. The department shall distribute \$166,667 monthly
 130 pursuant to s. 288.1162 to each applicant certified as a
 131 facility for a new or retained professional sports franchise
 132 pursuant to s. 288.1162. Up to \$41,667 shall be distributed
 133 monthly by the department to each certified applicant as defined
 134 in s. 288.11621 for a facility for a spring training franchise.
 135 However, not more than \$416,670 may be distributed monthly in
 136 the aggregate to all certified applicants for facilities for
 137 spring training franchises. Distributions begin 60 days after
 138 such certification and continue for not more than 30 years,
 139 except as otherwise provided in s. 288.11621. A certified
 140 applicant identified in this sub-subparagraph may not receive
 141 more in distributions than expended by the applicant for the
 142 public purposes provided for in s. 288.1162(5) or s.
 143 288.11621(3).

144 c. Beginning 30 days after notice by the Department of
 145 Economic Opportunity to the Department of Revenue that an

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146 applicant has been certified as the professional golf hall of
 147 fame pursuant to s. 288.1168 and is open to the public, \$166,667
 148 shall be distributed monthly, for up to 300 months, to the
 149 applicant.

150 d. Beginning 30 days after notice by the Department of
 151 Economic Opportunity to the Department of Revenue that the
 152 applicant has been certified as the International Game Fish
 153 Association World Center facility pursuant to s. 288.1169, and
 154 the facility is open to the public, \$83,333 shall be distributed
 155 monthly, for up to 168 months, to the applicant. This
 156 distribution is subject to reduction pursuant to s. 288.1169. A
 157 lump sum payment of \$999,996 shall be made, after certification
 158 and before July 1, 2000.

159 7. All other proceeds must remain in the General Revenue
 160 Fund.

161 Section 2. Subsection (3) of section 218.23, Florida
 162 Statutes, is amended to read:

163 218.23 Revenue sharing with units of local government.—

164 (3) The distribution to a unit of local government under
 165 this part is determined by the following formula:

166 (a) First, the entitlement of an eligible unit of local
 167 government shall be computed on the basis of the apportionment
 168 factor provided in s. 218.245, which shall be applied for all
 169 eligible units of local government to all receipts available for
 170 distribution in the respective revenue sharing trust fund.

171 (b) Second, revenue shared with eligible units of local
 172 government for any fiscal year shall be adjusted so that no
 173 eligible unit of local government receives less funds than its
 174 guaranteed entitlement.

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175 (c) Third, revenues shared with counties for any fiscal
176 year shall be adjusted so that no county receives less funds
177 than its guaranteed entitlement plus the second guaranteed
178 entitlement for counties.

179 (d) Fourth, revenue shared with units of local government
180 for any fiscal year shall be adjusted so that no unit of local
181 government receives less funds than its minimum entitlement.

182 (e) Fifth, after the adjustments provided in paragraphs
183 (b), (c), and (d), the funds remaining in the respective trust
184 fund for municipalities shall be distributed to the appropriate
185 governing body eligible for a distribution under ss. 290.0137
186 and 290.0138.

187 (f)(e) Sixth Fifth, after the adjustments provided in
188 paragraphs (b), (c), ~~and~~ (d), and (e), and after deducting the
189 amount committed to all the units of local government, the funds
190 remaining in the respective trust funds shall be distributed to
191 those eligible units of local government which qualify to
192 receive additional moneys beyond the guaranteed entitlement, on
193 the basis of the additional money of each qualified unit of
194 local government in proportion to the total additional money of
195 all qualified units of local government.

196 Section 3. Section 290.004, Florida Statutes, is amended to
197 read:

198 290.004 Definitions relating to Florida Enterprise Zone
199 Act.—As used in ss. 290.001-290.016, the term:

200 (1) "Base year" means the amount of sales taxes that would
201 have been produced by the tax levied upon all eligible sales and
202 use transactions pursuant to chapter 212 before the construction
203 of the retail development project.

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204 (2) "Bond" means any bonds, notes, or other instruments
205 issued by the governing body and secured by tax increment
206 revenues or other security authorized in this chapter.

207 (3)(1) "Community investment corporation" means a black
208 business investment corporation, a certified development
209 corporation, a small business investment corporation, or other
210 similar entity incorporated under Florida law that has limited
211 its investment policy to making investments solely in minority
212 business enterprises.

213 (4) "Compliance period" means the 3-year period after the
214 establishment of the base year for a sales tax TIF area during
215 which the minimum job requirement for a retail development
216 project must be satisfied.

217 (5)(2) "Department" means the Department of Economic
218 Opportunity.

219 (6)(3) "Governing body" means the council or other
220 legislative body charged with governing the county or
221 municipality.

222 (7)(4) "Minority business enterprise" has the same meaning
223 as provided in s. 288.703.

224 (8) "Retail development project" means the establishment of
225 a retail facility, under common ownership or control, consisting
226 of more than 300,000 square feet of new or rehabilitated retail
227 space within an enterprise zone engaged in direct onsite retail
228 sales to consumers. A retail development project shall create at
229 least 500 jobs within the compliance period and generate more
230 than \$1 million annually in additional taxes and fees collected
231 pursuant to s. 212.20(6)(d)5. A retail development project may
232 include restaurants, grocery and specialty food stores, art

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233 galleries, and businesses engaged in sales of home furnishings,
 234 apparel, and general merchandise goods serving both local
 235 customers and tourists. A retail development project shall
 236 exclude:

237 (a) Liquor stores;
 238 (b) Adult entertainment nightclubs;
 239 (c) Adult book stores; and
 240 (d) The relocation of a retail business to the retail
 241 development project from another location within the enterprise
 242 zone, unless the relocation involves a significant expansion of
 243 the size of the business or results in a total increase in
 244 taxable sales of not less than 50 percent within the county in
 245 which the business relocates.

246 (9) "Retail development project developer" means any person
 247 or entity sponsoring a retail development project within an
 248 enterprise zone.

249 (10){5} "Rural enterprise zone" means an enterprise zone
 250 that is nominated by a county having a population of 75,000 or
 251 fewer, or a county having a population of 100,000 or fewer which
 252 is contiguous to a county having a population of 75,000 or
 253 fewer, or by a municipality in such a county, or by such a
 254 county and one or more municipalities. An enterprise zone
 255 designated in accordance with s. 290.0065(5) (b) is considered to
 256 be a rural enterprise zone.

257 (11) "Sales tax TIF area" means a geographic area within an
 258 enterprise zone that includes a retail development project,
 259 designated by a governing body to receive tax increment revenues
 260 or bond proceeds to underwrite improvements authorized under s.
 261 290.0056.

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262 (12){6} "Small business" has the same meaning as provided
 263 in s. 288.703.

264 (13) "Tax increment revenues" means the portion of
 265 available sales tax revenue calculated pursuant to s.
 266 290.0138(1).

267 (14) "TIF" means tax increment financing.

268 Section 4. Paragraph (a) of subsection (9) of section
 269 290.0056, Florida Statutes, is amended, subsections (11) and
 270 (12) are renumbered as subsections (12) and (13), respectively,
 271 and a new subsection (11) is added to that section, to read:
 272 290.0056 Enterprise zone development agency.—
 273 (9) The following powers and responsibilities shall be
 274 performed by the governing body creating the enterprise zone
 275 development agency acting as the managing agent of the
 276 enterprise zone development agency, or, contingent upon approval
 277 by such governing body, such powers and responsibilities shall
 278 be performed by the enterprise zone development agency:

279 (a) To review, process, and certify applications for state
 280 enterprise zone tax incentives pursuant to ss. 212.08(5) (g),
 281 (h), and (15); 212.096; 220.181; ~~and~~ 220.182; and 290.0137.

282 (11) Contingent upon the governing body's designation of a
 283 sales tax TIF area, the governing body or the enterprise zone
 284 development agency may exercise the following additional powers
 285 for the purpose of financing public improvements that will
 286 foster job growth and enhance the base of retailers within an
 287 enterprise zone, unless otherwise prohibited by ordinance:

288 (a) Enter into cooperative contracts and agreements with a
 289 county, municipality, or governmental agency for services and
 290 assistance within the sales tax TIF area;

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291 (b) Expend tax increment revenues to acquire, own, convey,
 292 construct, maintain, improve, and manage property and facilities
 293 and grant and acquire licenses, easements, and options with
 294 respect to such property within the sales tax TIF area;

295 (c) Expend tax increment revenues to complete public
 296 improvements within the sales tax TIF area, including, but not
 297 limited to, the:

- 298 1. Construction of streetscape improvements;
- 299 2. Installation of landscaping enhancements within the
 300 public right-of-way;
- 301 3. Construction of street lighting systems;
- 302 4. Installation of water and sewer service mains; and
- 303 5. Construction of on-street and off-street public parking
 304 facilities.

305 (d) Enter into a retail development agreement with a retail
 306 project developer to underwrite public improvements or services
 307 identified in paragraphs (a)-(c).

308 Section 5. Subsection (9) is added to section 290.007,
 309 Florida Statutes, to read:

310 290.007 State incentives available in enterprise zones.—The
 311 following incentives are provided by the state to encourage the
 312 revitalization of enterprise zones:

313 (9) The designation of a sales tax TIF area provided in s.
 314 290.0137.

315 Section 6. Section 290.01351, Florida Statutes, is created
 316 to read:

317 290.01351 Municipal Revitalization Act.—Sections 290.0136-
 318 290.01391 may be cited as the "Municipal Revitalization Act."

319 Section 7. Section 290.0136, Florida Statutes, is created

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320 to read:

321 290.0136 Sales tax TIF area; intent and purpose.—

322 (1) The Legislature intends to foster the revitalization of
 323 counties and municipalities and support job-creating retail
 324 development projects within enterprise zones by authorizing the
 325 governing bodies of counties and municipalities to designate
 326 sales tax TIF areas within enterprise zones, subject to the
 327 review and approval by the department.

328 (2) The Legislature finds that by authorizing local
 329 government governing bodies to designate a sales tax TIF area,
 330 the counties or municipalities may receive from the state a
 331 portion of an annual increase in sales tax collections generated
 332 by the development of a retail development project and will
 333 further the revitalization of such counties and municipalities.
 334 By authorizing the receipt of an annual increase in sales tax
 335 collections within a sales tax TIF area resulting from the
 336 retail development project, the Legislature intends to provide
 337 financing for public improvements that will foster job growth
 338 for the residents of economically distressed areas and enhance
 339 the base of retailers operating within the enterprise zone and
 340 servicing local residents and international visitors.

341 Section 8. Section 290.0137, Florida Statutes, is created
 342 to read:

343 290.0137 Designation of sales tax TIF area; review and
 344 approval by the department.—

345 (1) Any municipality having a population of at least
 346 300,000 residents that has designated an enterprise zone, or all
 347 of the governing bodies in the case of a county and one or more
 348 municipalities having designated an enterprise zone if the

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349 county has a population of at least 1,200,000 residents, may
 350 adopt a resolution after a public hearing designating a sales
 351 tax TIF area.

352 (2) The resolution creating a sales tax TIF area, at a
 353 minimum, must:

354 (a) Include findings that the designation of the sales tax
 355 TIF area:

356 1. Is essential to furthering a retail development project;

357 2. Will provide needed retail amenities within the
 358 enterprise zone;

359 3. Will result in the development of a retail development
 360 project that will create no fewer than 500 new jobs within the
 361 compliance period and not less than \$1 million in sales tax
 362 increment revenue annually; and

363 4. Will enhance the health and general welfare of the
 364 residents of the enterprise zone within the sponsoring
 365 municipality or county;

366 (b) Fix the geographic boundaries of the sales tax TIF area
 367 within which the governing body may expend tax increment
 368 revenues;

369 (c) Establish the term of the life of the sales tax TIF
 370 area, which term may not extend more than 40 years after the
 371 date the sales tax TIF area is approved by the department; and

372 (d) Establish the base year for determination of sales tax
 373 receipts collected pursuant to s. 212.20(6)(d)5., less the
 374 amount required under s. 290.0138(1).

375 (3) No more than two sales tax TIF areas may be designated
 376 in any one eligible municipality. No more than four sales tax
 377 TIF areas may be designated in any eligible county. If an

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378 eligible municipality is located in an eligible county, any
 379 sales tax TIF area designated by a municipality shall count
 380 against the maximum number of sales tax TIF areas permitted
 381 within an eligible county. A sales tax TIF area may not be
 382 located within a one-quarter mile of any other designated sales
 383 tax TIF area and may not exceed 5 square miles in total land
 384 mass.

385 (4) A designated sales tax TIF area may not include:

386 (a) Areas designated or to be designated as an "urban
 387 infill and redevelopment area" pursuant to part II of chapter
 388 163;

389 (b) Areas designated or to be designated as a "community
 390 redevelopment area" pursuant to part III of chapter 163;

391 (c) Any facility financed or partially financed with bonds
 392 whose debt is serviced with proceeds collected under the
 393 authority provided under s. 125.0104; or

394 (d) Any facility conducting gaming activities authorized
 395 pursuant to part II of chapter 285, chapter 550, chapter 551, or
 396 chapter 849. This prohibition shall extend to any facilities
 397 authorized to conduct gaming activities after the effective date
 398 of this act.

399 (5) The powers conferred by ss. 290.0136-290.01391 upon
 400 counties not having adopted a home rule charter may not be
 401 exercised within the boundaries of a municipality within such
 402 county unless the governing body of the municipality expresses
 403 its consent by resolution. A resolution consenting to the
 404 exercise of the powers conferred upon counties by ss. 290.0136-
 405 290.01391 must specifically enumerate the powers to be exercised
 406 by the county within the boundaries of the municipality. Any

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407 power not specifically enumerated in the resolution of consent
 408 shall be exercised exclusively by the municipality within its
 409 boundaries.

410 (6) In any county that has adopted a home rule charter, the
 411 powers conferred by ss. 290.0136-290.01391 shall be exercised
 412 exclusively by the governing body of the county. However, the
 413 governing body of such county may, in its discretion, by
 414 resolution delegate the exercise of the powers conferred upon
 415 the county by ss. 290.0136-290.01391 within the boundaries of a
 416 municipality to the governing body of the municipality. Such
 417 delegation to a municipality confers upon a municipality only
 418 the powers that are specifically enumerated in the delegating
 419 resolution. Any power not specifically delegated is reserved
 420 exclusively to the governing body of the county.

421 (7) Before the governing body adopts any resolution
 422 designating a sales tax TIF area pursuant to the requirements of
 423 this section or authorizes the issuance of redevelopment revenue
 424 bonds under s. 290.01391, the governing body must provide public
 425 notice of such proposed action pursuant to s. 125.66(2) or s.
 426 166.041(3) (a).

427 (8) A copy of the resolution adopted by the governing body
 428 designating the sales tax TIF area must be transmitted to the
 429 department for review. The department shall determine whether
 430 the designation of the sales tax TIF area complies with the
 431 requirements of this chapter. When determining whether the
 432 designation complies with the requirements of this chapter, the
 433 department must consider whether the designation:

434 (a) Captures taxable spending, either in whole or in
 435 significant part, that would not otherwise occur in the

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436 community rather than redistributing current spending;

437 (b) Supports and enhances the tourism industry; and

438 (c) Supports a retail development project that will meet
 439 the jobs and taxes and fees required to be generated under s.
 440 290.004.

441 (9) If the department determines that the designation by
 442 the governing body complies with the requirements of this
 443 chapter, the department must provide written notification to the
 444 local governing body of such determination. Upon receipt of the
 445 notification, the local governing body must remit a copy of the
 446 resolution establishing the sales tax TIF area, along with the
 447 department's notice of determination, to the Department of
 448 Revenue.

449 Section 9. Section 290.0138, Florida Statutes, is created
 450 to read:

451 290.0138 Calculation of tax increment revenue contribution
 452 to governing body.-

453 (1) The governing body of a designated sales tax TIF area
 454 is eligible for a percentage distribution from the Revenue
 455 Sharing Trust Fund for Municipalities of the increased
 456 collections of the state tax on sales, use, and other
 457 transactions realized during any month by the municipality over
 458 the same monthly period of the base year, as follows:

459 (a) Eighty-five percent of the increased monthly
 460 collections of \$85,000 or less.

461 (b) Seventy-five percent of the increased monthly
 462 collections greater than \$85,000 but \$425,000 or less.

463 (c) Fifty percent of the increased monthly collections
 464 greater than \$425,000 but \$675,000 or less.

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465 (d) Twenty-five percent of the increased monthly
 466 collections greater than \$675,000 but \$1 million or less.

467 (e) Zero percent of the increased monthly collections of
 468 more than \$1 million.

469 (2) The specific amount payable to each eligible governing
 470 body must be determined monthly by the Department of Revenue for
 471 distribution to the appropriate eligible governing body in
 472 accordance with subsection (1). The Department of Revenue must
 473 determine monthly the aggregate amount of sales tax revenue that
 474 is required for distribution to each eligible governing body
 475 under this section and transfer that amount from the General
 476 Revenue Fund to the Revenue Sharing Trust Fund for
 477 Municipalities in accordance with s. 212.20(6)(d)5. All amounts
 478 transferred to the Revenue Sharing Trust Fund for Municipalities
 479 must be distributed as provided in s. 218.23(3)(e). The total
 480 distribution provided to the eligible governing body may not
 481 exceed the total tax increment revenue contribution set forth in
 482 the retail project development agreement required pursuant to s.
 483 290.0139.

484 (3) Percentage distributions to each governing body under
 485 subsection (1) are contingent upon the following:

486 (a) A contribution by the local governing body equal to not
 487 less than 30 percent of the percent of the distributions of
 488 sales tax revenues provided to the governing body under
 489 subsection (1). Such matching contribution may be provided in
 490 one of the following forms:

- 491 1. A cash deposit by the governing body to the revenue
 492 account established pursuant to subsection (4);
 493 2. A commitment within the governing body's capital plan to

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494 underwrite any project within the sales TIF area; or

495 3. Approval of an economic development ad valorem tax
 496 exemption by the governing body authorized under ss. 196.1995
 497 and 196.1996.

498 (b) Total private investment in a retail development
 499 project equal to an amount not less than three times the state
 500 contribution; and

501 (c) Annual transmittal of an employment certificate by the
 502 retail development project developer to the department and the
 503 Department of Revenue attesting to the total number of full-time
 504 and part-time jobs created by the retail development project.

505 1. The retail development project developer must continue
 506 to provide such employment certificate until the end of the
 507 compliance period or transmittal of an employment certificate
 508 indicating that the retail development project has created the
 509 required minimum number of jobs, whichever occurs first. For
 510 purposes of determining whether the job requirement has been
 511 satisfied, two part-time jobs shall be counted as the equivalent
 512 of one full-time job.

513 2. If the retail development project fails to create the
 514 required minimum number of jobs by the end of the compliance
 515 period, future percentage distributions to the governing body
 516 under subsection (1) must be reduced by the number of actual
 517 jobs created as a percentage of the minimum required jobs.

518 (4) Each governing body receiving a percentage distribution
 519 under subsection (1) must establish a separate redevelopment
 520 trust fund for each designated sales tax TIF area. Funds
 521 allocated to and deposited in this fund may only be used to
 522 underwrite any eligible public improvements approved by the

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523 enterprise zone governing body pursuant to the authority
 524 provided in s. 290.0056 and ss. 290.0136-290.01391.

525 Section 10. Section 290.0139, Florida Statutes, is created
 526 to read:

527 290.0139 Retail development project agreement.-

528 (1) A retail development project developer proposing to use
 529 tax increment revenues to expend sales tax increment revenues
 530 for purposes authorized under s. 290.0056 on behalf of the
 531 governing body or enterprise zone development agency may enter
 532 into a retail development project agreement with the governing
 533 body designating a sales tax TIF area. The agreement must set
 534 forth:

535 (a) The goals and objectives of the retail development
 536 project;

537 (b) Requirements for leasing retail space within the retail
 538 development project which will advance the governing body's or
 539 enterprise zone development agency's goals and objectives;

540 (c) The terms and conditions pursuant to which tax
 541 increment revenue or bond proceeds will be advanced to pay for
 542 costs incurred in the sales tax TIF area;

543 (d) Goals for the hiring of enterprise zone residents for
 544 the new jobs created by the retail development project;

545 (e) Such matters as may be required in connection with the
 546 issuance of bonds to support the retail development project; and

547 (f) Such other matters as the governing body designating
 548 the sales tax TIF area may determine to be necessary and
 549 appropriate.

550 (2) A retail project development agreement must be approved
 551 by resolution of the governing body following a public hearing

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552 advertised in a newspaper of general circulation not less than
 553 10 days before the date of the required public hearing.

554 (3) A retail development agreement must be transmitted to
 555 the department for review and determination that the agreement
 556 complies with the requirements of this chapter.

557 Section 11. Section 290.01391, Florida Statutes, is created
 558 to read:

559 290.01391 Issuance of sales tax increment revenue bonds;
 560 use of bond proceeds; funding agreement.-

561 (1) If authorized or approved by resolution of the
 562 governing body that designated the sales tax TIF area, after a
 563 public hearing, tax increment revenues may be used to support
 564 the issuance of sales tax increment revenue bonds to finance the
 565 authorized public improvements, including, but not limited to,
 566 the payment of principal and interest upon any advances for
 567 surveys and plans or preliminary loans and to issue refunding
 568 bonds for the payment or retirement of bonds or other
 569 obligations previously issued. Sales tax increment revenue bonds
 570 may not be committed for any projects identified following the
 571 10th year after the base year established under s. 290.004. Any
 572 sales tax increment revenue bonds or other obligations issued to
 573 finance the undertaking of any eligible activity under ss.
 574 290.0136-290.01391 must mature by the end of the 40th fiscal
 575 year after the fiscal year in which sales tax increment revenues
 576 are first deposited into the sales tax TIF area trust fund or at
 577 the expiration of any agreement between the governing body and
 578 the retail project developer for which bonds are issued to
 579 underwrite eligible public improvements, whichever is later.
 580 However, any refunding bonds issued pursuant to this subsection

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581 may not mature later than the final maturity date of any bonds
 582 or other obligations issued pursuant to this subsection being
 583 paid or retired with the proceeds of such refunding bonds.

584 (2) Sales tax increment revenue bonds issued under ss.
 585 290.0136-290.01391 may not be deemed to constitute a debt,
 586 liability, or obligation of the public body or the state or any
 587 political subdivision thereof, or a pledge of the faith and
 588 credit of the public body or the state or any political
 589 subdivision thereof, but shall be payable solely from the
 590 revenues provided therefor. All such sales tax increment revenue
 591 bonds must contain on the face thereof a statement to the effect
 592 that the agency may not be obligated to pay the same or the
 593 interest thereon except from the revenues of the sales tax TIF
 594 area held for that purpose and that neither the faith and credit
 595 nor the taxing power of the governing body or of the state or of
 596 any political subdivision thereof is pledged to the payment of
 597 the principal of, or the interest on, such bonds.

598 (3) Bonds issued under this section must be authorized by
 599 resolution of the governing body and may be issued in one or
 600 more series and may bear such date or dates, be payable upon
 601 demand or mature at such time or times, bear interest at such
 602 rate or rates, be in such denomination or denominations, be in
 603 such form either with or without coupon or registered, carry
 604 such conversion or registration privileges, have such rank or
 605 priority, be executed in such manner, be payable in such medium
 606 of payment at such place or places, be subject to such terms of
 607 redemption with or without a premium, be secured in such manner,
 608 and have such other characteristics as may be provided by the
 609 resolution or ordinance authorizing their issuance. Bonds issued

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610 under this section may be sold in such manner, either at public
 611 or private sale, and for such price as the designated governing
 612 body may determine will effectuate the purposes of this section.

613 (4) If the public officials of the county or municipal
 614 governing body whose signatures appear on any bonds or coupons
 615 issued under ss. 290.0136-290.01391 cease to be such officials
 616 before the delivery of such bonds, such signatures are,
 617 nevertheless, valid and sufficient for all purposes, the same as
 618 if such officials had remained in office until such delivery.

619 (5) Bonds issued under ss. 290.0136-290.01391 are declared
 620 to be issued for an essential public and governmental purpose.
 621 In any suit, action, or proceeding involving the validity or
 622 enforceability of any bond issued under this section, any bond
 623 that recites in substance that it has been issued by the
 624 governing body in connection with the sales tax increment
 625 district for a purpose authorized under this section is
 626 conclusively presumed to have been issued for that purpose, and
 627 any project financed by the bond is conclusively presumed to
 628 have been planned and carried out in accordance with the
 629 intended purposes of this section.

630 (6) If the enterprise zone program is not extended beyond
 631 the date set forth in s. 290.016 and bonds issued pursuant to
 632 this section remain outstanding, the Department of Revenue must
 633 continue to collect and remit tax increment revenues generated
 634 by the retail development project to service the outstanding
 635 bond obligations.

636 Section 12. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Regulation, *Chair*
Agriculture
Budget - Subcommittee on Health and Human Services
Appropriations
Governmental Oversight and Accountability
Reapportionment
Transportation

SENATOR RENE GARCIA

40th District

February 6, 2012

The Honorable Michael S. "Mike" Bennett
Chair, Budget Committee
201 Capitol Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bennett,

This letter should serve as a request to have my bill **SB 1022 Sales Tax Increment**

Districts heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "René García".

State Senator René García
District 40

RG:dm

CC: Tom Yeatman, Staff Director

REPLY TO:

- 3814 West 12th Avenue, Hialeah, Florida 33012 (305) 824-5058
- 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5106

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

✓ rec'd 2/6/12
apw

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/2012

Meeting Date

Topic _____

Bill Number 1022
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/2012

Meeting Date

Topic Sales Tax Increment Financing

Bill Number SB 1022
(if applicable)

Name Javier Fernandez

Amendment Barcode _____
(if applicable)

Job Title Associate, Alkermantenterfitt

Address One SE 3rd Avenue, 25th Floor
Street

Phone (305) 374-5600

Miami, FL 33131
City State Zip

E-mail javier.fernandez@alkerman.com

Speaking: For Against Information

Representing Miami Design District Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/2012
Meeting Date

Topic Revitalizing Municipalities

Bill Number 1022
(if applicable)

Name Amber Hughes

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 701-3621

Tallahassee
City State Zip

E-mail ahughes@flcities.com

Speaking: For Against Information

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB's 590 & 568

INTRODUCER: Transportation Committee and Senators Garcia, Wise and Evers

SUBJECT: Noncriminal Traffic Infractions

DATE: February 8, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Buford	TR	Fav/CS
2.	Anderson	Yeatman	CA	Favorable
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This committee substitute (bill) contains several provisions relating to red-light cameras. Specifically, the bill:

- Provides that upon receipt of an affidavit, the person identified as having care, custody, and control of the motor vehicle at the time of the violation may be issued a notice of violation before issuance of a uniform traffic citation (UTC).
- Provides the same procedure that applies to the registered owner under the provisions of the red-light camera statute applies to the person identified as the driver on the affidavit.
- Specifies the registered owner of a motor vehicle is responsible for payment of the fine for a violation unless the motor vehicle's owner was deceased on or before the date the UTC was issued, as established by an affidavit and supporting documentation.
- Applies same standards to left-hand turns made in a careful and prudent manner from a one way street onto a one way street when permissible.
- Standardizes enforcement of right or left hand turns on red.
- Requires minimum yellow light interval to be established in accordance with national standards before a camera can be used at an intersection.

- Requires a local government operating a red light camera program to include the yellow light interval in the notice of violation or maintain records of the programmed yellow light intervals at each camera intersection.
- Requires the yellow light interval to be tested at least once during every calendar year beginning in 2013 if each notice of violation for a particular approach does not state the length of the yellow light duration.
- Specifies a traffic infraction detector monitoring a traffic signal which is not in compliance with the engineering standards must be disabled until the traffic signal is brought into compliance with the standards.

This bill substantially amends sections 316.0083, 316.075, and 316.0776 of the Florida Statutes.

II. Present Situation:

Federal Rules on Traffic Control Devices

The Federal Highway Administration (FHWA) publishes a Manual on Uniform Traffic Control Devices (MUTCD) that defines standards related to the installation and maintenance of traffic control signals. The MUTCD is updated periodically to “accommodate the nation’s changing transportation needs and address new safety technologies, traffic control tools and traffic management techniques.”¹ On December 16, 2009, a final rule adopting the 2009 Edition of the MUTCD was published in the Federal Register with an effective date of January 15, 2010.² All states must adopt the 2009 edition of the MUTCD by January 15, 2012.³ According to information published on FHWA’s website, Florida has adopted this national standard.⁴

Florida Laws and Rules on Traffic Control Devices

Section 316.0745(1), F.S., requires the Florida Department of Transportation (FDOT) to adopt a uniform system of traffic control devices for use on the streets and highways of the state. Section 316.0745(2), F.S., requires FDOT to compile and publish a manual defining its uniform system. The statute also requires FDOT to compile and publish minimum specifications for traffic control signal devices “certified by [FDOT] as conforming with the uniform system.”⁵

Following statutory requirements, FDOT publishes a Traffic Engineering Manual (TEM) to provide traffic engineering standards and guidelines.⁶ The TEM covers the processes whereby standards and guidelines are adopted, as well as chapters devoted to “highway signs and markings, traffic signals, traffic optimization through the use of computer models . . . , and links to information on [FDOT’s] aging road user program –Safe Mobility for Life.”⁷

¹ See the Federal Highway Administration’s (FHWA) information on the MUTCD at <http://mutcd.fhwa.dot.gov/> (Last viewed Feb. 8, 2012).

² *Id.*

³ *Id.*

⁴ See FHWA’s chart indicating Florida has adopted the 2009 Edition of the MUTCD. This information can be accessed at http://mutcd.fhwa.dot.gov/knowledge/natl_adopt_2009.htm (Last visited Feb. 8, 2012).

⁵ Section 316.0745(2), F.S.

⁶ Florida Department of Transportation *Traffic Engineering Manual*, “Adoption Procedure.” This information can be viewed at <http://www.dot.state.fl.us/trafficoperations/Operations/Studies/TEM/TEM.shtml> (last visited Feb. 8, 2012).

⁷ *Id.*

In addition to FDOT's TEM, many sections of Florida law require drivers to obey traffic control signal demands. Section 316.075, F.S., requires drivers to follow set traffic control signal commands and yield the right-of-way to pedestrians lawfully in intersections and crosswalks. Violators of s. 316.075, F.S., including those that run red lights, commit non-criminal traffic violations punishable pursuant to ch. 318, F.S.

Institute of Transportation Engineers

According to its website, the Institute of Transportation Engineers (ITE) is an international, educational and scientific association of transportation professionals.⁸ Among other things, ITE offers recommendations to the MUTCD and is recognized as one of the leading organizations in transportation research. It publishes a Traffic Engineering Handbook containing information used by transportation officials nationwide. FDOT's TEM calculates the minimum yellow signal change and all-red clearance intervals using formulas contained within the ITE's Traffic Engineering Handbook. However, there is no express requirement in Florida law that FDOT's TEM contain formulas contained within ITE's Traffic Engineering Handbook.

Traffic Signal Yellow Intervals

The purpose of the yellow light display is "to provide a safe transition between two conflicting traffic signal phases."⁹ More specifically, the function of the yellow light display is "to warn traffic of an impending change in the right-of-way assignment."¹⁰ The MUTCD states that a yellow change interval should have a minimum duration of 3 seconds and a maximum duration of 6 seconds and a red clearance interval should have a duration not exceeding 6 seconds.¹¹

Drivers approaching a traffic signal displaying a yellow light face at least four conditions:

1. The vehicle is traveling at a speed where the driver can stop comfortably;
2. The vehicle is too close to the intersection to stop comfortably, and must thus continue at the same speed or accelerate to travel through the intersection before conflicting traffic movements begin;
3. The driver can neither stop comfortably nor continue without encountering a conflicting traffic movement (prevalent with short yellow intervals and/or high approach speeds); or
4. The driver can either stop or proceed safely through the intersection.

The ideal yellow interval accommodates conditions 1 and 2, eliminates condition 3, and minimizes condition 4. To accomplish this, traffic engineers nationwide typically employ the following formula, which is heavily influenced by vehicle approach speed, and was developed by the Institute of Transportation Engineers (ITE):

⁸ See the Institute of Transportation Engineers website at <http://www.ite.org/aboutite/index.asp> (last visited 2/4/12).

⁹ Florida Department of Transportation *Traffic Engineering Manual*, s. 3.6.1, "Purpose." This information can be viewed at http://www.dot.state.fl.us/trafficoperations/Operations/PDFs/FDOT_Traffic_Engineering_Manual_revised_January_2012.pdf (last visited Feb. 8, 2012).

¹⁰ *Id.*

¹¹ *Id.*

$$Y = t + \frac{1.47v}{2(a + Gg)}$$

Where:

Y= length of yellow interval, sec.

t = perception-reaction time, (Use 1 sec.).

v = speed of approaching vehicles, in mph.

a = deceleration rate in response to the onset of a yellow indication. (Use 10 ft/sec²)

g = acceleration due to gravity. (Use 32.2 ft/sec²)

G = grade, with uphill positive and downhill negative. (percent grade /100)

For Florida traffic signal timing, the FDOT TEM (Topic No. 750-000-005) provides required minimum durations for the yellow change interval in the following table which was computed using the ITE formula:

APPROACH SPEED (MPH)	YELLOW INTERVAL (SECONDS)
25	3.0
30	3.2
35	3.6
40	4.0
45	4.3
50	4.7
55	5.0
60	5.4
65	5.8
* For approach grades other than 0%, Use ITE Formula.	

Traffic Infraction Detectors generally

Traffic infraction detectors, or “red-light cameras,” are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. A second photograph typically shows the red light violator in the intersection. In some cases, video cameras are used. These video cameras record the license plate number, the date and time of day, the time elapsed since the signal has turned red and the vehicle’s speed.

Traffic Infraction Detectors in Florida

In 2010, the Florida Legislature enacted Chapter 2010-80, Laws of Florida. The law expressly preempted to the state regulation of the use of cameras for enforcing the provisions of ch. 316, F.S.¹² The law authorized the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to authorize officials to issue notices of violations of ss. 316.074(1)

¹² Section 316.0076, F.S.

and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal when such violation was identified by a traffic infraction detector.¹³

Installation, Operation, Equipment and Testing Specifications

Any traffic infraction detector installed on the highways, roads, and streets must meet placement and installation specifications established by FDOT.¹⁴ In addition, traffic infraction detectors must be tested at regular intervals according to procedures prescribed by FDOT to ensure specified technical and operational requirements are met.¹⁵ These requirements are published by FDOT and are to be conducted in accordance with the manufacturer's recommendations or county or city testing requirements, whichever is more stringent.¹⁶ Pursuant to the process, traffic infraction detectors are required to perform and record the results of a daily internal self test sequence that confirms proper operation of each critical system component. If the system fails on one or more portions of the internal self test, the system will render itself inoperable until a successful internal self test is recorded.¹⁷

During the system test phase, traffic infraction detectors are required to activate and create 'event information' consistent with an 'event,' when artificially activated. According to FDOT specifications, an 'event' is defined as the point at which "a motor vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red indication."¹⁸ With regard to the capturing of 'event information' during the testing phase, traffic infraction detectors are required to capture the following:

- a photographic or electronic image of the intersection that includes the rear of the vehicle and license tag at a time the vehicle is in advance (and beyond) of the stop bar or clearly marked stop line with the corresponding traffic control signal steady red light visible in the image; and
- if 'right on red' violations are enforced, a minimum of five seconds of streaming video showing the rear of the vehicle (and license tag) in advance of the stop bar or clearly marked stop line with the corresponding traffic control signal steady red light visible in the image. The streaming video must continue until after the vehicle is beyond the stop bar or clearly marked stop line with the corresponding traffic control signal steady red light visible in the image.

Municipalities may install or authorize installation of traffic infraction detectors on streets and highways in accordance with FDOT standards, and on state roads within the incorporated area when permitted by FDOT.¹⁹ Counties may install or authorize installation of traffic infraction detectors on streets and highways in unincorporated areas of the county in accordance with FDOT standards, and on state roads in unincorporated areas of the county when permitted by

¹³ See generally s. 316.0083, F.S.

¹⁴ Sections 316.07456 and 316.0776, F.S.

¹⁵ Section 316.07456, F.S.

¹⁶ DOT's Traffic Infraction Detector Equipment and Testing Specifications may be viewed at

<http://www.dot.state.fl.us/trafficoperations/Operations/redlight/101216%20Traffic%20Infraction%20Detector%20Equipment%20Specifications.pdf> (last visited Feb. 8, 2012).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 316.008(7), F.S.; s. 316.0776(1), F.S.

FDOT.²⁰ DHSMV may install or authorize installation of traffic infraction detectors on any state road under the original jurisdiction of FDOT, when permitted by FDOT.²¹

If DHSMV, a county, or a municipality installs a traffic infraction detector at an intersection, the respective governmental entity must notify the public that a traffic infraction device may be in use at that intersection, including specific notification of enforcement of violations concerning right turns.²² Such signage must meet the specifications for uniform signals and devices adopted by FDOT pursuant to s. 316.0745, F.S.²³

Notifications and Citations

If a traffic infraction detector identifies a person violating ss. 316.074(1) or 316.075(1)(c)1., F.S., the visual information is captured and reviewed by a traffic infraction enforcement officer. A notification must be issued to the registered owner (first name on registration in cases of joint registration) of the vehicle within 30 days of the alleged violation.²⁴ The notice must be accompanied by a photograph or other recorded image of the violation, a statement of the vehicle owner's right to review images or video of the violation, and the time and place, or Internet location where the evidence may be reviewed.²⁵ Violations may not be issued if the driver is making a right-hand turn "in a careful and prudent manner."²⁶

If the registered owner of the vehicle does not submit payment within 30 days of receipt of the notification described above, the traffic infraction enforcement officer must issue a traffic citation (UTC) to the registered owner (first name on registration in cases of joint registration).²⁷ A citation must be mailed by certified mail, and must be issued no later than 60 days after the violation.²⁸ The citation must also include the photograph and statements described above regarding review of the photographic or video evidence.²⁹ The report of a traffic infraction enforcement officer and images provided by a traffic infraction detector are admissible in court and provide a rebuttable presumption the vehicle was used in a violation.³⁰

A traffic infraction enforcement officer must provide by electronic transmission a replica of the citation data when issued under s. 316.0083, F.S., to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the issuance date of the citation to the violator.³¹

²⁰ *Id.*

²¹ Section 321.50, F.S. As of February 2012, DHSMV has not undertaken any effort to install or authorize traffic infraction detectors itself.

²² Section 316.0776(2), F.S.

²³ *Id.*

²⁴ Section 316.0083(1)(b), F.S.

²⁵ *Id.*

²⁶ Section 316.0083(2), F.S.

²⁷ Section 316.0083(1)(c), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 316.0083(1)(e), F.S.

³¹ Section 316.650(3)(c), F.S.

Defenses

The registered owner of the motor vehicle is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Passed through the intersection at the direction of a law enforcement officer;
- Was, at the time of the violation, in the care, custody, or control of another person; or
- Received a UTC for the alleged violation issued by a law enforcement officer.³²

To establish any of these defenses, the owner of the vehicle must furnish an affidavit to the appropriate governmental entity that provides detailed information supporting an exemption as provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued.³³ If the owner submits an affidavit that another driver was behind the wheel, the affidavit must contain the name, address, date of birth, and if known, the driver's license number, of the driver.³⁴ A traffic citation may be issued to this person, and the affidavit from the registered owner may be used as evidence in a further proceeding regarding that person's alleged violation of ss. 316.074(1) or 316.075(1)(c)1., F.S.³⁵ Submission of a false affidavit is a second degree misdemeanor.

If a vehicle is leased, the owner of the leased vehicle is not responsible for paying the citation, nor required to submit an affidavit, if the motor vehicle is registered in the name of the lessee.³⁶ If a person presents documentation from the appropriate governmental entity that the citation was issued in error, the clerk of court may dismiss the case and may not charge for such service.³⁷

Fines

A fine of \$158 is levied on violators who fail to stop at a traffic signal as required by ss. 316.074(1) or 316.075(1)(c)1., F.S. When the \$158 fine is the result of a local government's traffic infraction detector, \$75 is retained by the local government and \$83 is deposited with the Department of Revenue (DOR).³⁸ DOR subsequently distributes the fines by depositing \$70 in the General Revenue Fund, \$10 in the Department of Health Administrative Trust Fund, and \$3 in the Brain and Spinal Cord Injury Trust Fund.³⁹

If a law enforcement officer cites a motorist for the same offense, the fine is still \$158, but the revenue is distributed from the local clerk of court to DOR, where \$30 is distributed to the General Revenue Fund, \$65 is distributed to the Department of Health Administrative Trust

³² Section 316.0083(1)(d), F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Section 318.18(15), F.S.

³⁸ Section 318.18(15), F.S., s. 316.0083(1)(b)3., F.S.

³⁹ *Id.*

Fund, and \$3 is distributed to the Brain and Spinal Cord Injury Trust Fund. The remaining \$60 is distributed in small percentages to a number of funds pursuant to s. 318.21, F.S.⁴⁰

Violations of ss. 316.074(1) or 316.075(1)(c)1., F.S., enforced by traffic infraction detectors may not result in points assessed against the operator's driver's license and may not be used for the purpose of setting motor vehicle insurance rates.⁴¹

No Notice of Violation Issued to Person Named in the Affidavit

In instances where the registered owner furnishes an affidavit raising the exemption that the vehicle was, at the time of the violation, in the care, custody or control of another person, the identified person is not issued a notice of violation. Instead, the person is immediately issued a traffic citation at a higher amount,⁴² which includes associated court fees and costs.⁴³ The immediate issuance of a traffic citation comes as a result of time constraints imposed by the red-light camera statute. Because a traffic citation must be issued to the registered owner within 60 days after the date of the violation in cases of nonpayment, there is not enough time to issue another notice of violation – even if the registered owner furnishes an affidavit identifying someone else as the driver. As such, while registered owners are given the opportunity to pay a \$158 fine pursuant to the notice of violation, persons identified on the affidavit are subject to a higher fine and run the risk of having a conviction recorded on their driving record if they elect to attend a hearing and are found to have committed the violation.

III. Effect of Proposed Changes:

Section 1 makes several changes to s. 316.0083, F.S. First, the bill revises the procedure that applies to a person identified on an affidavit as having care, custody, and control of a motor vehicle captured by a traffic infraction detector for an alleged violation of the red-light camera statute. The bill makes these changes by:

- providing that upon receipt of an affidavit, the person identified as having care, custody, and control of the motor vehicle at the time of the violation may be issued a notice of violation before a uniform traffic citation (UTC) is issued; and
- providing that the same procedure that applies to the registered owner under the provisions of the red-light camera statute applies to the person identified as the driver on the affidavit.

Issuance of a Notice of Violation before Issuance of a Uniform Traffic Citation

The bill provides that upon receipt of an affidavit, the person identified as having care, custody, and control of the motor vehicle at the time of the violation may be issued a notice of violation before issuance of a uniform traffic citation. The effect of the proposed change lifts the time constraints on traffic infraction enforcement officers responsible for mailing notices of violations and UTCs and gives the identified person the same rights as the registered owner. Specifically, the bill allows the person identified as having care, custody, and control of the motor vehicle at the time of the violation the opportunity to pay a \$158 fine that is not subject to court costs, fees

⁴⁰ Section 318.18(15), F.S.

⁴¹ Section 322.27(3)(d)6., F.S.

⁴² The UTC amount varies across jurisdictions due to differing court costs and fees, but is generally above \$200.

⁴³ Section 316.0083(1)(d)3., F.S.

and risks associated with attending a hearing – namely the possibility of a conviction being recorded on the person's driving record. Additionally, because the bill provides that a notice of violation may be sent to the person identified on the affidavit, the identified person receives the same amount of time as a registered owner of a motor vehicle to pay the imposed fine before a UTC is issued.

The Same Procedure that Applies to the Registered Owner Applies to the Person Identified on an Affidavit

The bill provides that the same procedure that applies to the registered owner under the provisions of the red-light camera statute applies to the person identified on the affidavit as having care, custody, and control of the motor vehicle. The effect of the proposed change will require the same notice of violation sent to a registered owner be sent to the person identified on the affidavit. A notice of violation must be accompanied by a photograph or other recorded image of the violation and must include a statement of the cited person's right to review images or video of the violation and the time, place and Internet location where the evidence may be reviewed. The same procedure for non-payment that applies to a registered owner also applies to a person identified on an affidavit.

Second, s. 316.0083(1)(d), F.S., is amended to provide an additional defense to the responsibility and liability for payment of the fine for a violation of s. 316.074(1) or s. 316.075(1)(c)1., F.S. Specifically, the registered owner of the motor vehicle is responsible for payment of the fine unless the motor vehicle's owner was deceased on or before the date the uniformed traffic citation was issued, as established by an affidavit submitted by the representative or the motor vehicle owner's estate, or other designated person or family member.

The affidavit must include a certified copy of the owner's death certificate showing the date of death occurred on or before the issuance of the uniform traffic citation and one of the following:

- A bill of sale or other document showing the deceased owner's motor vehicle was sold after his or her death;
- Documentary proof that the registered license plate belonging to the deceased owner's vehicle was turned into the DHSMV; or
- A copy of a police report showing the deceased owner's registered license plate or motor vehicle was stolen after the owner's death.

Upon receipt of the death certificate and proper documentation, the governmental entity must dismiss the citation and provide proof of such dismissal to the affiant.

Section 316.0083(2), F.S., is amended to include that a notice of violation may not be issued if the driver is making a left-hand turn in a careful and prudent manner from a one-way street onto a one-way street where left-hand turns are permissible. A citation also may not be issued if the driver of the vehicle came to a complete stop before turning right or left when permissible, but failed to stop before the point at which a stop is required.

In addition, a notice of violation or traffic citation for failure to stop at a red light before making a right or left turn must be issued at the discretion of the reviewing traffic infraction enforcement officer, as if the citation had been issued by an officer at an intersection. When examining

evidence for violations, a traffic infraction enforcement officer may consider one or more of the following factors that would indicate the turn was not made in careful or prudent manner:

- The operator of the motor vehicle failed to yield to a pedestrian or bicyclist;
- The operator of the motor vehicle put a pedestrian or bicyclist in danger of injury;
- The operator of the motor vehicle failed to yield to another vehicle or oncoming traffic; or
- The operator of the motor vehicle commenced the turn in disregard for the safety of person or property.

Lastly, this section of the bill creates subsection (5) to require DSHMV, each county, or each municipality within 15 months or when one year of data is available to submit a report to FDOT that includes a comparison and analysis of:

- Month-to-month violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., which occur at the intersections where traffic infraction detectors are enforcing the law to stop at a red light; and
- The number and type of related traffic collisions that occur at each intersection prior to and after the use of traffic infraction detectors.

The report must also describe instances when camera results are not used and other data, such as traffic crash reports, are used in the comparison and analysis by the DHSMV, county, or municipality.

Section 2 amends s. 316.075, F.S., to require each jurisdiction to establish minimum yellow light change interval times for use in traffic signals where a traffic infraction detector is used. The minimum time is set in accordance with engineering standards set forth in the Institute of Transportation Engineers' *Traffic Engineering Handbook*, as adopted by the Department of Transportation.

A jurisdiction issuing a notice of violation sent pursuant to s. 316.0083, F.S., must include the length of the yellow light time during the signal phase of the traffic control signal immediately before the violation on the notice or must maintain records of the most recent programmed yellow intervals for inspection in order to ensure compliance.

The yellow light interval must be tested at least once during every calendar year beginning in 2013 if each notice of violation for a particular approach does not state the length of the yellow light duration. A traffic infraction detector monitoring a traffic signal which is not in compliance with the Institute of Transportation Engineers' *Traffic Engineering Handbook* standards must be disabled until the traffic signal is brought into compliance with the standards.

The bill provides the issuance of a notice stating the length of the yellow light duration or annual testing of the yellow light change interval time establishes a presumption that the yellow light cycle was compliant with standards at the time the alleged violation occurred. In addition, a certificate or signed affidavit verifying compliance establishes a presumption that the testing of the yellow light cycle was compliant with standards and the certificate or affidavit is admissible as proof of such compliance.

The bill provides that traffic infraction detectors operational on July 1, 2012, must be in compliance with the minimum yellow light change interval times by January 1, 2013.

Section 3 amends s. 316.0776(2), F.S., relating to signage requirements notifying the public that a traffic infraction device may be in use at an intersection. Specifically, the bill deletes reference to notification of camera enforcement for only right turns and requires signage notifying the public of camera enforcement of violations concerning turns to conform to other provisions in the bill.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The registered owner of a motor vehicle and the person identified as having care, custody, and control of the motor vehicle at the time of the violation will be subject to the same procedure for the disposition of a red-light camera citation.

C. Government Sector Impact:

Depending on whether or not the bill's change allows a person identified on an affidavit to first receive a notice of violation instead of a UTC, this bill will reduce or increase the amount of revenue received by state and local governments.

For those signals monitored by traffic infraction detectors that do not record yellow light interval times, local governments will be responsible for the costs associated with the annual testing of the devices and possibly experience a reduction of fines collected until the signal is made compliant. The cost is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Transportation Committee on February 7, 2012:

The CS combined SB's 590 and 568 and replaced the substance of those bills as described above. The CS was further amended to remove the terms "willful and wanton" when determining whether a turn was made in disregard to safety of person or property. In addition, the CS specifies certain documentation that must be submitted with the affidavit if advising the appropriate government entity of the owner's death to establish an affirmative defense for the issuance of a UTC when the registered owner of the vehicle is deceased. Along with a copy of the death certificate, at least, one other document must be submitted showing the deceased owner's vehicle was sold, stolen after the owner's death or that vehicle's license tag has been turned into the DHSMV.

- B. **Amendments:**

None.

By the Committee on Transportation; and Senators Garcia, Wise,
and Evers

596-03072-12

2012590c1

1 A bill to be entitled
2 An act relating to noncriminal traffic infractions;
3 amending s. 316.0083, F.S., relating to use of a
4 traffic infraction detector when a driver has failed
5 to stop at a traffic control signal pursuant to
6 specified provisions; revising procedures applied to a
7 person identified by a motor vehicle owner as having
8 care, custody, and control of the vehicle when a
9 violation occurred; providing for notification and
10 citation within certain time periods after receipt of
11 an affidavit from the owner identifying such person;
12 providing that the owner of a motor vehicle involved
13 in a violation is responsible for paying the uniform
14 traffic citation unless the motor vehicle's owner was
15 deceased on or before the date the uniformed traffic
16 citation was issued; requiring the representative of
17 the deceased owner to submit certain documentation to
18 prove the death of the owner of the vehicle; providing
19 for a traffic citation to be issued at the discretion
20 of the reviewing traffic infraction enforcement
21 officer for failure to stop before making a left-hand
22 turn or right-hand turn where such turn is
23 permissible; specifying factors for the reviewing
24 traffic infraction enforcement officer to consider;
25 requiring that the Department of Highway Safety and
26 Motor Vehicles and counties and municipalities that
27 install a traffic infraction detector to submit a
28 report to the Department of Transportation which
29 provides specified data; amending s. 316.075, F.S.;

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30 requiring the establishment of minimum yellow light
31 change interval times for intersections where traffic
32 infraction detectors are used; requiring notices of
33 violation for violations at such intersections to
34 contain specific information regarding the yellow
35 light times; providing that such notices establish a
36 presumption; requiring testing to such traffic control
37 signals; requiring such signals to comply with certain
38 standards; requiring that certain detectors be in
39 compliance with the act by a specified date; amending
40 s. 316.0776, F.S.; revising provisions to conform to
41 changes made by the act; providing an effective date.
42

43 Be It Enacted by the Legislature of the State of Florida:
44

45 Section 1. Subsections (1) and (2) of section 316.0083,
46 Florida Statutes, are amended, and subsection (5) is added to
47 that section, to read:

48 316.0083 Mark Wandall Traffic Safety Program;
49 administration; report.—

50 (1) (a) For purposes of administering this section, the
51 department, a county, or a municipality may authorize a traffic
52 infraction enforcement officer under s. 316.640 to issue a
53 traffic citation for a violation of s. 316.074(1) or s.
54 316.075(1)(c)1. A notice of violation and a traffic citation may
55 not be issued for failure to stop at a red light if the driver
56 is making a right-hand turn in a careful and prudent manner at
57 an intersection where right-hand turns are permissible. This
58 paragraph does not prohibit a review of information from a

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59 traffic infraction detector by an authorized employee or agent
 60 of the department, a county, or a municipality before issuance
 61 of the traffic citation by the traffic infraction enforcement
 62 officer. This paragraph does not prohibit the department, a
 63 county, or a municipality from issuing notification as provided
 64 in paragraph (b) to the registered owner of the motor vehicle or
 65 to another person identified as having care, custody, and
 66 control of the motor vehicle involved in the violation of s.
 67 316.074(1) or s. 316.075(1)(c)1.

68 (b)1.a. Within 30 days after a violation, notification must
 69 be sent to the registered owner of the motor vehicle involved in
 70 the violation specifying the remedies available under s. 318.14
 71 and that the violator must pay the penalty of \$158 to the
 72 department, county, or municipality, or furnish an affidavit in
 73 accordance with paragraph (d), within 30 days following the date
 74 of the notification in order to avoid court fees, costs, and the
 75 issuance of a traffic citation. The notification shall be sent
 76 by first-class mail.

77 b. Included with the notification to the registered owner
 78 of the motor vehicle involved in the infraction must be a notice
 79 that the owner has the right to review the photographic or
 80 electronic images or the streaming video evidence that
 81 constitutes a rebuttable presumption against the owner of the
 82 vehicle. The notice must state the time and place or Internet
 83 location where the evidence may be examined and observed.

84 2. Penalties assessed and collected by the department,
 85 county, or municipality authorized to collect the funds provided
 86 for in this paragraph, less the amount retained by the county or
 87 municipality pursuant to subparagraph 3., shall be paid to the

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88 Department of Revenue weekly. Payment by the department, county,
 89 or municipality to the state shall be made by means of
 90 electronic funds transfers. In addition to the payment, summary
 91 detail of the penalties remitted shall be reported to the
 92 Department of Revenue.

93 3. Penalties to be assessed and collected by the
 94 department, county, or municipality are as follows:

95 a. One hundred fifty-eight dollars for a violation of s.
 96 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
 97 stop at a traffic signal if enforcement is by the department's
 98 traffic infraction enforcement officer. One hundred dollars
 99 shall be remitted to the Department of Revenue for deposit into
 100 the General Revenue Fund, \$10 shall be remitted to the
 101 Department of Revenue for deposit into the Department of Health
 102 Administrative Trust Fund, \$3 shall be remitted to the
 103 Department of Revenue for deposit into the Brain and Spinal Cord
 104 Injury Trust Fund, and \$45 shall be distributed to the
 105 municipality in which the violation occurred, or, if the
 106 violation occurred in an unincorporated area, to the county in
 107 which the violation occurred. Funds deposited into the
 108 Department of Health Administrative Trust Fund under this sub-
 109 subparagraph shall be distributed as provided in s. 395.4036(1).
 110 Proceeds of the infractions in the Brain and Spinal Cord Injury
 111 Trust Fund shall be distributed quarterly to the Miami Project
 112 to Cure Paralysis and shall be used for brain and spinal cord
 113 research.

114 b. One hundred fifty-eight dollars for a violation of s.
 115 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
 116 stop at a traffic signal if enforcement is by a county or

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117 municipal traffic infraction enforcement officer. Seventy
 118 dollars shall be remitted by the county or municipality to the
 119 Department of Revenue for deposit into the General Revenue Fund,
 120 \$10 shall be remitted to the Department of Revenue for deposit
 121 into the Department of Health Administrative Trust Fund, \$3
 122 shall be remitted to the Department of Revenue for deposit into
 123 the Brain and Spinal Cord Injury Trust Fund, and \$75 shall be
 124 retained by the county or municipality enforcing the ordinance
 125 enacted pursuant to this section. Funds deposited into the
 126 Department of Health Administrative Trust Fund under this sub-
 127 subparagraph shall be distributed as provided in s. 395.4036(1).
 128 Proceeds of the infractions in the Brain and Spinal Cord Injury
 129 Trust Fund shall be distributed quarterly to the Miami Project
 130 to Cure Paralysis and shall be used for brain and spinal cord
 131 research.

132 4. An individual may not receive a commission from any
 133 revenue collected from violations detected through the use of a
 134 traffic infraction detector. A manufacturer or vendor may not
 135 receive a fee or remuneration based upon the number of
 136 violations detected through the use of a traffic infraction
 137 detector.

138 (c)1.a. A traffic citation issued under this section shall
 139 be issued by mailing the traffic citation by certified mail to
 140 the address of the registered owner of the motor vehicle
 141 involved in the violation when payment has not been made within
 142 30 days after notification under subparagraph (b)1.

143 b. Delivery of the traffic citation constitutes
 144 notification under this paragraph.

145 c. In the case of joint ownership of a motor vehicle, the

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146 traffic citation shall be mailed to the first name appearing on
 147 the registration, unless the first name appearing on the
 148 registration is a business organization, in which case the
 149 second name appearing on the registration may be used.

150 d. The traffic citation shall be mailed to the registered
 151 owner of the motor vehicle involved in the violation no later
 152 than 60 days after the date of the violation.

153 2. Included with the notification to the registered owner
 154 of the motor vehicle involved in the infraction shall be a
 155 notice that the owner has the right to review, either in person
 156 or remotely, the photographic or electronic images or the
 157 streaming video evidence that constitutes a rebuttable
 158 presumption against the owner of the vehicle. The notice must
 159 state the time and place or Internet location where the evidence
 160 may be examined and observed.

161 (d)1. The owner of the motor vehicle involved in the
 162 violation is responsible and liable for paying the uniform
 163 traffic citation issued for a violation of s. 316.074(1) or s.
 164 316.075(1)(c)1. when the driver failed to stop at a traffic
 165 signal, unless the owner can establish that:

166 a. The motor vehicle passed through the intersection in
 167 order to yield right-of-way to an emergency vehicle or as part
 168 of a funeral procession;

169 b. The motor vehicle passed through the intersection at the
 170 direction of a law enforcement officer;

171 c. The motor vehicle was, at the time of the violation, in
 172 the care, custody, or control of another person; ~~or~~

173 d. A uniform traffic citation was issued by a law
 174 enforcement officer to the driver of the motor vehicle for the

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175 alleged violation of s. 316.074(1) or s. 316.075(1)(c)1; ~~or-~~

176 e. The motor vehicle's owner was deceased on or before the
 177 date the uniformed traffic citation was issued, as established
 178 by an affidavit submitted by the representative of the motor
 179 vehicle owner's estate, or other designated person or family
 180 member.

181 2. In order to establish such facts, the owner of the motor
 182 vehicle shall, within 30 days after the date of issuance of the
 183 traffic citation, furnish to the appropriate governmental entity
 184 an affidavit setting forth detailed information supporting an
 185 exemption as provided in this paragraph.

186 a. An affidavit supporting an exemption under sub-
 187 subparagraph 1.c. must include the name, address, date of birth,
 188 and, if known, the driver ~~driver's~~ license number of the person
 189 who leased, rented, or otherwise had care, custody, or control
 190 of the motor vehicle at the time of the alleged violation. If
 191 the vehicle was stolen at the time of the alleged offense, the
 192 affidavit must include the police report indicating that the
 193 vehicle was stolen.

194 b. If a traffic citation for a violation of s. 316.074(1)
 195 or s. 316.075(1)(c)1. was issued at the location of the
 196 violation by a law enforcement officer, the affidavit must
 197 include the serial number of the uniform traffic citation.

198 c. If the motor vehicle's owner to whom a traffic citation
 199 has been issued is deceased, the affidavit must include a
 200 certified copy of the owner's death certificate showing the date
 201 of death occurred on or before the issuance of the uniform
 202 traffic citation and one of the following:

203 (I) A bill of sale or other document showing that the

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204 deceased owner's motor vehicle was sold after his or her death;

205 (II) Documentary proof that the registered license plate
 206 belonging to the deceased owner's vehicle was turned in to the
 207 Department of Highway Safety and Motor Vehicles, including any
 208 branch or authorized office thereof; or

209 (III) A copy of a police report showing that the deceased
 210 owner's registered license plate or motor vehicle was stolen
 211 after the owner's death.

212
 213 Upon receipt of the affidavit and documentation required under
 214 this sub-subparagraph, the governmental entity shall dismiss the
 215 citation and provide proof of such dismissal to the person who
 216 submitted the affidavit.

217 3. Upon receipt of an affidavit, the person designated as
 218 having care, custody, and control of the motor vehicle at the
 219 time of the violation may be issued a notice of violation
 220 pursuant to paragraph (b) ~~traffic citation~~ for a violation of s.
 221 316.074(1) or s. 316.075(1)(c)1. when the driver failed to stop
 222 at a traffic signal. The affidavit is admissible in a proceeding
 223 pursuant to this section for the purpose of providing proof that
 224 the person identified in the affidavit was in actual care,
 225 custody, or control of the motor vehicle. The owner of a leased
 226 vehicle for which a traffic citation is issued for a violation
 227 of s. 316.074(1) or s. 316.075(1)(c)1. when the driver failed to
 228 stop at a traffic signal is not responsible for paying the
 229 traffic citation and is not required to submit an affidavit as
 230 specified in this subsection if the motor vehicle involved in
 231 the violation is registered in the name of the lessee of such
 232 motor vehicle.

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233 4. Paragraphs (b) and (c) apply to the person identified on
 234 the affidavit, except that the notification under sub-
 235 subparagraph (b)1.a. must be sent within 30 days after receipt
 236 of an affidavit and the traffic citation mailed pursuant to sub-
 237 subparagraph (c)1.d. must be mailed no later than 60 days after
 238 the date of receipt of an affidavit.

239 5.4- The submission of a false affidavit is a misdemeanor
 240 of the second degree, punishable as provided in s. 775.082 or s.
 241 775.083.

242 (e) The photographic or electronic images or streaming
 243 video attached to or referenced in the traffic citation is
 244 evidence that a violation of s. 316.074(1) or s. 316.075(1)(c)1.
 245 when the driver failed to stop at a traffic signal has occurred
 246 and is admissible in any proceeding to enforce this section and
 247 raises a rebuttable presumption that the motor vehicle named in
 248 the report or shown in the photographic or electronic images or
 249 streaming video evidence was used in violation of s. 316.074(1)
 250 or s. 316.075(1)(c)1. when the driver failed to stop at a
 251 traffic signal.

252 (2) A notice of violation and a traffic citation may not be
 253 issued for failure to stop at a red light if the driver is
 254 making a right-hand turn in a careful and prudent manner at an
 255 intersection where right-hand turns are permissible or when
 256 making a left-hand turn in a careful and prudent manner from a
 257 one-way street onto a one-way street where left-hand turns are
 258 permissible. A notice of violation or traffic citation for
 259 failure to stop at a red light before making a right or left
 260 turn shall be issued at the discretion of the reviewing traffic
 261 infraction enforcement officer, as if the citation had been

Page 9 of 13

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

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262 issued by an officer at an intersection. When examining evidence
 263 for violations under this subsection, a traffic infraction
 264 enforcement officer shall consider one or more of the following
 265 factors that would indicate the turn was not made in careful or
 266 prudent manner:

267 (a) The operator of the motor vehicle failed to yield to a
 268 pedestrian or bicyclist;

269 (b) The operator of the motor vehicle put a pedestrian or
 270 bicyclist in danger of injury;

271 (c) The operator of the motor vehicle failed to yield to
 272 another vehicle or oncoming traffic; or

273 (d) The operator of the motor vehicle commenced the turn in
 274 disregard for the safety of a person or property.

275
 276 A citation may not be issued under this subsection if the driver
 277 of the vehicle came to a complete stop before turning right or
 278 left when permissible at a red light, but failed to achieve a
 279 stop before the point at which a stop is required.

280 (5) Within 15 months or when 1 year of data is available
 281 following the date of installation of a traffic infraction
 282 detector, the department, each county, or each municipality
 283 shall submit a report to the Department of Transportation which
 284 includes a comparison and analysis of:

285 (a) Month-to-month violations of ss. 316.074(1) and
 286 316.075(1)(c)1. which occur at the intersections where traffic
 287 infraction detectors are enforcing the law to stop at a red
 288 light; and

289 (b) The number and type of related traffic collisions that
 290 occur at each intersection prior to and after the use of traffic

Page 10 of 13

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291 infraction detectors.

292

293 The report shall also describe instances when camera results are
 294 not used and other data, such as traffic crash reports, are used
 295 in the comparison and analysis by the department, county, or
 296 municipality.

297 Section 2. Subsection (4) of section 316.075, Florida
 298 Statutes, is amended, and subsection (5) is added to that
 299 section, to read:

300 316.075 Traffic control signal devices.—

301 (4) A violation of subsection (1) or subsection (2) this
 302 ~~section~~ is a noncriminal traffic infraction, punishable pursuant
 303 to chapter 318 as either a pedestrian violation or, if the
 304 infraction resulted from the operation of a vehicle, as a moving
 305 violation.

306 (5) (a) Before initiating the use of a traffic infraction
 307 detector for any intersection approach pursuant to s. 316.0083,
 308 each jurisdiction shall establish minimum yellow light change
 309 interval time for the designated intersection approach in
 310 accordance with engineering standards set forth in the Institute
 311 of Transportation Engineers Traffic Engineering Handbook, as
 312 adopted by the Department of Transportation, and any such
 313 established time may not be less than the recognized national
 314 minimum standard. The Department of Transportation shall adopt
 315 the latest edition of Institute of Transportation Engineers
 316 Traffic Engineering Handbook for use in compliance with this
 317 subsection.

318 (b) A jurisdiction issuing a notice of violation sent
 319 pursuant to s. 316.0083, must include the length of the yellow

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320 light time during the signal phase of the traffic control signal
 321 immediately before the violation on the notice or must maintain
 322 records of the most recent programmed yellow intervals for
 323 inspection in order to ensure compliance with this subsection.

324 (c) Unless each notice of violation for a particular
 325 approach states the length of the yellow light duration, the
 326 yellow light interval shall be tested at least once during every
 327 calendar year beginning in 2013. A traffic infraction detector
 328 monitoring a traffic signal that is not in compliance with the
 329 Institute of Transportation Engineers Traffic Engineering
 330 Handbook standards, as adopted by the Department of
 331 Transportation, shall be disabled until that signal is brought
 332 into compliance with the standards.

333 (d) Issuance of a notice stating the length of the yellow
 334 light duration, or annual testing of the yellow light change
 335 interval time according to this subsection, establishes a
 336 presumption that the yellow light cycle was operating in
 337 compliance with this subsection at the time the violation is
 338 alleged to have occurred. Production of a certificate, or a
 339 signed affidavit, showing that the yellow light cycle was tested
 340 in compliance with this subsection, establishes a presumption
 341 that the testing of the yellow light cycle was completed in
 342 compliance with this subsection and the certificate or affidavit
 343 is admissible as proof of such compliance.

344 (e) A person raising the length of the yellow light cycle
 345 as an affirmative defense to the notice of violation must
 346 establish by clear and convincing evidence that the signal was
 347 not operating in compliance with the Institute of Transportation
 348 Engineers Traffic Engineering Handbook standards, as adopted by

596-03072-12

2012590c1

349 the Department of Transportation.

350 (f) A traffic infraction detector that is operational on
351 July 1, 2012, must be in compliance with this section by January
352 1, 2013.

353 Section 3. Paragraph (a) of subsection (2) of section
354 316.0776, Florida Statutes, is amended to read:

355 316.0776 Traffic infraction detectors; placement and
356 installation.—

357 (2)(a) If the department, county, or municipality installs
358 a traffic infraction detector at an intersection, the
359 department, county, or municipality shall notify the public that
360 a traffic infraction device may be in use at that intersection
361 and must specifically include notification of camera enforcement
362 of violations concerning ~~right~~ turns. Such signage used to
363 notify the public must meet the specifications for uniform
364 signals and devices adopted by the Department of Transportation
365 pursuant to s. 316.0745.

366 Section 4. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 / 13 / 201

Meeting Date

Topic _____

Bill Number 590
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/12

Meeting Date

Topic SB 590

Bill Number 590
(if applicable)

Name Casey Cook

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 701 3701

Tallahassee FL 32302
City State Zip

E-mail ccook@flcities.com

Speaking: For Against Information

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/12

Meeting Date

Topic Amber Lights

Bill Number SB 590
(if applicable)

Name Kathy Russell

Amendment Barcode _____
(if applicable)

Job Title Dir of Gov Relations

Address 400 S. Orange Ave

Phone _____

Street

Orlando FL 32801

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing City of Orlando

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1226

INTRODUCER: Senator Montford

SUBJECT: Sales Tax Exemptions

DATE: February 5, 2012

REVISED: _____

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

I. Summary:

This bill reimplements s. 212.031(10), F.S., exempting from sales tax separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required or available in connection with a lease or license to use real property, including charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing.

Section 212.031(10), F.S. (2009), providing the above exemptions was repealed by operation of law effective July 1, 2009.

This bill reimplements s. 212.031(10) of the Florida Statutes.

II. Present Situation:

Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on tangible personal property and a limited number of services. The statutes currently provide more than 200 different exemptions.

Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax; only those surtaxes specifically designated in s. 212.055, F.S., may be levied.¹ The maximum discretionary sales surtax that any county may levy depends upon the county's eligibility for the taxes listed in s. 212.055, F.S., and ranges between 1.5 percent and 3.5 percent. The maximum any county currently levies is 1.5 percent. As of January 2012, 58 counties levied at least one discretionary sales surtax and 13 counties levied at least two.²

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold and is levied in addition to the state taxes. The surtax applies to all transactions occurring in a county that are "subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions" and on communications services, defined in ch. 202, F.S. The surtax does not apply to a sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections received by DOR are returned monthly to the county imposing the tax.

Tax on Rental or License Fee for Use of Real Property

Section 212.031, F.S., establishes a taxable privilege for engaging in the business of renting, leasing, letting, or granting a license for the use of any real property. The tax imposed by s. 212.031, F.S., is in addition to the total amount of the rental or license fee.

There are several exemptions to the imposition of this taxable privilege cited in s. 212.031, F.S. Some of these exemptions include:

- Property used as an integral part of the performance of qualified production services.
- Property leased, subleased, licensed, or rented to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, publicly owned recreational facility.
- Property used or occupied predominantly for space flight business purposes.
- Property rented, leased, subleased, or licensed to a person providing telecommunications, data systems management, or Internet services at a publicly or privately owned convention hall, civic center, or meeting space at a public lodging establishment.

Chapter 2000-345, Section 212.031(10), F.S. (2009)

Chapter 2000-345, L.O.F., created subsection (10) of s. 212.031, F.S., providing a sales tax exemption for rental or license fees on separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required in connection with a lease or license to use real property. This exemption includes charges for

¹ These include: charter county and regional transportation system surtax, local government infrastructure surtax, small county surtax, county public hospital surtax, school capital outlay surtax, voter-approved indigent care surtax, emergency fire rescue services and facilities surtax.

² Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2012*, available at <http://dor.myflorida.com/dor/forms/2012/dr15dss.pdf> (last visited Feb. 5, 2012).

laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing.

Section 212.031(10), F.S., was scheduled for repeal on July 1, 2003. Chapter 2002-218, L.O.F., extended these sales tax exemptions until July 1, 2006. Chapter 2006-101, L.O.F, once again extended the tax exemptions of subsection (10), this time, until July 1, 2009. The exemptions were repealed by operation of law on July 1, 2009.

III. Effect of Proposed Changes:

Section 1 adds subsection (10) to s. 212.031, F.S., to provide that separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadiums, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required or available in connection with a lease or license to use real property, including charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing, are exempt from the tax imposed by this section.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue.

Subsection (d) provides an additional applicable exemption. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.88 million for FY 2011-2012), are exempt.

This bill reduces the authority that counties have to raise revenues with local option sales taxes. A February 2, 2012, analysis by the Revenue Estimating Conference estimated the total recurring local fiscal impact to be negative \$0.5 million.³ Because the fiscal impact was determined to be less than \$1.88 million, the impact of the bill will be considered insignificant and therefore exempt from the mandate restriction.

B. Public Records/Open Meetings Issues:

None.

³ Office of Economic and Demographic Research, The Florida Legislature, *Analysis of HB 1497 and SB 1226: Sales and Use Tax*, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page179.pdf> (last visited Feb. 7, 2012)

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) estimated that the fiscal impact of these sales tax exemptions would be a recurring reduction of state and local sales taxes of \$2.1 million. The table below summarizes FY 2012-13 REC figures for the bill.⁴

	FY 2012-13 Cash	FY 2012-13 Annualized
General Revenue	- \$1.5 million	- \$1.6 million
State Trust	insignificant	insignificant
Total State Impact	- \$1.5 million	- \$1.6 million
Revenue Sharing	insignificant	- \$0.1 million
Local Gov't. Half Cent	- \$0.1 million	- \$0.2 million
Local Option	- \$0.1 million	- \$0.2 million
Total Local Impact	- \$0.2 million	- \$0.5 million
Total Impact	- \$1.7 million	- \$2.1 million

B. Private Sector Impact:

Those persons eligible for the exemptions will benefit as certain rentals, leases, services and fees will be exempt from sales tax.

C. Government Sector Impact:

The DOR may incur administrative costs associated with the administration of the sales tax exemptions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

⁴ *Id.*

B. Amendments:

None.

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

By Senator Montford

6-01221-12

20121226__

1 A bill to be entitled
2 An act relating to sales tax exemptions; amending s.
3 212.031, F.S.; exempting from the sales tax certain
4 separately stated charges imposed on a lessee or
5 licensee of leased or licensed premises; providing an
6 effective date.

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

9
10 Section 1. Subsection (10) is added to section 212.031,
11 Florida Statutes, to read:

12 212.031 Tax on rental or license fee for use of real
13 property.-

14 (10) Separately stated charges imposed by a convention
15 hall, exhibition hall, auditorium, stadium, theater, arena,
16 civic center, performing arts center, or publicly owned
17 recreational facility upon a lessee or licensee for food, drink,
18 or services required or available in connection with a lease or
19 license to use real property, including charges for laborers,
20 stagehands, ticket takers, event staff, security personnel,
21 cleaning staff, and other event-related personnel, advertising,
22 and credit card processing, are exempt from the tax imposed by
23 this section.

24 Section 2. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on Education Pre-K - 12
Appropriations, *Vice Chair*
Agriculture
Budget
Budget - Subcommittee on Higher Education
Appropriations
Commerce and Tourism
Education Pre-K - 12
Governmental Oversight and Accountability
Reapportionment

JOINT COMMITTEE:
Administrative Procedures

SENATOR BILL MONTFORD

Democratic Whip
6th District

January 24, 2012

The Honorable Michael 'Mike' Bennett
Chair of Committee on Community Affairs
404 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bennett:

I respectfully request that you place SB 1226, relating to tax exemptions on your next Committee on Community Affairs meeting. The bill would reinstate tax exemptions to civic centers, stadiums, arenas, performing arts centers, theaters and similar venues imposed for the cost of hiring ticket takers, ushers, cleanup crew and various other people who provide services before, during and after an event.

I look forward to presenting this bill before your committee.

Thank you for your consideration and please let me know if you have any questions.

Sincerely,

Bill Montford
State Senator – District 6

*rec'd 1/25/12
apw*

BJM/mam

Cc: Tom Yeatman, Staff Director of Committee on Community Affairs

REPLY TO:

- 208 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004
- 56 Market Street, Apalachicola, Florida 32320 (850) 653-2656
- 2866 Madison Street, Tallahassee, Marianna, Florida 32448 (850) 718-0101

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-13-12

Meeting Date

Topic SB 1226 Bill Number SB 1226
(if applicable)

Name RON SPENCER Amendment Barcode _____
(if applicable)

Job Title Director - Tallahassee Civic CTR

Address 505 W. Pensacola St Phone 850-487-1691
Street

1911 FL 32302 E-mail rspencer@tlccc.org
City State Zip

Speaking: For Against Information Waive & Support

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/13/12
~~5/2/12~~

Meeting Date

Topic TAX EXEMPTED

Bill Number 1226
(if applicable)

Name WAYNE MALONEY

Amendment Barcode _____
(if applicable)

Job Title _____

Address P.O. Box 12514

Phone 850 933.7001

Street

TALLAHASSEE FL 32309

E-mail FLOBBYIST@AFL.COM

City

State

Zip

Speaking: For Against Information WAIVE IN SUPPORT

Representing FLORIDA FACILITY MANAGERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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exemptions. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.¹

Turbines

“A turbine is any kind of spinning device that uses the action of a fluid to produce work.”² Fluids typically used in turbines include air, wind, water, steam and helium. Windmills and hydroelectric dams are two examples of turbine action being used to turn the core of an electrical generator to produce power.

Gas turbines were first developed in the 1930s, and were used to generate electricity and power airplane flight. Gas turbines use a compressor to draw in and compress gas (usually air), then a combustor (or burner) adds fuel (such as propane, natural gas, kerosene or jet fuel) to heat the compressed gas, and a turbine extracts power from the hot air flow. The gas turbine is an internal combustion engine employing a continuous combustion process. Gas turbines are also known as combustion turbines, turboshaft engines, or gas turbine engines in power generation and marine applications and as jet engines, jet turbine engines, turbojets, turbofans, fanjets, turboprops or prop jets in aviation applications.

Gas turbines have many applications, and are used in power plants, tanks, jets, helicopters and trains.

Castings

“Casting is a manufacturing process by which a liquid material is usually poured into a mold, which contains a hollow cavity of the desired shape, and then allowed to solidify.” The “casting” is the solidified part, which is generally removed from the mold by breaking the mold.³ There are several different methods to create a casting.⁴ Materials used in casting are usually metals or “various cold setting materials that cure after mixing two or more components together. Casting is most often used for making complex shapes that would be otherwise difficult or uneconomical to make by other methods.”⁵

The World Foundry Organization lists the U.S. as the third largest castings producer in the world in 2009.⁶

Government Property Taxation

Florida law generally exempts government property from ad valorem taxation.⁷

¹ See ss. 212.05 and 212.06, F.S.

² See Langston, Lee S., and George Opdyke, Jr., *Introduction to Gas Turbines for Non-Engineers*, *Global Gas Turbine News*, Volume 37: 1997, No.2, available at <http://files.asme.org/IGTI/101/13001.pdf> (last visited Feb. 7, 2012).

³ See Wikipedia article, “Casting,” citing Degarmo, E. Paul, J. T. Black, and Ronald A. Kosher, “Materials and Processes in Manufacturing (9th ed.),” Wiley (2003).

⁴ See Reliance Foundry Co. Ltd. website on Foundry Production for a description of different methods of casting. Available at <http://www.reliance-foundry.com/foundry-production/> (last visited Feb. 7, 2012).

⁵ See “Casting” article.

⁶ See World Foundry Organization website Modern Castings and the American Foundry Society, *44th Census of World Casting Production* (2010), available at <http://thewfo.com/Page.aspx?pageId=11> (last visited Feb. 7, 2012).

Portions of governmental property may be leased to private parties. In instances where the government leases property to a private party, the lease is called a “governmental leasehold” and is subject to tax as “intangible personal property.”⁸

Effective January 1, 2007, ch. 2006-312, L.O F., repealed the annual tax on intangible personal property such as stocks, bonds, mutual funds, money market funds, and unsecured notes.⁹ The repeal did not include:

- The nonrecurring tax on a note, bond, or other obligation for payment of money that is secured by a mortgage deed or other lien on real property. Taxpayers who are lending money secured by a mortgage on Florida real property must still pay the nonrecurring intangible tax. These payments are generally made to the Clerk of Court in the county where the instrument is recorded.¹⁰
- The recurring tax on the lease of real property owned by a government and leased to a non-governmental entity when rental payments are due. Taxpayers that lease property from a governmental entity must still file and pay the governmental leasehold intangible tax annually, if the amount of tax owed before discount is \$60 or more.¹¹

In *Boca Airport, Inc. v. Florida Department of Revenue*, 56 So. 3d 140 (Fla. 4th DCA 2011), the court determined that the tax on governmental leaseholds applied to fixed base operators¹² leasing airport property from the county.

III. Effect of Proposed Changes:

Section 1 amends s. 196.199, F.S., to provide that lessees serving or performing a governmental, municipal or public function are exempt from the intangible tax. This section of the bill is effective upon becoming a law and applies retroactively to all leases of governmental property in existence as of January 1, 2012.

Section 2 creates s. 212.08(7)(hhh), F.S., to establish a new exemption from the tax on sales, use, and other transactions. The CS exempts chemicals, machinery, parts, and equipment used and consumed in the manufacture or fabrication of aircraft and gas turbine engines.

Items exempted include cores, electrical discharge machining supplies, brass electrodes, ceramic guides, grinding and deburring wheels, Norton vortex wheels, argon, nitrogen, helium, fluid

⁷ See s. 196.199, F.S. Subject to certain conditions, property of the United States, property of Florida and property of political subdivisions and municipalities of the state are exempt from ad valorem taxation.

⁸ See s. 196.199(2)(b), F.S. Section 192.001 (11)(b) defines “intangible personal property” as money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

⁹ Florida Department of Revenue, *2007 Tax Information Publication #07C02-01* (Jan 2, 2007), available at <http://dor.myflorida.com/dor/tips/tip07c02-01.html> (last visited Feb. 14, 2012).

¹⁰ *Id.*

¹¹ *Id.*

¹² Fixed base operators provide goods and services to the general aviation public by offering hanger space for private and commercial aircraft, aviation fuel, aircraft repairs, tie-down services, and amenities for pilots and the general public in the form of food, beverages, ground transportation, and reservations for rental cars and lodging.

abrasive cutters, solvents and soaps, borescopes, penetrants, patterns, dies, and molds consumed in the production of castings.

Section 3 provides that except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 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 the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2012-13), are exempt.

The Revenue Estimating Conference (REC) estimated that the provisions of this CS related to aircraft and gas turbine engines will have a \$300,000 negative fiscal impact annually on local governments. The REC has not met to discuss the intangible tax impact of the CS.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The REC estimated the impact of the CS related to sales and use tax for certain items used to manufacture and produce aircraft and gas turbine engines on December 12, 2011.

The REC adopted a recurring negative impact of \$1.3 million to general revenue and a recurring negative impact of \$300,000 to local funds each year.¹³

The REC has not reviewed the impact of this CS related to the intangible tax for lessees performing a governmental, municipal or public purpose function.

B. Private Sector Impact:

Purchasers of the cited items used in the manufacture of aircraft and gas turbine engines will benefit from the exemption of these items from taxes. Lessees performing a governmental, municipal or public purpose function will be exempt from the intangible tax.

C. Government Sector Impact:

The Department of Revenue (DOR) has indicated that the aircraft and gas turbine engines provisions of this CS would have an insignificant impact on its operations. The DOR has yet to formally analyze the implications of the intangible tax provisions of the CS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Turbine engines are classified by the type of fluid used to drive the engine. In general, the manufacturing process for all engines is the same and uses the same materials (cores, patterns, dies, and molds), although they may vary by type of metal. The exemption provided by this CS is limited to manufacturing and fabricating aircraft and gas turbine engines. The items cited for exemption which are used for other types of manufacturing would not be eligible for the exemption.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Community Affairs on February 13, 2012:

This committee substitute provides an exemption from intangible tax for lessees performing a governmental, municipal or public purpose function.

CS by Commerce and Tourism on February 2, 2012:

This committee substitute combined the two separately stated exemptions in the original bill into one.

¹³ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference for 2012 Regular Session – Exemption on Gas Turbine Manufacturers, HB 939* (December 12, 2011), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page174-178.pdf> (last visited Feb. 8, 2012).

B. Amendments:

None.

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



663472

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 10 and 11
insert:

Section 1. Paragraph (a) of subsection (2) of section
196.199, Florida Statutes, is amended to read:

196.199 Government property exemption.—

(2) Property owned by the following governmental units but
used by nongovernmental lessees shall only be exempt from
taxation under the following conditions:

(a) Leasehold interests in property of the United States,
of the state or any of its several political subdivisions, or of



663472

13 municipalities, agencies, authorities, and other public bodies
14 corporate of the state shall be exempt from ad valorem taxation
15 and the intangible tax referenced in paragraph (b) only when the
16 lessee serves or performs a governmental, municipal, or public
17 purpose or function, as defined in s. 196.012(6). In all such
18 cases, all other interests in the leased property shall also be
19 exempt from ad valorem taxation. However, a leasehold interest
20 in property of the state may not be exempted from ad valorem
21 taxation when a nongovernmental lessee uses such property for
22 the operation of a multipurpose hazardous waste treatment
23 facility.

24 Section 2. Section 1 of this act shall take effect upon
25 becoming law and shall apply retroactively to all leases of
26 governmental property in existence as of January 1, 2012.

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 Delete line 3

32 and insert:

33 use, and other transactions; amending s. 196.199, F.S. to
34 provide an exemption from intangible tax for lessees performing
35 a governmental, municipal, or public purpose or function;
36 amending s. 212.08, F.S.;

37

38 Delete line 7

39 and insert:

40 transactions; providing effective dates.

41

By the Committee on Commerce and Tourism; and Senator Altman

577-02851-12

20121108c1

A bill to be entitled

An act relating to exemptions from the tax on sales, use, and other transactions; amending s. 212.08, F.S.; exempting certain items used to manufacture, produce, or modify aircraft engines and gas turbine engines and parts from the tax on sales, use, and other transactions; providing an effective date.

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

Section 1. Paragraph (hhh) is added to subsection (7) of section 212.08, Florida Statutes, 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.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as

Page 1 of 2

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

577-02851-12

20121108c1

required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(hhh) Items used in manufacturing and fabricating aircraft and gas turbine engines.—Chemicals, machinery, parts, and equipment used and consumed in the manufacture or fabrication of aircraft engines and gas turbine engines, including cores, electrical discharge machining (EDM) supplies, brass electrodes, ceramic guides, reamers, grinding and deburring wheels, Norton vortex wheels, argon, nitrogen, helium, fluid abrasive cutters, solvents and soaps, boroscopes, penetrants, patterns, dies, and molds consumed in the production of castings are exempt from the tax imposed by this chapter.

Section 2. This act shall take effect July 1, 2012.

Page 2 of 2

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

WHITTAKER.ANN

From: JANZEN.KARI.S24
Sent: Tuesday, February 07, 2012 12:54 PM
To: YEATMAN.TOM
Cc: WHITTAKER.ANN
Subject: SB 1108 Agenda Request

February 7, 2012

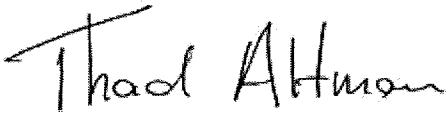
The Honorable Michael Bennett, Chair
Senate Committee on Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Bennett:

I respectfully request that SB 1108 related to *Tax Exemptions*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,



Thad Altman
TA/rk

CC: Tom Yeatman, Staff Director, 315 Knott Building

Kari L. Janzen

Senior Legislative Aide
Senator Thad Altman
District 24

District Office: 321.752.3138
6767 N. Wickham Road, Suite 211
Melbourne, FL 32940

Capitol Office: 850.487.5053
314 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

rec'd 2/7/12
apew

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 / 13 / 201

Meeting Date

Topic _____

Bill Number 1108
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/12

Meeting Date

Topic SALES TAX AEROSPACE MANUFACTURING

Bill Number 1108

(if applicable)

Name JIM MAGILL

Amendment Barcode

(if applicable)

Job Title LOBBYIST

Address 101 N. MONROE ST. SUITE 1090

Phone 850-681-0411

Street

TALLAHASSEE, FL

State

32301

Zip

E-mail JMAGILL@FOWLERWHITE.COM

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

Representing CHIZOMALLOY CASTINGS CORP.

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/2012
Meeting Date

Topic _____

Bill Number SB1108
(if applicable)

Name Sharon Spratt

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs

Address 325 John Knox, The Atrium
Street

Phone 298-6644

TLH _____
City State Zip

E-mail SSpratt@eflorida.com

Speaking: For Against Information

Representing Enterprise Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military Affairs, Space, and Domestic Security,
Chair
Budget - Subcommittee on Finance and Tax,
Vice Chair
Budget
Budget - Subcommittee on Higher Education
Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Higher Education
Reapportionment
Regulated Industries

SENATOR THAD ALTMAN
24th District

February 13, 2012

The Honorable Michael S. Bennett, Chair
Senate Committee on Community Affairs
404 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bennett:

Senate Bill 1108, related to *Tax Exemptions* is on the Community Affairs Committee agenda on February 13, 2012. Because of a conflict with the Communication, Energy, and Public Utilities Committee, I will be unable to attend. Please recognize my Legislative Assistant Rick Kendust to present SB 1108 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Thad Altman".

Thad Altman/vc

A large, stylized handwritten signature in cursive script, likely belonging to Michael S. Bennett.

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5053

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 840

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Community Redevelopment Agencies

DATE: February 5, 2012 REVISED: _____

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

I. Summary:

The provisions in this bill apply to counties defined in s. 125.011(1), F.S., and require Community Redevelopment Agencies (CRAs) operating within such counties to submit annual performance reviews conducted by and at the discretion of the board of county commissioners (Board). The bill grants these counties the power to terminate a CRA operating or located within its boundaries if the Board determines certain conditions exist. An approved termination plan is required and the elements of the plan are provided in the bill. The bill also establishes additional requirements regarding the operation of a CRA’s redevelopment trust fund.

In addition, the bill requires a CRA located and operating in a county as defined in s. 125.011(1), F.S., to submit to a forensic audit performed by a licensed and independent forensic accountant at least every five years, as requested by the Board. The forensic audit must include, but is not limited to, a review of an agency's assets, liabilities, income, and operating expenses to ensure that the agency has not engaged in financial misconduct or wasteful activity.

This bill substantially amends sections 163.356, 163.362, and 163.387 of the Florida Statutes.

II. Present Situation:

Community Redevelopment Act

The Community Redevelopment Act of 1969, Ch. 163, Part II, F.S. (Act), was enacted to provide a mechanism to revitalize slum and blighted areas “which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state.” The Act authorizes each local government to establish a CRA to revitalize designated slum and

blighted areas upon a “finding of necessity” and a further finding of a “need for a CRA to carry out community redevelopment.”¹

Creation of Community Redevelopment Agencies

Upon the finding of necessity and finding a need for a CRA to function in the county or municipality to carry out community redevelopment, any county or municipality may create a CRA.² CRAs of a county have the power to function within the corporate limits of a municipality only as, if, and when the governing body of the municipality has, by resolution, concurred in the community redevelopment plan or plans proposed by the county’s governing body.³

Section 163.356(2), F.S., addresses CRA board membership. The governing body adopting a resolution declaring a need for a CRA is required to appoint a board of commissioners of the CRA, which must consist of five to nine commissioners, serving four-year terms. One or more members of the board of commissioners of the agency may be representatives of a taxing authority, including members of that taxing authority’s governing body.

The powers of a CRA are exercised by the commissioners.⁴ A majority of the commissioners constitutes a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws require a larger number.⁵

The governing body may remove a commissioner for inefficiency, neglect of duty, or misconduct in office only after a hearing and only if he or she has been given a copy of the charges at least 10 days prior to such hearing and has had an opportunity to be heard in person or by counsel.⁶

Section 163.356(3)(c), F.S., provides that the county or municipal governing body is required to designate a chair and vice chair from among the commissioners. The CRA may employ an executive director, technical experts, and other employees. The CRA is required to file with the governing body, on or before March 31 of each year, a report of its activities for the preceding fiscal year. The CRA must provide a complete financial statement including its assets, liabilities, income, and operating expenses as of the end of the fiscal year.⁷ The CRA must publish in a newspaper of general circulation in the community a notice to the effect that the report has been filed with the county or municipality and that the report is available for inspection during business hours in the office of the clerk of the city or county commission and in the office of the CRA.

¹ Section 163.335, F.S.

² Section 163.356(1), F.S.

³ *Id.*

⁴ Section 163.356(3)(b), F.S.

⁵ *Id.*

⁶ Section 163.356 (4), F.S.

⁷ As dependent special districts, CRAs are subject to the annual financial report requirements of local government entities under s. 218.32, F.S., and the annual financial audit reports required under s. 218.39, F.S.

Governing Body as the CRA

As an alternative to the appointment of commissioners, the governing body may, at the time of the adoption of a resolution under s. 163.355, F.S., or at any time thereafter by adoption of a resolution, declare itself to be an agency, in which case all the rights, powers, duties, privileges, and immunities vested by this part in an agency will be vested in the governing body of the county or municipality, subject to all responsibilities and liabilities imposed or incurred.

Exercise of Powers in Carrying Out Community Redevelopment

Section 163.358, F.S., provides that a county or municipality may delegate powers to a CRA except for the following, which continue to vest in the governing body of the county or municipality:

- the power to determine an area to be a slum or blighted area, or combination thereof;
- the power to grant final approval to community redevelopment plans and modifications;
- the power to authorize the issuance of revenue bonds;
- the power to approve the acquisition, demolition, removal, or disposal of property;
- the power to approve the development of community policing innovations;
- the power of eminent domain.⁸

Community Redevelopment Agency Plans

Each community redevelopment area must have an approved community redevelopment plan that is consistent with the local government comprehensive plan.⁹ The community redevelopment plan must be sufficiently complete to indicate any land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation to be carried out in the designated area.¹⁰ The plan must also provide for the development of affordable housing in the area or state the reasons for not addressing the issue in the plan.¹¹ The local government may subsequently modify the community redevelopment plan upon the recommendation of the CRA.¹²

CRAs are authorized to modify community redevelopment plans after public notice and a public hearing.¹³ Amendments to the community redevelopment plan are permitted to change the boundaries of a redevelopment area or the development and implementation of community policing innovations.¹⁴

CRA Bonds and Trust Funds

When authorized or approved by resolution or ordinance of the governing body, a county, municipality, or CRA has the power to issue redevelopment revenue bonds to finance

⁸ Sections 163.358(1)-(6), F.S.

⁹ Section 163.360(2)(a), F.S.

¹⁰ Section 163.360(2)(b), F.S.

¹¹ Section 163.360(2)(c), F.S.

¹² Section 163.361(1), F.S.

¹³ Section 163.361(2), F.S.

¹⁴ Section 163.361(1), F.S.

community redevelopment.¹⁵ In addition, after approval of a community redevelopment plan, a CRA is authorized to create a redevelopment trust fund.¹⁶ Trust fund monies may be used to finance or refinance any community redevelopment a CRA undertakes pursuant to the approved community redevelopment plan.¹⁷

Section 163.387(6), F.S., allows additional trust fund expenditures for the following purposes as described in the community redevelopment plan:

- administrative and overhead expenses;
- expenses of redevelopment planning, surveys, and financial analysis;
- the acquisition of real property in the redevelopment area;
- the clearance and preparation of any redevelopment area for redevelopment;
- the repayment of principal and interest on any form of indebtedness;
- all expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds;
- the development of affordable housing within the community redevelopment area;
- the development of community policing innovations.¹⁸

Any money that remains in a CRA trust fund at the end of a fiscal year shall be:

- returned proportionately to each taxing authority which paid the increment;
- used to reduce any indebtedness to which increment revenues are pledged;
- deposited into an escrow account for a later reduction of indebtedness; or
- appropriated to a specific, approved redevelopment project which will be completed within three years.¹⁹

Section 163.387(8), F.S., provides that each CRA must provide for an audit report of the trust fund each fiscal year prepared by an independent certified public accountant or firm. The audit must describe the amount and source of deposits into, and the amount and purpose of withdrawals from, the trust fund during the fiscal year. It also must include the amount of principal and interest paid during the fiscal year on any indebtedness to which increment revenues are pledged and the remaining amount of such indebtedness. The agency provides a copy of the report to each taxing authority by registered mail.

CRA Tax Increment Financing

CRA's are funded primarily through tax increment financing (TIF).²⁰ As property tax values in the redevelopment area rise above property values in the base year the redevelopment area was created, increment revenues are generated by applying the current millage rate levied by each taxing authority in the area to the increase in value. Each non-exempt taxing authority that levies taxes on property within a community redevelopment area must annually appropriate the amount of increment revenues to the CRA trust fund. These revenues are used primarily to service bonds

¹⁵ Section 163.385(1)(a), F.S.

¹⁶ Section 163.387(1)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 163.387(6)(a)-(h), F.S.

¹⁹ *See s. 163.387(7)*, F.S.

²⁰ *See s. 163.387*, F.S.

issued to finance redevelopment projects. CRAs created prior to 2002 may receive TIF contributions for 60 years, while CRAs subsequently created may receive TIF contributions for 40 years.²¹

CRAs and Home Rule Charter Counties

Section 163.410, F.S., provides that in any county which has adopted a home rule charter, CRA powers must be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon the county within the boundaries of a municipality to the governing body of such municipality. Such a delegation to a municipality must confer only such powers upon a municipality as are specifically enumerated in the delegating resolution. Any power not specifically delegated must be reserved exclusively to the governing body of the county. These provisions do not affect any CRA created by a municipality prior to the adoption of a county home rule charter.²²

III. Effect of Proposed Changes:

Section 1 amends s. 163.356, F.S., to add provisions for the termination of a CRA operating in a county as defined in s. 125.011(1). The board of county commissioners may terminate a CRA if the board finds:

- the agency has been inefficient in removing slum and blight;
- the agency has neglected its duties and responsibilities;
- the agency has engaged in financial misconduct or wasteful activities as evidenced by a forensic audit, an annual performance review or, an annual report; or
- there is no longer a need for the agency.

After a public hearing, the board of the county commissioners may effectuate the termination by adopting a resolution. The CRA must be notified of the proposed termination in writing at least 30 days before the public hearing. Upon notice of a proposed termination, the CRA may not issue bonds, incur further indebtedness or enter into any contract unless approved by the board. The CRA must respond to the notice in writing at least five days before the public hearing.

A termination plan approved by the board of county commissioners includes the following provisions:

- if the CRA has outstanding debt, the plan shall require repayment of the debt, or taxing authorities may be required to continue making contributions until the repayment is made;
- may require the county commissioners to assume powers of the CRA;
- provides an effective date of termination after the payment of all outstanding debt; and
- provides that, after termination, taxing authorities' obligations to contribute to the CRA trust fund automatically end; any remaining trust fund monies shall be returned proportionately to taxing authorities.

²¹ Section 163.387(2)(a), F.S.

²² Section 163.410, F.S.

Notwithstanding any provision of law to the contrary, consent to termination is not required by the CRA, the governing body of a municipality, a contributing taxing authority or from any other person or entity.

Section 2 amends s. 163.362, F.S., to provide that a county as defined in s. 125.011(1), F.S., establish a specific completion date for any CRA redevelopment plan approved or amended on or after July 1, 2012.

Section 3 amends s. 163.387, F.S., related to a CRA in a county defined in s. 125.011(1), F.S., and its trust fund. Such a defined CRA must submit an annual budget of proposed increment revenue expenditures which the board of county commissioners may approve by resolution. Increment revenues contributed by the county, may not be expended for redevelopment without the approval of the county commissioners unless expenditures are to pay CRA debt or contract obligations existing prior to a notice of termination. Certain salaries and terminable at will debts or obligations are not subject to such approval. The CRA may not issue bonds, incur further indebtedness or enter into contracts until the governing body has approved the CRA's annual budget.

In addition, this section further amends how a CRA, as defined by s. 125.011(1), F.S., appropriates trust fund monies remaining at the end of the fiscal year. Such funds may be appropriated to a redevelopment project only if an acceptable timeline and budget for the project is approved by the board of county commissioners.

The section also requires a forensic audit²³ of a CRA as defined in s. 125.011(1), F.S. This forensic audit must occur at least every five years to ensure that the CRA has not engaged in financial misconduct or wasteful activity.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ A "forensic audit" is the application of accounting methods to the tracking and collecting of forensic evidence, usually for investigation and prosecution of criminal acts such as embezzlement or fraud. BusinessDictionary.com *available at* <http://www.businessdictionary.com/definition/forensic-audit.html> (last visited Feb.8, 2012); *see* Robert M. Torok, *Accounting and You*, 66 CLEV. B.J. 31 (1995).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

CRAAs located in counties defined in s. 125.011(1), F.S., would be required to pay the cost of a forensic audit at least every five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Section 125.011(1), Florida Statutes and Miami-Dade County**

Section 125.011(1), F.S., reads:

“County” means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county.

The constitutional sections contained in the statute refer to Key West/Monroe County, Dade County and Hillsborough County, respectively. Duval County is also mentioned in Art. VIII, s. 6(e) of the 1968 Constitution, but it is not referred to in s. 125.011(1), F.S.

Miami-Dade County is the only county that comports with the description contained in s. 125.011(1), F.S., of a “county operating under home rule charter” adopted under constitutional authority and which “by resolution of its board of county commissioners, elects the powers” conferred by that statutory section.²⁴ General laws used by Miami-Dade County, and only Miami-Dade County have survived various legal challenges claiming that such general laws are, in actuality, special laws.²⁵

²⁴ Memorandum to Rip Colvin, Executive Director, Legislative Committee on Intergovernmental Affairs, from Carolyn Horwich, Staff Attorney (April 20, 2006) (on file with the Senate Committee on Community Affairs).

²⁵ See *Metropolitan Dade County v. Golden Nugget Group*, 448 So. 515 (FLA. 3rd DCA 1984), *aff'd*, 464 So. 2d 535 (Fla. 1985); *City of Miami v. McGrath*, 824 So. 1543 (Fla. 2002); *Homestead Hospital v. Miami-Dade County*, 829 So. 2d 259 (Fla. 3rd DCA 1992).

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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



972724

LEGISLATIVE ACTION

Senate	.	House
	.	
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	.	

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

Senate Amendment (with title amendment)

Between lines 230 and 231
insert:

Section 4. This act does not apply to a community redevelopment agency located in a municipality that has a population greater than 75,000.

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

And the title is amended as follows:

Delete line 20
and insert:



972724

13
14
15
16

years for certain purposes; providing that the act
does not apply to community redevelopment agencies
located in certain municipalities; providing an
effective

By Senator Diaz de la Portilla

36-00722-12

2012840__

A bill to be entitled

An act relating to community redevelopment agencies; amending s. 163.356, F.S.; providing reporting requirements for certain community redevelopment agencies; providing for the termination of community redevelopment agencies by the board of county commissioners of certain counties; providing public hearing and notice and termination plan requirements; providing that consent from certain entities is not required for such termination; amending s. 163.362, F.S.; providing additional redevelopment plan requirements for certain counties; amending s. 163.387, F.S.; providing requirements for the expenditure of moneys from redevelopment trust funds in certain counties; exempting payment of debt service in such counties from certain approval; providing requirements for the appropriation of certain trust fund moneys in such counties; requiring a forensic audit of agencies in such counties at least every 5 years for certain purposes; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 163.356, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

163.356 Creation and termination of a community redevelopment agency.—

Page 1 of 8

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

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2012840__

(3)

(c) The governing body of the county or municipality shall designate a chair and vice chair from among the commissioners. An agency may employ an executive director, technical experts, and such other agents and employees, permanent and temporary, as it requires, and determine their qualifications, duties, and compensation. For such legal service as it requires, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this part shall file with the governing body, on or before March 31 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the county or municipality and that the report is available for inspection during business hours in the office of the clerk of the city or county commission and in the office of the agency. Agencies operating within a county as defined in s. 125.011(1) are required to submit to annual performance reviews conducted by and at the discretion of the board of county commissioners.

(5) (a) In any county as defined in s. 125.011(1) that has created a community redevelopment agency or has delegated the creation of a community redevelopment agency to a municipality pursuant to s. 163.410, the board of county commissioners may terminate the agency operating or located in its boundaries, if the board finds:

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59 1. The agency has been inefficient in removing slum and
60 blight within the community redevelopment area;

61 2. The agency has neglected its duties and responsibilities
62 under the approved redevelopment plan or under any interlocal
63 agreement between the governing body of the county or any taxing
64 authority and the agency under this part;

65 3. The agency has engaged in financial misconduct or
66 wasteful activities as evidenced by any forensic audit required
67 by s. 163.387(9), any annual performance review, or any annual
68 report of the agency's activities for the previous fiscal year,
69 including the complete financial statement required in paragraph
70 (3) (c); or

71 4. There is no longer a need for the agency.

72 (b)1. After a public hearing on the proposed termination of
73 an agency under this subsection, the board of county
74 commissioners may effectuate the termination of the agency by
75 adopting a resolution that approves termination of the agency
76 pursuant to a termination plan consistent with the provisions of
77 subparagraph 3.

78 2. The board of county commissioners must notify the agency
79 of the proposed termination and the grounds for termination in
80 writing at least 30 days before the public hearing on the
81 termination of the agency. After the agency has been given
82 notice pursuant to this subparagraph, the agency may not issue
83 bonds, incur further indebtedness, or enter into any contract,
84 unless approved by the board. The agency must respond to the
85 notice of proposed termination and the grounds for termination
86 in writing at least 5 days before the public hearing.

87 3. A termination plan approved by the board of county

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88 commissioners:

89 a. Shall, if the agency has outstanding debt, including
90 debt that pledges increment revenues as a source of repayment,
91 require repayment of the debt, or make provision for the
92 repayment, on or before it is due and may require taxing
93 authorities to continue making required contributions until the
94 repayment is paid;

95 b. May require the governing body of the county to assume
96 the powers of the agency and act as the board of commissioners
97 for the agency for purposes of overseeing the continued payment
98 of outstanding debt or the completion of projects begun before
99 the date of the notice of termination;

100 c. Shall provide an effective date of termination of the
101 agency, which shall be a date after payment or provision for
102 payment of all outstanding debt of the agency; and

103 d. Shall provide that after termination of the agency the
104 obligation of a taxing authority to contribute to the trust fund
105 pursuant to s. 163.387 is automatically terminated by operation
106 of law and any funds remaining in the trust fund shall be
107 disbursed to the taxing authorities in proportion to the amounts
108 contributed by such taxing authorities.

109 (c) Notwithstanding any provision of law to the contrary,
110 consent to termination under this subsection is not required
111 from the agency, from the governing body of a municipality
112 within which the agency operates or which was delegated the
113 authority to create the agency, from the taxing authorities that
114 contribute to the redevelopment trust fund of the agency, or
115 from any other person or entity.

116 Section 2. Subsection (10) of section 163.362, Florida

Page 4 of 8

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

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117 Statutes, is amended, to read:

118 163.362 Contents of community redevelopment plan.—Every
119 community redevelopment plan shall:

120 (10) Provide a time certain for completing all
121 redevelopment financed by increment revenues. Such time certain
122 shall occur no later than 30 years after the fiscal year in
123 which the plan is approved, adopted, or amended pursuant to s.
124 163.361(1). However, for any agency created after July 1, 2002,
125 the time certain for completing all redevelopment financed by
126 increment revenues must occur within 40 years after the fiscal
127 year in which the plan is approved or adopted. In any county as
128 defined in s. 125.011(1), any redevelopment plan that is
129 approved or amended on or after July 1, 2012, must also provide
130 a specific date by which each redevelopment activity that is a
131 part of a redevelopment project proposed to be funded by the
132 increment fund is scheduled to be completed.

133 Section 3. Subsections (6) and (7) of section 163.387,
134 Florida Statutes, are amended, and subsection (9) is added to
135 that section, to read:

136 163.387 Redevelopment trust fund.—

137 (6) (a) Moneys in the redevelopment trust fund may be
138 expended from time to time for undertakings of a community
139 redevelopment agency as described in the community redevelopment
140 plan for the following purposes, including, but not limited to:

141 1. (a) Administrative and overhead expenses necessary or
142 incidental to the implementation of a community redevelopment
143 plan adopted by the agency.

144 2. (b) Expenses of redevelopment planning, surveys, and
145 financial analysis, including the reimbursement of the governing

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146 body or the community redevelopment agency for such expenses
147 incurred before the redevelopment plan was approved and adopted.

148 3. (e) The acquisition of real property in the redevelopment
149 area.

150 4. (d) The clearance and preparation of any redevelopment
151 area for redevelopment and relocation of site occupants within
152 or outside the community redevelopment area as provided in s.
153 163.370.

154 5. (e) The repayment of principal and interest or any
155 redemption premium for loans, advances, bonds, bond anticipation
156 notes, and any other form of indebtedness.

157 6. (f) All expenses incidental to or connected with the
158 issuance, sale, redemption, retirement, or purchase of bonds,
159 bond anticipation notes, or other form of indebtedness,
160 including funding of any reserve, redemption, or other fund or
161 account provided for in the ordinance or resolution authorizing
162 such bonds, notes, or other form of indebtedness.

163 7. (g) The development of affordable housing within the
164 community redevelopment area.

165 8. (h) The development of community policing innovations.

166 (b) For the purpose of the expenditure of moneys in
167 redevelopment trust funds in counties as defined in s.
168 125.011(1), the following apply:

169 1. An agency operating in the county must submit an annual
170 budget indicating any proposed expenditures of increment
171 revenues by August 15 of each year.

172 2. The board of county commissioners may approve the budget
173 by resolution.

174 3. Increment revenues contributed by the county may not be

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175 expended for redevelopment activities without the approval of
 176 the board of county commissioners, unless such expenditures are
 177 to pay existing debts and contractual obligations of the agency.

178 4. Existing debts or contractual obligations, as described
 179 in subparagraph 3., include only such debt incurred pursuant to
 180 s. 163.385 and moneys owed from contracts entered into before
 181 the date of a notice of termination as authorized by s.
 182 163.356(5). Existing debts or contractual obligations may not
 183 include salaries of at-will employees whose duties are directly
 184 associated with the provision of administrative or other
 185 services and who are employed by an agency or a municipality
 186 that provides administrative or other services to an agency.
 187 Existing debts or contractual obligations may not include
 188 contracts that are terminable at will.

189 5. The agency may not seek permission to issue bonds, incur
 190 further indebtedness, or enter into contracts until the
 191 governing body of the county has approved the agency's annual
 192 budget.

193 (c) Notwithstanding any provision in this section, in a
 194 county as defined in s. 125.011(1), if the agency's issuance of
 195 debt has been approved pursuant to s. 163.385, the agency's
 196 payment of debt service for debt secured by increment revenues
 197 does not require the approval of the board of county
 198 commissioners as a part of the annual agency budgetary approval
 199 process.

200 (7) On the last day of the fiscal year of the community
 201 redevelopment agency, any money that ~~which~~ remains in the trust
 202 fund after the payment of expenses pursuant to subsection (6)
 203 for such year shall be:

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204 (a) Returned to each taxing authority that ~~which~~ paid the
 205 increment in the proportion that the amount of the payment of
 206 such taxing authority bears to the total amount paid into the
 207 trust fund by all taxing authorities for that year;

208 (b) Used to reduce the amount of any indebtedness to which
 209 increment revenues are pledged;

210 (c) Deposited into an escrow account for the purpose of
 211 later reducing any indebtedness to which increment revenues are
 212 pledged; or

213 (d) Appropriated to a specific redevelopment project
 214 pursuant to an approved community redevelopment plan. However,
 215 in a county as defined in s. 125.011(1), such funds may be
 216 appropriated in accordance with this paragraph only if:

217 1. The ~~which~~ project will be completed within 3 years after
 218 from the date of such appropriation.

219 2. Before the appropriation, an acceptable construction
 220 timeline and budget for the project is submitted to and approved
 221 by the board of county commissioners.

222 (9) In addition to the audit required by subsection (8), an
 223 agency located and operating in a county as defined in s.
 224 125.011(1) shall submit to a forensic audit performed by a
 225 licensed and independent forensic accountant at least every 5
 226 years, as requested by the board of county commissioners. The
 227 forensic audit shall include, but is not limited to, a review of
 228 an agency's assets, liabilities, income, and operating expenses
 229 to ensure that the agency has not engaged in financial
 230 misconduct or wasteful activity.

231 Section 4. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 / 13 / 2012

Meeting Date

Topic _____

Bill Number 840
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Community Redevelopment

Bill Number 840
(if applicable)

Name Bill Peables

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 10930

Phone 880 564 3029

ILH FL 32302
Street City State Zip

E-mail bill@billpeables.com

Speaking: For Against Information

Representing Florida Redevelopment Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/12

Meeting Date

Topic Community Redevelopment Agencies

Bill Number 840
(if applicable)

Name David Cruz

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address P.O. Box 1757

Phone 305-322-3643

Street

Tallahassee FL 32302

City

State

Zip

E-mail DCruz @ FL Cities. com

Speaking: For Against Information

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-13-2012

Meeting Date

Topic Community Redevelopment Agencies

Bill Number 840
(if applicable)

Name Michael Parker

Amendment Barcode _____
(if applicable)

Job Title Exe Director Tallahassee CRA

Address 300 S. Adams

Phone 850-891-0457

Street

Tallahassee

FL

32301

E-mail ~~850-891-0457~~

City

State

Zip

michel.parker@ta.gov.com

Speaking: For Against Information

Representing Tallahassee Community Redevelopment Agency

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/12
Meeting Date

Topic C.R.A Bill Number 840
(if applicable)

Name Rick Ammirato Amendment Barcode _____
(if applicable)

Job Title Executive Director - Homestead C.R.A

Address 212 N.W. 1st Ave. Phone 305-224-4480
Street

Homestead FL 33030
City State Zip

E-mail _____

Speaking: For Against Information

Representing Homestead - C.R.A

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 2088

INTRODUCER: Governmental Oversight and Accountability Committee and Governmental Oversight and Accountability Committee

SUBJECT: Public Retirement Plans

DATE: February 8, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.	Anderson	Yeatman	CA	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill allows municipalities and their firefighter and police plan members to mutually agree to changes in retirement benefits without putting premium tax revenues at risk. The bill also requires a mutual agreement between a municipality and collective bargaining unit or plan members in police pension plans, in order to include less than 300 hours of overtime in the retirement calculation.

This bill amends sections 175.351, 185.02, and 185.35 of the Florida Statutes.

II. Present Situation:

Local Retirement Systems and Plans

The Division of Retirement of the Department of Management Services (DMS) reports¹ that as of September 30, 2011, there are 492 defined benefit plans sponsored by 251 local governments. The vast majority of the plans, 486, are local government defined benefit systems that provide

¹ Division of Management Services, *Florida Local Government Retirement Systems*, 2011 Annual Report.

benefits to 69,178 retirees, with 106,541 active employees, and total plan assets of \$23.9 billion.² The average annual pension in these local plans is \$24,485, and the average annual required contribution rate as a percentage of payroll is 25.74 percent.

The “Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund” Acts

The Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund Acts, located in chapters 175 and 185, Florida Statutes, declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, and in implementing the provisions of s. 14, Art. X of the State Constitution. Pursuant to ss. 175.021(1) and 185.01(1), F.S., all municipal and special district firefighters, and all municipal police officers retirement trust fund systems or plans, must be managed, administered, operated, and funded to maximize the protection of firefighters’ and police officers’ pension trust funds. The Division of Retirement within the Department of Management Services is the primary state agency responsible for administrative oversight, including monitoring for actuarial soundness, of the funds in the Municipal Police Officers’ Retirement Trust Fund and the Firefighters’ Pension Trust Fund.³

The Police Officers Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amounts up to .85 percent of the gross receipts on premiums for policies issued within the municipality boundary.⁴ This excise tax is also payable to the Department of Revenue and the net proceeds are transferred to the appropriate fund at the Division of Retirement. In 2010, premium tax distributions to municipalities from the Police Officers Retirement Trust Fund amounted to \$57.4 million.⁵

Additional revenues for both funds come from a five percent employee contribution through salary, employer contributions, fines for employees violating board rules and regulations, and other sources.⁶

Sections 175.351 and 185.35, F.S., specify that in order to participate in the distribution of the premium tax funds, local law plans must meet the minimum benefits and minimum standards set forth in Chapters 175 and 185, F.S. This determination is made by the DMS Division of Retirement.

Changes to Local Pensions in 2011

The 2011 Legislature enacted⁷ sweeping changes to local government pension plans, by providing for the following:

² The other 6 plans are school board early retirement programs that provide benefits to 1,617 retirees, with active plan membership of 8,613, and total plan assets of \$58.7 million.

³ See ss. 175.121 and 185.10, F.S.

⁴ Section 185.08, F.S.

⁵ Division of Management Services, *Municipal Police Officers and Firefighters’ Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2010.pdf (last visited on Feb. 8, 2012).

⁶ See ss. 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

⁷ Chapter 2011-216, L.O.F.; Senate Bill 1128.

- Local plans' actuarial reports are required to include the present value of all benefits, using a standard rate of return, to promote comparisons between plans;
- DMS is required to post on their website a five-year history of each plan's funded ratio, and local plans are required to link to this DMS website;
- Actuarial or cash surpluses in a local plan may not be used outside the plan;
- Local plans may not reduce contributions required to fund normal cost;
- For all local plans, accrued sick or annual leave may not be included in calculations of retirement benefits; overtime may be included, but is capped at 300 hours; and
- With approval of the members, firefighter and police plans are allowed to increase member contributions without increasing member benefits.

Definition of Salary in Municipal Police Pension Plans

The 300 hour cap on the amount of overtime hours to be included in the calculation of retirement benefits was added to ss. 112.66, 175.032, and 185.02, F.S., by SB 1128. The provisions for general public retirement systems (Chapter 112, F.S.) and firefighter pensions (Chapter 175, F.S.) did not have existing provisions allowing any overtime hours to be included in the calculation of retirement benefits. Section 185.02(4), F.S., had the following definition before amendment by SB 1128:

“Compensation” or “salary” means the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, a local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes, but in no event shall such overtime limit be less than 300 hours per officer per calendar year.

After amendment, the section reads as follows:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

The pre-SB 1128 provision sets the limit at no less than 300 hours, effectively acting as a floor or minimum of 300 hours. The post-SB 1128 language has been interpreted to mean that after July 1, 2011, the 300 hour floor has been replaced by a 300 hour cap. The DMS Division of Retirement has not yet taken final agency action on its interpretation of the provision, but appears to be taking the position that SB 1128 did not *replace* the floor with a cap, but supplemented the 300 floor with a 300 hour cap. In other words, the employer must include at least 300 hours of overtime in the calculation, but may not include more than 300 hours. If the division deems that a firefighter or police pension plan created pursuant to Chapters 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

III. Effect of Proposed Changes:

Sections 1 and 3 respectively amend sections 175.351 and 185.35, F.S., by providing the following provision in both sections:

Notwithstanding any other provision, with respect to any plan established under this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative or, if none, a majority of the plan members, mutually consent to the retirement benefits provided in the plan or to the use of income from the premium tax provided pursuant to this chapter, the provisions of the agreement shall be deemed to comply with this chapter for retirement purposes. This subsection is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

This provision appears designed to allow municipalities and their plan members to mutually agree to changes in retirement benefits without putting premium tax revenues at risk by a determination by the Division of Retirement that the plan does not meet the minimum benefits and standards requirements of Chapters 175 and 185, F.S.

Section 2 amends s. 185.02(4), F.S., by providing that for service prior to July 1, 2011, the amount of overtime to be used in the retirement benefit calculation may not be less than 300 hours per officer per calendar year "unless a smaller number of hours is mutually agreed to by the collective bargaining representative and municipality." For service after July 1, 2011, up to 300 hours per year in overtime compensation may be included "unless a smaller number of hours is mutually agreed to by a majority of the plan members and the municipality."

This language appears to require a mutual agreement between the municipality and collective bargaining unit or plan members, in order to include less than 300 hours of overtime in the retirement calculation.

Section 4 provides a statement of important state interest.

Section 5 provides an effective date of July 1, 2012.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest. None of the constitutional exceptions apply.

However, subsection (d) of Section (18) provides an exemption for general laws having an insignificant fiscal impact. Laws determined to have an “insignificant fiscal impact,” means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.88 million for FY 2010-2011). No current revenue estimate is available for this bill; however, if the costs incurred by municipalities are greater than \$1.88 million, the law may be unenforceable unless the bill contains a finding of an important state interest and it is passed by a two-thirds vote of the membership of each house of the Legislature. The bill contains a finding of important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on February 1, 2012:

The CS allows municipalities and their firefighter and police plan members to mutually agree to changes in retirement benefits without putting premium tax revenues at risk, and requires a mutual agreement between a municipality and collective bargaining unit or plan members in police pension plans, in order to include less than 300 hours of overtime in the retirement calculation.

- B. **Amendments:**

None.



911550

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/13/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 18 - 40.

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

And the title is amended as follows:

Delete lines 2 - 6

and insert:

An act relating to public retirement plans;



648338

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

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

Senate Amendment (with title amendment)

Delete lines 99 - 118.

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

And the title is amended as follows:

Delete lines 9 - 12

and insert:

police officers' pensions; providing a declaration

By the Committees on Governmental Oversight and Accountability;
and Governmental Oversight and Accountability

585-02802-12

20122088c1

A bill to be entitled

An act relating to public retirement plans; amending s. 175.351, F.S.; revising provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan; providing for retroactive application; amending s. 185.02, F.S.; revising the definition of the term "compensation" or "salary" for purposes of police officers' pensions; amending s. 185.35, F.S.; revising provisions relating to benefits paid by a municipality that has its own pension plan; providing for retroactive application; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (6) is added to section 175.351, Florida Statutes, to read:

175.351 Municipalities and special fire control districts having their own pension plans for firefighters.—For any municipality, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter, in order for municipalities and special fire control districts with their own pension plans for firefighters, or for firefighters and police officers if included, to participate in the distribution of the tax fund established pursuant to s. 175.101, local law plans must meet the minimum benefits and minimum standards set forth in this

Page 1 of 5

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

585-02802-12

20122088c1

chapter.

(6) Notwithstanding any other provision, with respect to any plan established under this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative or, if none, a majority of the plan members, mutually consent to the retirement benefits provided in the plan or to the use of income from the premium tax provided pursuant to this chapter, the provisions of the agreement shall be deemed to comply with this chapter for retirement purposes. This subsection is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

Section 2. Subsection (4) of section 185.02, Florida Statutes, is amended to read:

185.02 Definitions.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(4) "Compensation" or "salary" means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year unless a smaller number of

Page 2 of 5

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

585-02802-12 20122088c1

59 hours is mutually agreed to by the collective bargaining
 60 representative and municipality. For noncollectively bargained
 61 service earned on or after July 1, 2011, or for service earned
 62 under collective bargaining agreements entered into on or after
 63 July 1, 2011, the term has the same meaning except that when
 64 calculating retirement benefits, up to 300 hours per year in
 65 overtime compensation may be included unless a smaller number of
 66 hours is mutually agreed to by a majority of the plan members
 67 and the municipality as specified in the plan or collective
 68 bargaining agreement, but payments for accrued unused sick or
 69 annual leave may not be included.

70 (a) Any retirement trust fund or plan that meets the
 71 requirements of this chapter does not, solely by virtue of this
 72 subsection, reduce or diminish the monthly retirement income
 73 otherwise payable to each police officer covered by the
 74 retirement trust fund or plan.

75 (b) The member's compensation or salary contributed as
 76 employee-elective salary reductions or deferrals to any salary
 77 reduction, deferred compensation, or tax-sheltered annuity
 78 program authorized under the Internal Revenue Code shall be
 79 deemed to be the compensation or salary the member would receive
 80 if he or she were not participating in such program and shall be
 81 treated as compensation for retirement purposes under this
 82 chapter.

83 (c) For any person who first becomes a member in any plan
 84 year beginning on or after January 1, 1996, compensation for
 85 that plan year may not include any amounts in excess of the
 86 Internal Revenue Code s. 401(a)(17) limitation, as amended by
 87 the Omnibus Budget Reconciliation Act of 1993, which limitation

585-02802-12 20122088c1

88 of \$150,000 shall be adjusted as required by federal law for
 89 qualified government plans and shall be further adjusted for
 90 changes in the cost of living in the manner provided by Internal
 91 Revenue Code s. 401(a)(17)(B). For any person who first became a
 92 member before the first plan year beginning on or after January
 93 1, 1996, the limitation on compensation may not be less than the
 94 maximum compensation amount that was allowed to be taken into
 95 account under the plan ~~as~~ in effect on July 1, 1993, which
 96 limitation shall be adjusted for changes in the cost of living
 97 since 1989 in the manner provided by Internal Revenue Code s.
 98 401(a)(17)(1991).

99 Section 3. Subsection (6) is added to section 185.35,
 100 Florida Statutes, to read:

101 185.35 Municipalities having their own pension plans for
 102 police officers.—For any municipality, chapter plan, local law
 103 municipality, or local law plan under this chapter, in order for
 104 municipalities with their own pension plans for police officers,
 105 or for police officers and firefighters if included, to
 106 participate in the distribution of the tax fund established
 107 pursuant to s. 185.08, local law plans must meet the minimum
 108 benefits and minimum standards set forth in this chapter:

109 (6) Notwithstanding any other provision, with respect to
 110 any plan established under this chapter, if the municipality and
 111 the plan members' collective bargaining representative or, if
 112 none, a majority of the plan members, mutually consent to the
 113 retirement benefits provided in the plan or to the use of income
 114 from the premium tax provided pursuant to this chapter, the
 115 provisions of the agreement shall be deemed to comply with this
 116 chapter for retirement purposes. This subsection is retroactive

585-02802-12

20122088c1

117 in application to any agreement entered into or effective on or
118 after October 1, 2010.

119 Section 4. The Legislature finds that a proper and
120 legitimate state purpose is served when employees and retirees
121 of the state and its political subdivisions, and the dependents,
122 survivors, and beneficiaries of such employees and retirees, are
123 extended the basic protections afforded by governmental
124 retirement systems that provide fair and adequate benefits and
125 that are managed, administered, and funded in an actuarially
126 sound manner as required by s. 14, Article X of the State
127 Constitution and part VII of chapter 112, Florida Statutes.
128 Therefore, the Legislature determines and declares that this act
129 fulfills an important state interest.

130 Section 5. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-13-12

Meeting Date

Topic Public Retirement Plans

Bill Number 2088
(if applicable)

Name Tim Caddell

Amendment Barcode _____
(if applicable)

Job Title GOVERNMENT RELATIONS ADMINISTRATOR

Address 5851 Park Blvd

Phone 727-541-0721

Street

PINELLAS PARK FL 33781

City

State

Zip

E-mail tcaddell@PinellasPark.com

Speaking: For Against Information

Representing CITY OF PINELLAS PARK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic Pension s

Bill Number 2088
(if applicable)

Name Lisa Henning

Amendment Barcode 911550
(if applicable)

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr

Phone 766-8808

Street

Tallahassee FL 32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Fraternal Order of Police

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Pensions Bill Number 2088

Name Lisa Henning Amendment Barcode 648338
(if applicable)

Job Title Director Legislative Affairs *(if applicable)*

Address 242 Office Plaza Dr Phone 850-766-8808
Street Tallahassee FL 32301 E-mail lhenning@legislative.com
City State Zip

Speaking: For Against Information

Representing Fraternal Order of Police

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/2012

Meeting Date

Topic Municipal Pensions

Bill Number 2088
(if applicable)

Name Matt Rickett

Amendment Barcode 911 550
(if applicable)

Job Title Lobbyist

Address 300 East Brevard St.

Phone 850-222-3329

Street

Tallahassee

FL

32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Florida Police Benevolent Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/2012
Meeting Date

Topic Municipal Revisions

Bill Number 2088
(if applicable)

Name Matt Ruckett

Amendment Barcode 648338
(if applicable)

Job Title lobbyist

Address 300 East Brevard St

Phone 850-222-3329

Street

Tallahassee

FL

32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Florida Police Benevolent Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/12
Meeting Date

Topic Amendments & Bill

Bill Number SB 2088
(if applicable)

Name Kraig Conn

Amendment Barcode 648338
(if applicable)

Job Title _____

911550

Address 301 S. Brough

Phone 222 9684

Tall FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida League of Cities
Amendments

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/CS/SB's 232, 848 and 870

INTRODUCER: Community Affairs Committee; Transportation Committee; and Senators Norman, Oelrich and Fasano

SUBJECT: Transportation Facility Designations

DATE: February 13, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Abrams	Buford	TR	Fav/CS
2.	Roam	Yeatman	CA	Fav/CS
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Section 334.071, F.S., specifies the purpose and effect of the designation of roads, bridges, and other transportation facilities for honorary or memorial purposes by the Florida Legislature. These designations are for honorary purposes only, and do not require changing of street signs, mailing addresses, or 911 listings. This bill designates the following roads:

- The portion of Interstate 275 in Hillsborough County between the Livingston Avenue Bridge and the intersection of Interstate 75 at the Hillsborough-Pasco County line is designated as “Corporal Michael Joseph Roberts Memorial Highway.”
- The portion of State Road 26A in Alachua County between West University Avenue and S.W. 25th Street in Gainesville is designated as “Deputy Jack A. Romeis Road.”
- The portion of U.S Highway 41/State Road 45 between State Road 50 in Hernando County and State Road 52 in Pasco County is designated as “Deputy John C. Mecklenburg Memorial Highway.”

- Milepost 22.182 on State Road 27 in Highlands County is designated as “Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial.”
- The Interstate 295/State Road 9A overpass (Bridge Numbers 720256 and 720347) over Interstate 10/State Road 8 in Duval County is designated as "Duval County Law Enforcement Memorial Overpass."
- The portion of State Road 679/Pinellas Bayway South in Pinellas County from north of the pedestrian crossing to State Road 682/Pinellas Bayway South is designated as “Gene Carpenter Memorial Highway.”

This bill creates undesignated sections of Florida Law.

II. Present Situation:

Section 334.071, F.S., provides: (1) Legislative designations of transportation facilities are for honorary or memorial purposes, or to distinguish a particular facility, and may not be construed to require any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes; (2) When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the transportation facility; and (3) The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, resolutions supporting the designations must be passed by each affected local government prior to the erection of the markers.

III. Effect of Proposed Changes:

Section 1 designates the portion of Interstate 275 between the Livingston Avenue Bridge and the intersection of Interstate 75 at the Hillsborough-Pasco County line as “Corporal Michael Joseph Roberts Memorial Highway.” The bill directs FDOT to erect suitable markers.

Corporal Roberts was shot and killed in the line of duty after 11 years of service with the Tampa Police. During his service with the Tampa Police Department, Corporal Roberts was honored with a Life Saving Award in 2005 as well as numerous letters of appreciation from citizens and other law enforcement agencies.

Section 2 designates the portion of State Road 26A in Alachua County between West University Avenue and S.W. 25th Street in Gainesville as “Deputy Jack A. Romeis Road.” The bill directs FDOT to erect suitable markers.

Deputy Romeis died after sustaining injuries due to an automobile accident while in pursuit of a stolen vehicle. Deputy Romeis had served as a full time deputy for 5 years and had previously served as a reserve deputy for 15 years.

Section 3 designates the portion of U.S Highway 41/State Road 45 between State Road 50 in Hernando County and State Road 52 in Pasco County as “Deputy John C. Mecklenburg Memorial Highway.” The bill directs FDOT to erect suitable markers.

Deputy John C. Mecklenburg was killed in the line of duty as a result of injuries sustained in a crash on July 3, 2011. Deputy Mecklenburg strived to protect the citizenry and the Hernando County community while working in the Sheriff’s Department for more than two years. He served with loyalty, honor, courage and compassion.

Section 4 designates Milepost 22.182 on State Road 27 in Highlands County as “Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial.” The bill directs FDOT to erect suitable markers.

Sgt. Nicholas G. Sottile shot and killed in the line of duty while performing a traffic stop at the intersection of U.S. 27 and Whitmore Road in Highlands County. Sgt. Sottile protected the citizens of Florida for nearly 24 years as a Florida Highway Patrol Trooper.

Section 5 designates the Interstate 295/State Road 9A overpass (Bridge Numbers 720256 and 720347) over Interstate 10/State Road 8 in Duval County as "Duval County Law Enforcement Memorial Overpass." The bill directs FDOT to erect suitable markers.

This memorial is dedicated to the men and women in all law enforcement agencies located within Duval County who have died in the line of duty.

Section 6 designates the portion of State Road 679/Pinellas Bayway South in Pinellas County from north of the pedestrian crossing to State Road 682/Pinellas Bayway South as “Gene Carpenter Memorial Highway.”

P.E. "Gene" Carpenter directed all the Federal Highway efforts in Florida from 1971 until his retirement in 1986. He worked through both the Askew and Graham administrations. He headed up two of the largest building projects in Florida history, the rebuilding of the Sunshine Skyway and the Overseas Highway in the Florida Keys. He was very involved in conservation efforts for the Florida Panther on Alligator Alley.

Section 7 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Staff estimates the cost to erect road designation markers required under this bill to be at least \$6,000. This is based on the assumption that 12 markers will be erected for six road designations at a cost of no less than \$500 each. This includes sign fabrication, installation, and maintenance over time. The estimate does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Community Affairs Committee on February 13, 2012:

The committee substitute adds the “Gene Carpenter Memorial Highway” designation in Pinellas County and directs FDOT to erect suitable markers.

CS by Transportation Committee on February 2, 2012:

The committee substitute combines bills 232, 848 and 870, and adds the “Florida Highway Patrol Trooper Sgt. Nicolas G. Sottile Memorial” and the “Duval County Law Enforcement Overpass” designations.

B. Amendments:

None.

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



829098

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
	.	
	.	
	.	

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

Senate Amendment

Between lines 55 and 56
insert:

Section 6. Gene Carpenter Memorial Highway designated;
Department of Transportation to erect suitable markers.-

(1) That portion of State Road 679/Pinellas Bayway South in
Pinellas County from north of the pedestrian crossing to State
Road 682/Pinellas Bayway South is designated as "Gene Carpenter
Memorial Highway."

(2) The Department of Transportation is directed to erect
suitable markers designating the Gene Carpenter Memorial Highway



829098

13

as described in subsection (1).

By the Committee on Transportation; and Senators Norman,
Oelrich, and Fasano

596-02863-12

2012232c1

1 A bill to be entitled
2 An act relating to transportation facility
3 designations; providing honorary designations of
4 certain transportation facilities in specified
5 counties; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Corporal Michael Joseph Roberts Memorial Highway
10 designated; Department of Transportation to erect suitable
11 markers.-

12 (1) That portion of I-275 in Hillsborough County between
13 the Livingston Avenue Bridge and the intersection with I-75 at
14 the Hillsborough-Pasco County line is designated as "Corporal
15 Michael Joseph Roberts Memorial Highway."

16 (2) The Department of Transportation is directed to erect
17 suitable markers designating the Corporal Michael Joseph Roberts
18 Memorial Highway as described in subsection (1).

19 Section 2. Deputy Jack A. Romeis Road designated;
20 Department of Transportation to erect suitable markers.-

21 (1) That portion of State Road 26A in Alachua County
22 between West University Avenue and S.W. 25th Street in
23 Gainesville is designated as "Deputy Jack A. Romeis Road."

24 (2) The Department of Transportation is directed to erect
25 suitable markers designating Deputy Jack A. Romeis Road as
26 described in subsection (1).

27 Section 3. Deputy John C. Mecklenburg Memorial Highway
28 designated; Department of Transportation to erect suitable
29 markers.-

596-02863-12

2012232c1

30 (1) That portion of U.S Highway 41/State Road 45 between
31 State Road 50 in Hernando County and State Road 52 in Pasco
32 County is designated as "Deputy John C. Mecklenburg Memorial
33 Highway."

34 (2) The Department of Transportation is directed to erect
35 suitable markers designating Deputy John C. Mecklenburg Memorial
36 Highway as described in subsection (1).

37 Section 4. Florida Highway Patrol Trooper Sgt. Nicholas G.
38 Sottile Memorial designated; Department of Transportation to
39 erect suitable markers.-

40 (1) Milepost 22.182 on State Road 27 in Highlands County is
41 designated as "Florida Highway Patrol Trooper Sgt. Nicholas G.
42 Sottile Memorial."

43 (2) The Department of Transportation is directed to erect
44 suitable markers designating Florida Highway Patrol Trooper Sgt.
45 Nicholas G. Sottile Memorial as described subsection (1).

46 Section 5. Duval County Law Enforcement Memorial Overpass
47 designated; Department of Transportation to erect suitable
48 markers.-

49 (1) The Interstate 295/State Road 9A overpass (Bridge
50 Numbers 720256 and 720347) over Interstate 10/State Road 8 in
51 Duval County is designated as "Duval County Law Enforcement
52 Memorial Overpass."

53 (2) The Department of Transportation is directed to erect
54 suitable markers designating Duval County Law Enforcement
55 Memorial Overpass as described in subsection (1).

56 Section 6. This act shall take effect July 1, 2012.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 576

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Public-Private Partnerships

DATE: February 13, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Favorable
2.	Anderson	Yeatman	CA	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This committee substitute (bill) creates the Florida Public-Private Partnership Act to facilitate public-private partnerships. The bill requires public entities to develop and adopt guidelines governing procedures and criteria for the selection of projects and public-private agreements. The bill specifies the requirements for such partnership, providing powers and duties for private entities and public entities.

The bill creates section 287.05712 of the Florida Statutes.

II. Present Situation:

Public-Private Partnerships

Overview

A public-private partnership (PPP) is a contractual agreement formed between a public agency and a private sector entity that allows for greater private sector participation in the delivery and

financing of public building and infrastructure projects.¹ Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public.² In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.³

There are different types of PPPs with varying levels of private sector involvement. The most common is called a Design-Build-Finance-Operate (DBFO) transaction, where the government grants a private sector partner the right to develop a new piece of public infrastructure.⁴ The private entity takes on full responsibility and risk for delivery and operation of the public project against pre-determined standards of performance established by government. The private entity is paid through the revenue stream generated by the project, which could take the form of a user charge (such as a highway toll) or, in some cases, an annual government payment for performance (often called a “shadow toll” or “availability charge”). Any increases in the user charge or payment for performance typically are set out in advance and regulated by a binding contract.⁵

Another PPP procurement process is the Unsolicited Proposal Procurement Model (UPPM). This allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.⁶ Generally, the public entity requires a processing or review fee to cover costs for the technical and legal review.⁷

Florida Department of Transportation Public-Private Partnership

The Florida Department of Transportation (FDOT) currently has a public-private partnership program in place.⁸ The Florida Legislature declared that there is a public need for rapid construction of safe and efficient transportation facilities for the purpose of travel within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.⁹

Florida law provides that a private transportation facility constructed pursuant to s. 334.30, F.S., must comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions that FDOT determines to be in the public's best interest.¹⁰

Current law allows FDOT to advance projects programmed in the adopted 5-year work program using funds provided by public-private partnerships or private entities to be reimbursed from

¹ See The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, available at: <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on January 25, 2012).

² See generally The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: <http://ncppp.org/howpart/index.shtml#define>.

³ *Id.*

⁴ See The Oregon Department of Transportation, The Power of Public-Private Partnerships, available at: <http://www.oregon.gov/ODOT/HWY/OIPP/docs/PowerofPublicPrivate050806.pdf>.

⁵ *Id.*

⁶ See *Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, at 3.

⁷ *Id.*

⁸ See s. 334.30, F.S.

⁹ Section 334.30, F.S.

¹⁰ Section 334.30(3), F.S.

FDOT funds for the project.¹¹ In accomplishing this, FDOT may use state resources to participate in funding and financing the project as provided for under FDOT's enabling legislation for projects on the State Highway System.¹²

FDOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities.¹³ If FDOT receives an unsolicited solicitation or proposal, it is required to publish a notice in the Florida Administrative Weekly and a newspaper of general circulation stating that FDOT has received the proposal and it will accept other proposals for the same project.¹⁴ In addition, FDOT requires an initial payment of \$50,000 accompany any unsolicited proposal to cover the costs of evaluating the proposal.¹⁵

Current law governing FDOT's PPP provides for a solicitation process that is similar to the Consultants' Competitive Negotiation Act.¹⁶ FDOT may request proposals from private entities for public-private transportation projects.¹⁷ The partnerships must be qualified by FDOT as part of the procurement process outlined in the procurement documents.¹⁸ These procurement documents must include provisions for performance of the private entity and payment of subcontractors, including surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees.¹⁹ FDOT must rank the proposals in the order of preference.²⁰ FDOT may then begin negotiations with the top firm. If that negotiation is unsuccessful, FDOT must terminate negotiations and move to the second-ranked firm, and if unsuccessful again, move to the third-ranked firm.²¹ FDOT must provide independent analyses of the proposed PPP that demonstrates the cost effectiveness and overall public benefit prior to moving forward with the procurement and prior to awarding the contract.²²

Current law authorizes FDOT to use innovative finance techniques associated with PPPs, including federal loans, commercial bank loans, and hedges against inflation from commercial banks or other private sources.²³ PPP agreements under s. 334.30, F.S., must be limited to a term not to exceed 50 years. In addition, FDOT may not utilize more than 15 percent of total federal and state funding in any given year to fund PPP projects.²⁴

¹¹ Section 334.30(1), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ Section 334.30(6)(a), F.S.

¹⁵ See Fla. Admin. Code R. 14-107.0011.

¹⁶ See s. 287.055, F.S.

¹⁷ Section 334.30(6)(a), F.S.

¹⁸ Section 334.30(6)(b), F.S.

¹⁹ Section 334.30(6)(c).

²⁰ See s. 334.30(6)(d), F.S., [i]n ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the project.

²¹ Section 334.30(6)(d), F.S.

²² Section 334.30(6)(e), F.S.

²³ Section 334.30(8), F.S.

²⁴ Section 334.30(13), F.S.

Procurement of Personal Property and Services

Chapter 287, F.S., regulates state agency²⁵ procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.²⁶ The Division of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.²⁷

Current law requires contracts for commodities or contractual services in excess of \$35,000 to be procured utilizing a competitive solicitation process.^{28,29}

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted in 1973,³⁰ to specify the procedures to follow when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.³¹

Currently, the CCNA specifies the process to follow when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper.³² The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

²⁵ As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

²⁶ See ss. 287.032 and 287.042, F.S.

²⁷ Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.

²⁸ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold provided in s. 287.017, F.S., to be competitively bid.

²⁹ As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

³⁰ Chapter 73-19, L.O.F.

³¹ Chapter 88-108, L.O.F.

³² Section 287.055, F.S.

The CCNA provides a two-phase selection process.³³ In the first phase, the “competitive selection,” the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the three bidders, ranked in order of preference, that it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the three most highly qualified bidders including: willingness to meet time and budget requirements; past performance; location; recent, current, and projected firm workloads; volume of work previously awarded to the firm; and whether the firm is certified as a minority business.³⁴

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Current law defines the term “compensation” to mean “the amount paid by the agency for professional services,” regardless of whether stated as compensation or as other types of rates.³⁵

In the second phase, the “competitive negotiation,” the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

Procurement of Construction Services

Chapter 255, F.S., regulates construction services³⁶ for public property and publically owned buildings. The Department of Management Services is responsible for establishing, through administrative rules, the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state.³⁷

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.³⁸ In addition, such projects must be advertised in the Florida Administrative

³³ Section 287.055(4) and (5), F.S.

³⁴ See s. 287.055(4)(b), F.S.

³⁵ Section 287.055(2)(d), F.S.

³⁶ As defined in s. 255.072(2), F.S., “construction services” means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term “construction services” does not include contracts or work performed for the Department of Transportation.

³⁷ Section 255.29, F.S.

³⁸ See 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

Weekly at least 21 days prior to the bid opening.^{39,40} Counties, municipalities, special districts,⁴¹ or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000.⁴²

III. Effect of Proposed Changes:

Section 1 creates s. 287.05712, F.S., the Florida Public-Private Partnership Act.

Florida Public-Private Partnership Act and Definitions

The bill creates the Florida Public-Private Partnership Act (Act) in s. 287.05712, F.S., and specifies relevant definitions. “Public entity” means any county, city, or town and any other political subdivision of the state; any public body politic and corporate; or any regional entity that serves a public purpose. “Qualifying project” means any public-purpose facility or project, including a public school building and any functionally related and subordinate facility, including any stadium or other facility primarily used for school events; a building or facility that meets a public purpose and is developed or operated by or for any public entity; improvements, including equipment, of buildings to be principally used by a public entity; and water or wastewater management facility and other related infrastructure.

Legislative Findings and Intent

In subsection (2), the bill specifies that the Legislature finds that there is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of public projects, that such public need may not be wholly satisfied by existing methods of procurement, and that it has been demonstrated that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public. The Legislature declares it is the intent of this section to encourage investment in the state by private entities, to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need, and to provide the greatest possible flexibility to public and private entities to contract for the provision of public services.

³⁹ Section 255.0525(1), F.S.

⁴⁰ State construction projects that are projected to exceed \$500,000 are required to be published 30 days prior to bid opening in the Florida Administrative Weekly, and at least once in a newspaper of general circulation in the county where the project is located. *See* s. 255.0525(1), F.S.

⁴¹ As defined in s. 189.403(1), F.S., “special district” means 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. For the purpose of s. 196.199(1), F.S., special districts must be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

⁴² *See* s. 255.20(1), F.S.

Adoption of Guidelines

Subsection (3) requires a responsible public entity to adopt and make publicly available guidelines that are sufficient to enable the responsible public entity to comply, before requesting or considering a proposal for a qualifying project. The guidelines must be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible public entity. State entity guidelines must include opportunities for competition through public notice, reasonable criteria for choosing among competing proposals, and suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.

The guidelines may include the provisions set forth in this subsection at the discretion of the public entity. However, the guidelines must include a requirement that the responsible public entity engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and the long and short-term costs of any request by a private entity for approval of a qualifying project unless the governing body of the responsible public entity determines that such analysis shall be performed by employees of the responsible public entity.

Procurement Procedures

Subsection (4) that a public entity is not required to select the proposal with the lowest bid offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include:

- The proposed costs of the qualifying facility.
- The general reputation, industry experience, and financial capacity of the private entity.
- The proposed design of the qualifying project.
- The eligibility of the facility for accelerated selection, review, and documentation timelines under the public entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan.
- The private entity's plans to employ local contractors and residents.
- Other criteria that the responsible public entity deems appropriate.

A public entity that is a school board or a county, city, or town may enter into an interim or comprehensive agreement under this section only with the approval of the local governing body.

Consideration and Approval of Qualifying Projects

A public entity may request proposals or invite bids from private entities for the development or operation of qualifying projects pursuant to the public notice and procurement provisions of the Act. A private entity may request the approval of the responsible public entity for a qualifying project; the request must include specified information, unless waived by the public entity. Upon receipt of a proposal, the public entity must determine whether to accept the proposal for consideration. The public entity may reject any proposal initiated by a private entity at any time.

The responsible public entity may approve the development or operation of an education facility, a water or wastewater management facility and related infrastructure, technology infrastructure

or other public infrastructure, or a government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if certain conditions are met.

Agreements

Before, or in connection with the negotiation of a comprehensive agreement, the public entity may enter into an interim agreement with the private entity. The interim agreement may:

- Permit the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain any other provisions related to any aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the public entity. Subsection (9) specifies that the comprehensive agreement must provide for:

- Delivery of maintenance, performance, and payment bonds and letters of credit, which shall comply with s. 255.05, F.S.
- Review of plans and specifications.
- Inspection of the qualifying project.
- Maintenance of a policy or policies of public liability insurance.
- Monitoring the practices of the private entity by the public entity.
- Reimbursement to be paid to the public entity for services provided by the public entity.
- Filing of appropriate financial statements on a periodic basis.
- Policies and procedures governing the rights and responsibilities of the public entity and the private entity in the event the comprehensive agreement is terminated or there is a material default by the private entity.
- User fees, lease payments, or service payments as may be established by agreement of the parties.
- Duties of the private entity, including terms and conditions that the responsible public entity determines serve the public purpose of this section.

The comprehensive agreement may include other specified provisions.

Affected Jurisdictions

Any private entity requesting approval from, or submitting a proposal to, a public entity must notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project must, within 60 days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government

spending plan. The comments must be given consideration by the responsible public entity before entering a comprehensive agreement with a private entity.

Defaults and remedies

In the event of a material default by the private entity, the public entity may elect to assume the responsibilities and duties of the private entity of the qualifying project. If so, it will succeed to all of the right, title, and interest in the project, subject to any liens on revenues previously granted by the private entity to any person providing financing. A public entity having the power of condemnation under state law may exercise the power of condemnation to acquire the qualifying project in the event of a material default by the private entity.

Financing

Subsection (11) provides that any financing of a qualifying project may be made pursuant to an interim or comprehensive agreement between the public entity and the private entity. The private entity and the public entity may propose to use any and all funding resources that may be available and may issue debt, equity, or other securities or obligations; enter into leases; access any designed trust funds; borrow or accept grants from any state infrastructure bank; and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying facility. The public entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this section and may enter into any contracts required to receive such assistance.

Powers and Duties of the Private Entity

Subsection (12) specifies that the private entity can collect lease payments, impose user fees, or enter into service contracts in connection with use thereof, determine financing for the project, and other specified duties.

Sovereign Immunity

Subsection (14) provides the sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee thereof with respect to a project is not waived by the Act. Counties, cities, and towns in which a qualifying project is located possess sovereign immunity with respect to the project's design, construction, and operation.

Construction

Subsection (15) provides that the Act is to be liberally construed to effectuate its purposes. Nothing shall be construed to limit the state or its agencies in the acquisition, design or construction of public projects pursuant to other statutory authority.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Community Affairs Committee February 13, 2012

Removes provision regarding Public-Private Partnership Advisory Commission, removes provision regarding the Consultant's Competitive Negotiation Act. Removes references to the state and state agencies with regard to procurement procedures. Adds language so that projects that involve construction must comply with Ch. 255, F.S.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 287.05712, Florida Statutes, is created to read:

287.05712 Public-private partnerships.-

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

(a) "Affected local jurisdiction" means any county or municipality in which all or a portion of a qualifying project is located.

(b) "Appropriating body" means the body responsible for



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13 appropriating or authorizing funding to pay for a qualifying
14 project.

15 (c) "Develop" or "development" means to plan, design,
16 develop, finance, lease, acquire, install, construct, or expand.

17 (d) "Fees" means fees or other charges imposed by the
18 private entity of a qualifying project for use of all or a
19 portion of such qualifying project pursuant to a comprehensive
20 agreement.

21 (e) "Lease payment" means any form of payment, including a
22 land lease, by a public entity to the private entity for the use
23 of a qualifying project.

24 (f) "Material default" means any default by the private
25 entity in the performance of its duties which jeopardizes
26 adequate service to the public from a qualifying project.

27 (g) "Operate" means to finance, maintain, improve, equip,
28 modify, repair, or operate.

29 (h) "Private entity" means any natural person, corporation,
30 general partnership, limited liability company, limited
31 partnership, joint venture, business trust, public benefit
32 corporation, nonprofit entity, or other private business entity.

33 (i) "Proposal" means a detailed proposal accepted by a
34 responsible public entity beyond a conceptual level of review at
35 which issues such as fixing costs, payment schedules, financing,
36 deliverables, and project schedule are defined.

37 (j) "Qualifying project" means any:

38 1. Public-purpose facility or project, including, but not
39 limited to, a public school building and any functionally
40 related and subordinate facility, including any stadium or other
41 facility primarily used for school events.



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42 2. Building or facility that meets a public purpose and is
43 developed or operated by or for any public entity.

44 3. Improvements, including equipment, of buildings to be
45 principally used by a public entity.

46 4. Water, wastewater, or surface water management facility
47 and other related infrastructure.

48 (k) "Responsible public entity" means any county,
49 municipality, or other political subdivision of the state; any
50 public body politic and corporate; or any regional entity that
51 serves a public purpose and has authority to develop or operate
52 a qualifying project.

53 (l) "Revenues" means all revenues, income, earnings, user
54 fees, lease payments, or other service payments relating to the
55 development or operation of a qualifying project, including, but
56 not limited to, money received as grants or otherwise from the
57 Federal Government, from any public entity, or from any agency
58 or instrumentality of the foregoing in aid of a qualifying
59 project.

60 (m) "Service contract" means a contract entered into
61 between a public entity and the private entity.

62 (n) "Service payments" means payments to the private entity
63 of a qualifying project pursuant to a service contract.

64 (o) "Water or wastewater management facility" means a
65 project for the treatment, storage, disposal, or distribution of
66 water or wastewater.

67 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
68 that there is a public need for the construction or upgrade of
69 facilities that are used predominantly for public purposes and
70 that it is in the public's interest to provide for the



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71 construction or upgrade of such facilities.

72 (a) The Legislature also finds that:

73 1. There is a public need for timely and cost-effective
74 acquisition, design, construction, improvement, renovation,
75 expansion, equipping, maintenance, operation, implementation, or
76 installation of public projects, including educational
77 facilities, water or wastewater management facilities and
78 infrastructure, technology infrastructure, and any other public
79 infrastructure and government facilities within the state which
80 serve a public need and purpose, and that such public need may
81 not be wholly satisfied by existing procurement methods.

82 2. There are inadequate resources to develop new
83 educational facilities, water or wastewater management
84 facilities and infrastructure, technology infrastructure, and
85 other public infrastructure and government facilities for the
86 benefit of residents of this state, and that it has been
87 demonstrated that public-private partnerships can meet these
88 needs by improving the schedule for delivery, lowering the cost,
89 and providing other benefits to the public.

90 3. There are state and federal tax incentives that promote
91 partnerships between public and private entities to develop and
92 operate qualifying projects.

93 4. A procurement under this section serves the public
94 purpose of this section if such action facilitates the timely
95 development or operation of qualifying projects.

96 (b) The Legislature declares that it is the intent of this
97 section to encourage investment in the state by private
98 entities, to facilitate various bond financing mechanisms,
99 private capital, and other funding sources for the development



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100 and operation of qualifying projects, including expansion and
101 acceleration of such financing to meet the public need, and to
102 provide the greatest possible flexibility to public and private
103 entities contracting for the provision of public services.

104 (3) ADOPTION OF GUIDELINES.—

105 (a) Before requesting or considering a proposal for a
106 qualifying project, a responsible public entity shall adopt and
107 make publicly available guidelines that enable the public entity
108 to comply with this section. Such guidelines must be reasonable,
109 encourage competition, and guide the selection of projects under
110 the purview of the public entity.

111 (b) The guidelines must include:

112 1. Opportunities for competition through public notice and
113 the availability of representatives of the responsible public
114 entity to meet with private entities considering a proposal.

115 2. Reasonable criteria for choosing among competing
116 proposals.

117 3. Suggested timelines for selecting proposals and
118 negotiating an interim or comprehensive agreement.

119 4. Authorization for accelerated selection and review and
120 documentation timelines for proposals involving a qualifying
121 project that the responsible public entity deems a priority.

122 5. Procedures for financial review and analysis which, at a
123 minimum, include a cost-benefit analysis, an assessment of
124 opportunity cost, and consideration of the results of all
125 studies and analyses related to the proposed qualifying project.

126 The procedures must also include requirements for disclosing
127 such analysis to the appropriating body for review before the
128 execution of an interim or comprehensive agreement.



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129 6. Consideration of the nonfinancial benefits of a proposed
130 qualifying project.

131 7. A mechanism for the appropriating body to review a
132 proposed interim or comprehensive agreement before execution.

133 8. Establishment of criteria for the creation and
134 responsibilities of a public-private partnership oversight
135 committee that includes members representing the responsible
136 public entity and the appropriating body. Such criteria must
137 include the scope, costs, and duration of the qualifying
138 project, as well as whether the project involves or affects
139 multiple public entities. If formed, the oversight committee
140 shall be an advisory committee that reviews the terms of a
141 proposed interim or comprehensive agreement.

142 9. Analysis of the adequacy of the information released
143 when seeking competing proposals and providing for the
144 enhancement of that information, if deemed necessary, to
145 encourage competition.

146 10. Establishment of criteria, key decision points, and
147 approvals required to ensure that the responsible public entity
148 considers the extent of competition before selecting proposals
149 and negotiating an interim or comprehensive agreement.

150 11. The publishing and posting of public notice of a
151 private entity's request for approval of a qualifying project,
152 including:

153 a. Specific information and documentation to be released
154 regarding the nature, timing, and scope of the project.

155 b. A reasonable time period, as determined by the
156 responsible public entity, of at least 45 days, which encourages
157 competition and public-private partnerships in accordance with



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158 the goals of this section, during which time the responsible
159 public entity is to receive competing proposals.

160 c. A requirement for advertising the public notice and
161 posting the notice on the Internet.

162 12. A requirement that the responsible public entity engage
163 the services of qualified professionals, which may include an
164 architect, professional engineer, or certified public
165 accountant, not otherwise employed by the responsible public
166 entity, to provide an independent analysis regarding the
167 specifics, advantages, disadvantages, and long-term and short-
168 term costs of a request by a private entity for approval of a
169 qualifying project, unless the governing body of the public
170 entity determines that such analysis should be performed by
171 employees of the public entity.

172 (4) PROCUREMENT PROCEDURES.—The responsible public entity
173 may receive or solicit proposals and, with the approval of the
174 Legislature, or other appropriate local government appropriation
175 process as evidenced by approval of the project in the public
176 entity's work program, enter into agreements with private
177 entities, or consortia thereof, for the building, upgrade,
178 operation, ownership, or financing of facilities.

179 (a) A responsible public entity may not consider any
180 request by a private entity for approval of a qualifying project
181 until the responsible public entity has adopted, or incorporated
182 and made publicly available, in accordance with subsection (3),
183 guidelines that enable the responsible public entity to comply
184 with this section.

185 (b) By rule, ordinance, or guideline as applicable, the
186 responsible public entity shall establish an application fee for



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187 the submission of unsolicited proposals under this section. The
188 fee must be sufficient to pay the costs of evaluating the
189 proposal. The responsible public entity may engage the services
190 of private consultants to assist in the evaluation.

191 (c) The responsible public entity may request proposals
192 from private entities for public-private projects or, if the
193 public entity receives an unsolicited proposal, the public
194 entity shall publish a notice in the Florida Administrative
195 Weekly and a newspaper of general circulation at least once a
196 week for 2 weeks stating that the public entity has received the
197 proposal and will accept other proposals for the same project
198 for 60 days after the initial date of publication. A copy of the
199 notice must be mailed to each local government in the affected
200 area.

201 (d) A responsible public entity that is a school board or a
202 county or municipality may enter into an interim or
203 comprehensive agreement only with the approval of the local
204 governing body.

205 (e) Before approval, the responsible public entity must
206 determine that the proposed project:

207 1. Is in the public's best interest;
208 2. Does not require the use of state funds unless the
209 project is for a facility that is owned by the responsible
210 public entity or for a facility for which ownership will be
211 conveyed to the responsible public entity;

212 3. Has adequate safeguards in place to ensure that
213 additional costs or service disruptions would not be imposed on
214 the public and residents of the state in the event of default or
215 cancellation of the agreement by the public entity;



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216 4. Has adequate safeguards in place to ensure that the
217 responsible public entity or the private entity has the
218 opportunity to add capacity to the proposed project and other
219 facilities serving similar predominantly public purposes; and

220 5. Would be owned by the responsible public entity upon
221 completion or termination of the agreement and upon payment of
222 all amounts financed.

223 (f) Technical studies and independent analyses must comply
224 with the following:

225 1. A private entity must provide an investment-grade
226 technical study prepared by a nationally recognized expert who
227 is accepted by the national bond rating agencies. The private
228 entity must also provide a finance plan, consistent with
229 subsection (11), which identifies the project cost, revenues by
230 source, financing, major assumptions, internal rate of return on
231 private investments, and whether any government funds are
232 assumed to deliver a cost-feasible project, and a total cash-
233 flow analysis beginning with implementation of the project and
234 extending for the term of the agreement.

235 2. In evaluating a request, including, but not limited to,
236 the private entity's technical study, the responsible public
237 entity may rely upon internal staff reports prepared by
238 personnel familiar with the operation of similar facilities or
239 the advice of external advisors or consultants having relevant
240 experience.

241 (g) The responsible public entity must ensure that all
242 reasonable costs to the state related to facilities which are
243 not to be transferred to the responsible public entity are borne
244 by the private entity. The responsible public entity must also



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245 ensure that all reasonable costs to the state and to
246 substantially affected local governments and utilities which are
247 related to the private facility are borne by the private entity
248 for facilities that are owned by the private entity. For
249 projects owned by the responsible public entity, the public
250 entity may use state resources to assist with funding and
251 financing the project as provided under the public entity's
252 enabling legislation.

253 (5) PROJECT APPROVAL REQUIREMENTS.—A request by a private
254 entity for approval of a qualifying project must be accompanied
255 by the following material and information, unless waived by the
256 responsible public entity:

257 (a) A topographic map with a scale of 1:2,000 or other
258 appropriate scale indicating the location of the qualifying
259 project.

260 (b) A description of the qualifying project, including the
261 conceptual design of such facilities or a conceptual plan for
262 the provision of services, and a schedule for the initiation of
263 and completion of the qualifying project which includes the
264 proposed major responsibilities and a timeline for activities to
265 be performed by both the public and private entity.

266 (c) A statement setting forth the method by which the
267 private entity proposes to secure any necessary property
268 interests required for the qualifying project.

269 (d) Information relating to current plans for the
270 development of facilities or technology infrastructure to be
271 used by a public entity which is similar to the qualifying
272 project being proposed by the private entity, if any, of each
273 affected local jurisdiction.



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274 (e) A list of all permits and approvals required for the
275 qualifying project from local, state, or federal agencies and a
276 projected schedule for obtaining such permits and approvals.

277 (f) A list of public water or wastewater management
278 facilities, if any, which will be crossed by the qualifying
279 project and a statement of the plans of the private entity to
280 accommodate such crossings.

281 (g) A statement setting forth the private entity's general
282 plans for financing the qualifying project, including the
283 sources of the private entity's funds and identification of any
284 dedicated revenue source or proposed debt or equity investment
285 on the behalf of the private entity.

286 (h) The names and addresses of persons who may be contacted
287 for further information concerning the request.

288 (i) User fees, lease payments, and other service payments
289 over the term of an interim or comprehensive agreement, and the
290 methodology and circumstances for changes to such user fees,
291 lease payments, and other service payments over time.

292 (j) Any additional material and information that the
293 responsible public entity may reasonably request.

294 (6) PROJECT QUALIFICATION AND PROCESS.-

295 (a) Public-private partnerships shall be qualified by the
296 responsible public entity as part of the procurement process
297 outlined in the procurement documents if such process ensures
298 that the private entity meets at least the minimum standards
299 contained in the responsible public entity's guidelines for
300 qualifying professional architectural, engineering, and
301 contracting services before submitting a proposal under the
302 procurement.



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303 (b) The responsible public entity must ensure that
304 procurement documents include provisions for the private
305 entity's performance and payment of subcontractors, including,
306 but not limited to, surety bonds, letters of credit, parent
307 company guarantees, and lender and equity partner guarantees.
308 For those components of the qualifying project which involve
309 construction, performance and payment bonds are required and are
310 subject to the recordation, notice, suit limitation, and other
311 requirements of s. 255.05. The responsible public entity shall
312 balance the structure of the security package for the public-
313 private partnership which ensures performance and payment of
314 subcontractors with the cost of the security to ensure the most
315 efficient pricing. The procurement documents must contain
316 contract provisions addressing termination, default, and exit
317 transition obligations of the private entity.

318 (c) After the public notification period has expired, the
319 responsible public entity shall rank the proposals in order of
320 preference. In ranking the proposals, the responsible public
321 entity may consider factors that include, but need not be
322 limited to, professional qualifications, general business terms,
323 innovative engineering or cost-reduction terms, finance plans,
324 and the need for state funds in order to deliver the project. If
325 the public entity is not satisfied with the results of the
326 negotiations, the public entity may terminate negotiations with
327 the proposer. If these negotiations are unsuccessful, the
328 responsible public entity may go to the second-ranked and lower-
329 ranked firms, in order, using this same procedure. If only one
330 proposal is received, the responsible public entity may
331 negotiate in good faith and, if the public entity is not



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332 satisfied with the results of the negotiations, the public
333 entity may terminate negotiations with the proposer.
334 Notwithstanding this subsection, the responsible public entity
335 may reject all proposals at any point in the process up to
336 execution of a contract with the proposer.

337 (d) The responsible public entity shall perform an
338 independent analysis, or other analysis in accordance with
339 paragraph (4) (f), of the proposed public-private partnership
340 which demonstrates the cost-effectiveness and overall public
341 benefit at the following times:

- 342 1. Before the procurement process; and
343 2. Before awarding the contract.

344 (e) The responsible public entity may approve the
345 development or operation of an educational facility, a water or
346 wastewater management facility and related infrastructure,
347 technology infrastructure or other public infrastructure, or a
348 governmental facility needed by the public entity as a
349 qualifying project, or the design or equipping of a qualifying
350 project so developed or operated, if:

351 1. There is a public need for or benefit derived from a
352 project of the type the private entity proposes as a qualifying
353 project.

354 2. The estimated cost of the qualifying project is
355 reasonable in relation to similar facilities.

356 3. The private entity's plans will result in the timely
357 acquisition, design, construction, improvement, renovation,
358 expansion, equipping, maintenance, or operation of the
359 qualifying project.

360 (f) The responsible public entity may charge a reasonable



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361 fee to cover the costs of processing, reviewing, and evaluating
362 the request, including, but not limited to, reasonable attorney
363 fees and fees for financial, technical, and other necessary
364 advisors or consultants.

365 (g) Upon approval of a qualifying project, the responsible
366 public entity shall establish a date for the commencement of
367 activities related to the qualifying project. The responsible
368 public entity may extend such date.

369 (h) Approval of a qualifying project by the responsible
370 public entity is subject to entering into a comprehensive
371 agreement with the private entity.

372 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

373 (a) Any private entity requesting approval from, or
374 submitting a proposal to, a responsible public entity must
375 notify each affected local jurisdiction by furnishing a copy of
376 its request or proposal to each affected local jurisdiction.

377 (b) Each affected local jurisdiction that is not a
378 responsible public entity for the respective qualifying project
379 shall, within 60 days after receiving such notice, submit any
380 comments it may have in writing to the responsible public entity
381 and indicate whether the facility is compatible with the local
382 comprehensive plan, the local infrastructure development plans,
383 the capital improvements budget, or other governmental spending
384 plan. Such comments shall be given consideration by the
385 responsible public entity before entering a comprehensive
386 agreement with a private entity.

387 (8) INTERIM AGREEMENT.—Before, or in connection with, the
388 negotiation of a comprehensive agreement, the responsible public
389 entity may enter into an interim agreement with the private



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390 entity proposing the development or operation of the qualifying
391 project. An interim agreement does not obligate the responsible
392 public entity to enter into a comprehensive agreement. An
393 interim agreement must be limited to provisions that:

394 (a) Authorize the private entity to commence activities for
395 which it may be compensated related to the proposed qualifying
396 project, including, but not limited to, project planning and
397 development, design and engineering, environmental analysis and
398 mitigation, surveys, or other activities concerning any part of
399 the proposed qualifying project, and ascertaining the
400 availability of financing for the proposed facility or
401 facilities.

402 (b) Establish the process and timing of the negotiation of
403 the comprehensive agreement.

404 (c) Contain any other provisions related to any aspect of
405 the development or operation of a qualifying project which the
406 responsible public entity and the private entity deem
407 appropriate.

408 (9) COMPREHENSIVE AGREEMENT.—

409 (a) Before developing or operating the qualifying project,
410 the private entity shall enter into a comprehensive agreement
411 with the responsible public entity. The comprehensive agreement
412 shall provide for:

413 1. Delivery of maintenance, performance, and payment bonds
414 and letters of credit in connection with the development or
415 operation of the qualifying project in the forms and amounts
416 satisfactory to the responsible public entity. For those
417 components of the qualifying project which involve construction,
418 the form and amount of the bonds must comply with s. 255.05.



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419 2. Review of plans and specifications for the qualifying
420 project by the responsible public entity and approval by the
421 responsible public entity if the plans and specifications
422 conform to standards acceptable to the responsible public
423 entity. This subparagraph does not require the private entity to
424 complete the design of a qualifying project before the execution
425 of a comprehensive agreement.

426 3. Inspection of the qualifying project by the responsible
427 public entity to ensure that the operator's activities are
428 acceptable to the public entity in accordance with the
429 comprehensive agreement.

430 4. Maintenance of a policy or policies of public liability
431 insurance, copies of which shall be filed with the responsible
432 public entity accompanied by proofs of coverage, or self-
433 insurance, each in the form and amount satisfactory to the
434 responsible public entity and reasonably sufficient to ensure
435 coverage of tort liability to the public and employees and to
436 enable the continued operation of the qualifying project.

437 5. Monitoring the practices of the private entity by the
438 responsible public entity to ensure that the qualifying project
439 is properly maintained.

440 6. Reimbursement to be paid to the responsible public
441 entity for services provided by the responsible public entity.

442 7. Filing of appropriate financial statements on a periodic
443 basis.

444 8. Procedures governing the rights and responsibilities of
445 the responsible public entity and the private entity in the
446 event the comprehensive agreement is terminated or there is a
447 material default by the private entity. Such procedures must



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448 include conditions governing assumption of the duties and
449 responsibilities of the private entity by the responsible public
450 entity and the transfer or purchase of property or other
451 interests of the private entity by the responsible public
452 entity.

453 9. Fees, lease payments, or service payments as may be
454 established by agreement of the parties. A copy of any service
455 contract shall be filed with the responsible public entity. In
456 negotiating user fees, the parties shall establish fees that are
457 the same for persons using the facility under like conditions
458 and that will not materially discourage use of the qualifying
459 project. The execution of the comprehensive agreement or any
460 amendment thereto constitutes conclusive evidence that the fees,
461 lease payments, or service payments provided for comply with
462 this section. Fees or lease payments established in the
463 comprehensive agreement as a source of revenues may be in
464 addition to, or in lieu of, service payments.

465 10. Duties of the private entity, including terms and
466 conditions that the responsible public entity determine serve
467 the public purpose of this section.

468 (b) The comprehensive agreement may include:

469 1. An agreement by the responsible public entity to make
470 grants or loans to the private entity from amounts received from
471 the federal, state, or local government or any agency or
472 instrumentality thereof.

473 2. Provisions under which each entity agrees to provide
474 notice of default and cure rights for the benefit of the other
475 entity, including, but not limited to, provisions regarding
476 unavoidable delays.



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477 3. Provisions whereby the authority and duties of the
478 private entity under this section will cease and the qualifying
479 project be dedicated to the responsible public entity or, if the
480 qualifying project was initially dedicated by an affected local
481 jurisdiction, to such affected local jurisdiction for public
482 use.

483 (10) FEES.—

484 (a) Agreements entered into pursuant to this section may
485 authorize the private entity to impose fees for the use of the
486 facility. The following provisions apply to such agreements:

487 1. The public-private partnership agreement must ensure
488 that the facility is properly operated, maintained, and renewed
489 in accordance with the responsible public entity's standards.

490 2. The responsible public entity may develop new facilities
491 or increase capacity in existing facilities through public-
492 private partnerships.

493 3. The responsible public entity may lease existing fee-
494 for-use facilities through public-private partnerships.

495 4. Any revenues must be regulated by the responsible public
496 entity pursuant to guidelines or rules established pursuant to
497 subsection (3). The regulations governing the future increase of
498 fees must be included in the public-private partnership
499 agreement.

500 (b) The responsible public entity shall include provisions
501 in the public-private partnership agreement which ensure that a
502 negotiated portion of revenues from fee-generating projects are
503 returned to the public entity over the life of the agreement. In
504 the case of a lease of an existing facility, the responsible
505 public entity shall receive a portion of funds upon closing on



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506 the agreements and also a portion of excess revenues over the
507 life of the public-private partnership.

508 (11) FINANCING.—

509 (a) A private entity may enter into private-source
510 financing agreements between financing sources and the private
511 entity. All financing agreements and any liens on the property
512 or facility must be paid in full at the applicable closing that
513 transfers ownership of a facility to a responsible public
514 entity.

515 (b) The responsible public entity may lend funds from its
516 trust fund to private entities that construct projects
517 containing facilities that are approved under this section. To
518 be eligible, a private entity must comply with s. 215.97 and
519 must provide an indication from a nationally recognized rating
520 agency that the senior bonds for the project will be investment
521 grade, or must provide credit support, such as a letter of
522 credit or other means acceptable to the responsible public
523 entity, to ensure that the loans will be fully repaid. The
524 state's liability for the funding of a facility is limited to
525 the amount approved for that specific facility in the
526 responsible public entity's 5-year work program adopted pursuant
527 to the responsible public entity's rules, or otherwise limited
528 to 15 percent of the responsible public entity's total funding
529 for similar projects in a given fiscal year.

530 (c) The responsible public entity may use innovative
531 finance techniques associated with a public-private partnership
532 under this section, including, but not limited to, federal loans
533 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
534 and hedges against inflation from commercial banks or other



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535 private sources. A responsible public entity may use the model
536 financing agreement provided pursuant to s. 489.145(6) for its
537 financing of a facility owned by a responsible public entity. A
538 financing agreement may not require the responsible public
539 entity to indemnify the financing source, subject the
540 responsible public entity's facility to liens in violation of s.
541 11.066(5), or secure financing by a responsible public entity
542 with a pledge of security interest, and any such provisions are
543 void.

544 (12) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

545 (a) The private entity shall:

546 1. Develop or operate the qualifying project in a manner
547 that is acceptable to the responsible public entity in
548 accordance with the provisions of an interim or comprehensive
549 agreement.

550 2. Maintain, or provide by contract for the maintenance or
551 upgrade of, the qualifying project if required by an interim or
552 comprehensive agreement.

553 3. Cooperate with the responsible public entity in making
554 best efforts to establish any interconnection with the
555 qualifying project requested by the responsible public entity.

556 4. Comply with an interim or comprehensive agreement and
557 any lease or service contract.

558 (b) Each private facility constructed pursuant to this
559 section must comply with all requirements of federal, state, and
560 local laws; state, regional, and local comprehensive plans;
561 responsible public entity rules, procedures, and standards for
562 facilities; and any other conditions that the responsible public
563 entity determine to be in the public's best interest.



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564 (c) The responsible public entity may exercise any power
565 possessed by it, including eminent domain, to facilitate the
566 development and construction of projects pursuant to this
567 section. The responsible public entity may provide services to
568 the private entity. Agreements for maintenance and other
569 services entered into pursuant to this section must provide for
570 full reimbursement for services rendered for projects.

571 (d) A private entity of a qualifying project may provide
572 additional services for the qualifying project to public or
573 private entities other than the responsible public entity if the
574 provision of additional service does not impair the private
575 entity's ability to meet its commitments to the public entity
576 pursuant to an interim or comprehensive agreement.

577 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon
578 expiration or termination of an interim or comprehensive
579 agreement, the responsible public entity may use revenues to pay
580 current operation and maintenance costs of the qualifying
581 project, as well as compensation to the responsible public
582 entity for its services in developing and operating the
583 qualifying project. Except as provided otherwise in the interim
584 or comprehensive agreement, the right to receive such payment,
585 if any, is considered just compensation for the qualifying
586 project in the event termination is due to the default of the
587 private entity; however, this right does not affect the right of
588 the responsible public entity to terminate, with cause, an
589 interim or comprehensive agreement and to exercise any other
590 rights and remedies that may be available to it at law or in
591 equity. The full faith and credit of the responsible public
592 entity may not be pledged to secure any financing of the private



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593 entity by the election to take over the qualifying project.
594 Assumption of the development or operation of the qualifying
595 project does not obligate the responsible public entity to pay
596 any obligation of the private entity from sources other than
597 revenues.

598 (14) SOVEREIGN IMMUNITY.—This section does not waive the
599 sovereign immunity of the state, any responsible public entity,
600 any affected local jurisdiction, or any officer or employee
601 thereof with respect to participation in, or approval of, all or
602 any part of the qualifying project or its operation, including,
603 but not limited to, interconnection of the qualifying project
604 with any other infrastructure or project. Counties and
605 municipalities in which a qualifying project is located possess
606 sovereign immunity with respect to the project's design,
607 construction, and operation.

608 (15) CONSTRUCTION.—This section shall be liberally
609 construed to effectuate the purposes thereof.

610 (a) This section does not affect the authority of the
611 responsible public entity to take action that would impact the
612 debt capacity of the state.

613 (b) This section does not limit the state or its agencies
614 in the acquisition, design, or construction of public projects
615 pursuant to other statutory authority.

616 (c) Except as otherwise provided in this section, this
617 section does not amend existing laws by granting additional
618 powers to, or further restricting, local governmental entities
619 from regulating and entering into cooperative arrangements with
620 the private sector for the planning, construction, and operation
621 of facilities.



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622 Section 2. This act shall take effect July 1, 2012.

623

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

625 And the title is amended as follows:

626 Delete everything before the enacting clause

627 and insert:

628 A bill to be entitled

629 An act relating to public-private partnerships;
630 creating s. 287.05712, F.S.; providing definitions;
631 providing legislative findings and intent relating to
632 the construction or upgrade of facilities by private
633 entities which are used predominately for a public
634 purpose; requiring public entities to develop and
635 adopt guidelines governing procedures and criteria for
636 the selection of projects and public-private
637 agreements; providing procurement procedures;
638 providing project-approval requirements; providing
639 project qualifications and process; providing for
640 notice to affected local jurisdictions; providing for
641 interim and comprehensive agreements between the
642 public and private entities; providing for use fees;
643 providing for private financing requirements;
644 providing powers and duties for private entities;
645 providing for expiration or termination of agreements;
646 providing for the applicability of sovereign immunity
647 for public entities with respect to qualified
648 projects; providing for construction of the act;
649 providing an effective date.

By Senator Bennett

21-00626-12

2012576__

1 A bill to be entitled
 2 An act relating to public-private partnerships;
 3 creating s. 287.05712, F.S.; establishing the Florida
 4 Public-Private Partnership Act; providing definitions;
 5 providing legislative findings and intent; providing
 6 for private entities to develop and operate public-
 7 purpose projects; requiring public entities to adopt
 8 and make publicly available specified guidelines for
 9 public-private agreements; providing requirements and
 10 procedures for procurement, consideration, and
 11 approval of projects; providing an exemption from the
 12 Consultant's Competitive Negotiation Act and any
 13 interpretations, regulations, or guidelines of the
 14 Department of Management Services; providing
 15 requirements and procedures for interim and
 16 comprehensive agreements between private and public
 17 entities; providing for affected local governments to
 18 comment on proposed projects; providing powers and
 19 duties for private entities; providing for material
 20 default and remedies with respect to projects and
 21 agreements; providing for federal, state, and local
 22 financing; providing sovereign immunity for public
 23 entities with respect to specified project activities;
 24 providing for construction and effect of the act;
 25 establishing the Public-Private Partnership Advisory
 26 Commission; providing commission duties; providing for
 27 appointment and reimbursement of commission members;
 28 requiring the commission to submit annual reports to
 29 the Governor and the Legislature; providing an

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

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30 effective date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Section 287.05712, Florida Statutes, is created
 35 to read:
 36 287.05712 Florida Public-Private Partnership Act.-
 37 (1) DEFINITIONS.—As used in this section, the term:
 38 (a) "Affected local jurisdiction" means any county, city,
 39 or town in which all or a portion of a qualifying project is
 40 located.
 41 (b) "Appropriating body" means the body responsible for
 42 appropriating or authorizing funding to pay for a qualifying
 43 project.
 44 (c) "Comprehensive agreement" means the comprehensive
 45 agreement between the private entity and the responsible public
 46 entity.
 47 (d) "Develop" or "development" means to plan, design,
 48 develop, finance, lease, acquire, install, construct, or expand.
 49 (e) "Interim agreement" means an agreement between a
 50 private entity and a responsible public entity that provides for
 51 phasing of the development or operation of a qualifying project.
 52 Such phases may include, but are not limited to, design,
 53 planning, engineering, environmental analysis and mitigation,
 54 financial and revenue analysis, or any other phase of the
 55 project that constitutes activity on any part of the qualifying
 56 project.
 57 (f) "Lease payment" means any form of payment, including a
 58 land lease, by a public entity to the private entity for the use

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59 of a qualifying project.

60 (g) "Material default" means any default by the private
 61 entity in the performance of its duties that jeopardizes
 62 adequate service to the public from a qualifying project.

63 (h) "Operate" means to finance, maintain, improve, equip,
 64 modify, repair, or operate.

65 (i) "Private entity" means any natural person, corporation,
 66 general partnership, limited liability company, limited
 67 partnership, joint venture, business trust, public benefit
 68 corporation, nonprofit entity, or other private business entity.

69 (j) "Proposal" means a detailed proposal accepted by a
 70 responsible public entity beyond a conceptual level of review
 71 and at which time issues such as fixing costs, payment
 72 schedules, financing, deliverables, and project schedule are
 73 defined.

74 (k) "Public entity" means the state and any agency or
 75 authority thereof; any county, city, or town and any other
 76 political subdivision of the state; any public body politic and
 77 corporate; or any regional entity that serves a public purpose.

78 (l) "Qualifying project" means any:

79 1. Public-purpose facility or project, including, but not
 80 limited to, a public school building and any functionally
 81 related and subordinate facility, including any stadium or other
 82 facility primarily used for school events.

83 2. Building or facility that meets a public purpose and is
 84 developed or operated by or for any public entity.

85 3. Improvements, including equipment, of buildings to be
 86 principally used by a public entity.

87 4. Water or wastewater management facility and other

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88 related infrastructure.

89 (m) "Responsible public entity" means an agency or
 90 institution of the state that has the authority to develop or
 91 operate a qualifying project.

92 (n) "Revenues" means all revenues, income, earnings, user
 93 fees, lease payments, or other service payments relating to the
 94 development or operation of a qualifying project, including, but
 95 not limited to, money received as grants or otherwise from the
 96 Federal Government, from any public entity, or from any agency
 97 or instrumentality of the foregoing in aid of a qualifying
 98 project.

99 (o) "Service contract" means a contract entered into
 100 between a public entity and the private entity.

101 (p) "Service payments" means payments to the private entity
 102 of a qualifying project pursuant to a service contract.

103 (q) "User fees" means the rates, tolls, fees, or other
 104 charges imposed by the private entity of a qualifying project
 105 for use of all or a portion of such qualifying project pursuant
 106 to a comprehensive agreement.

107 (r) "Water or wastewater management facility" means a
 108 project for treatment, storage, disposal, or distribution of
 109 water or wastewater.

110 (2) LEGISLATIVE FINDINGS AND INTENT.—

111 (a) The Legislature finds that:

112 1. There is a public need for timely and cost-effective
 113 acquisition, design, construction, improvement, renovation,
 114 expansion, equipping, maintenance, operation, implementation, or
 115 installation of public projects, including educational
 116 facilities, water or wastewater management facilities and

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117 infrastructure, technology infrastructure, and any other public
 118 infrastructure and government facilities within the state that
 119 serve a public need and purpose, and that such public need may
 120 not be wholly satisfied by existing methods of procurement.

121 2. There are inadequate resources to develop new
 122 educational facilities, water or wastewater management
 123 facilities and infrastructure, technology infrastructure and
 124 other public infrastructure and government facilities for the
 125 benefit of citizens of the state, and it has been demonstrated
 126 that public-private partnerships can meet these needs by
 127 improving the schedule for delivery, lowering the cost, and
 128 providing other benefits to the public.

129 3. There are state and federal tax incentives that promote
 130 partnerships between public and private entities to operate and
 131 develop qualifying projects.

132 4. An action under subsection (4) serves the public purpose
 133 of this section if such action facilitates the timely
 134 development or operation of qualifying projects.

135 (b) The Legislature declares it is the intent of this
 136 section to encourage investment in the state by private
 137 entities, to facilitate various bond financing mechanisms,
 138 private capital, and other funding sources for the development
 139 and operation of qualifying projects, including expansion and
 140 acceleration of such financing to meet the public need, and to
 141 provide the greatest possible flexibility to public and private
 142 entities to contract for the provision of public services.

143 (3) ADOPTION OF GUIDELINES BY RESPONSIBLE PUBLIC ENTITIES.-

144 (a) A responsible public entity shall, before requesting or
 145 considering a proposal for a qualifying project, adopt and make

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146 publicly available guidelines that are sufficient to enable the
 147 responsible public entity to comply with this section. Such
 148 guidelines shall be reasonable, encourage competition, and guide
 149 the selection of projects under the purview of the responsible
 150 public entity.

151 (b) For a responsible public entity that is an agency or
 152 institution of the state, the guidelines shall include, but are
 153 not limited to:

154 1. Opportunities for competition through public notice and
 155 availability of representatives of the responsible public entity
 156 to meet with private entities considering a proposal.

157 2. Reasonable criteria for choosing among competing
 158 proposals.

159 3. Suggested timelines for selecting proposals and
 160 negotiating an interim or comprehensive agreement.

161 4. Authorization for accelerated selection and review and
 162 documentation timelines for proposals involving a qualifying
 163 project that the responsible public entity deems a priority.

164 5. Financial review and analysis procedures that shall
 165 include, at a minimum, a cost-benefit analysis, an assessment of
 166 opportunity cost, and consideration of the results of all
 167 studies and analyses related to the proposed qualifying project.
 168 These procedures shall also include requirements for the
 169 disclosure of such analysis to the appropriating body for review
 170 prior to execution of an interim or comprehensive agreement.

171 6. Consideration of the nonfinancial benefits of a proposed
 172 qualifying project.

173 7. A mechanism for the appropriating body to review a
 174 proposed interim or comprehensive agreement prior to execution.

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175 8. Establishment of criteria for the creation of and the
 176 responsibilities of a public-private partnership oversight
 177 committee with members representing the responsible public
 178 entity and the appropriating body. Such criteria shall include
 179 the scope, costs, and duration of the qualifying project, as
 180 well as whether the project involves or impacts multiple public
 181 entities. The oversight committee, if formed, shall be an
 182 advisory committee to review the terms of any proposed interim
 183 or comprehensive agreement.

184 9. Analysis of the adequacy of the information released
 185 when seeking competing proposals and providing for the
 186 enhancement of that information, if deemed necessary, to
 187 encourage competition.

188 10. Establishment of criteria, key decision points, and
 189 approvals required to ensure that the responsible public entity
 190 considers the extent of competition before selecting proposals
 191 and negotiating an interim or comprehensive agreement.

192 11. The posting and publishing of public notice of a
 193 private entity's request for approval of a qualifying project,
 194 including:

195 a. Specific information and documentation to be released
 196 regarding the nature, timing, and scope of the qualifying
 197 project.

198 b. A reasonable time period as determined by the
 199 responsible public entity to encourage competition and public-
 200 private partnerships in accordance with the goals of this
 201 section, such reasonable period to be at least 45 days, during
 202 which time the responsible public entity shall receive competing
 203 proposals.

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204 c. A requirement for advertising the public notice and
 205 posting a notice on the Internet.

206 (c) For a responsible public entity that is not an agency
 207 or institution of the state, the guidelines may include the
 208 provisions set forth in this subsection at the discretion of the
 209 public entity. However, the guidelines shall include:

210 1. A requirement that the responsible public entity engage
 211 the services of qualified professionals, which may include an
 212 architect, professional engineer, or certified public
 213 accountant, not otherwise employed by the responsible public
 214 entity, to provide an independent analysis regarding the
 215 specifics, advantages, disadvantages, and the long and short-
 216 term costs of any request by a private entity for approval of a
 217 qualifying project unless the governing body of the responsible
 218 public entity determines that such analysis shall be performed
 219 by employees of the responsible public entity.

220 2. A mechanism for the appropriating body to review a
 221 proposed interim or comprehensive agreement prior to execution.

222 (4) PROCUREMENT PROCEDURES FOR RESPONSIBLE PUBLIC
 223 ENTITIES.—The Consultant's Competitive Negotiation Act under s.
 224 287.055 and any interpretations, regulations, or guidelines of
 225 the Department of Management Services do not apply to this
 226 section. However, a responsible public entity may enter into an
 227 interim or comprehensive agreement as follows:

228 (a) A responsible public entity shall not be required to
 229 select the proposal with the lowest bid offer, but may consider
 230 price as one factor in evaluating the proposals received. Other
 231 factors that may be considered include:

232 1. The proposed costs of the qualifying facility.

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233 2. The general reputation, industry experience, and
 234 financial capacity of the private entity.
 235 3. The proposed design of the qualifying project.
 236 4. The eligibility of the facility for accelerated
 237 selection, review, and documentation timelines under the
 238 responsible public entity's compliance with a minority business
 239 enterprise participation plan or good faith effort to comply
 240 with the goals of such plan.
 241 5. The private entity's plans to employ local contractors
 242 and residents.
 243 6. Other criteria that the responsible public entity deems
 244 appropriate.
 245 (b) A responsible public entity shall proceed in accordance
 246 with the guidelines adopted under subsection (3) unless it
 247 determines that proceeding in accordance with the guidelines is
 248 likely to be advantageous to the responsible public entity and
 249 the public, based on:
 250 1. The probable scope, complexity, or priority of the
 251 project.
 252 2. Risk sharing, including guaranteed cost or completion
 253 guarantees, added value or debt, or equity investments proposed
 254 by the private entity.
 255 3. An increase in funding, dedicated revenue source, or
 256 other economic benefit that would not otherwise be available.
 257
 258 When the responsible public entity determines to proceed
 259 according to the guidelines adopted by it pursuant to subsection
 260 (3), it shall state the reasons for its determination in
 261 writing.

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262 (c) A responsible public entity shall not proceed to
 263 consider any request by a private entity for approval of a
 264 qualifying project until the responsible public entity has
 265 adopted and made publicly available guidelines that are
 266 sufficient to enable the responsible public entity to comply
 267 with this section.
 268 (d) A responsible public entity that is a school board or a
 269 county, city, or town may enter into an interim or comprehensive
 270 agreement under this section only with the approval of the local
 271 governing body.
 272 (5) CONSIDERATION AND APPROVAL OF QUALIFYING PROJECTS.-
 273 (a) A responsible public entity may request proposals or
 274 invite bids from private entities for the development or
 275 operation of qualifying projects pursuant to the public notice
 276 and procurement provisions of this section. A private entity may
 277 request the approval of the responsible public entity for a
 278 qualifying project.
 279 (b) A request by a private entity for approval of a
 280 qualifying project shall be accompanied by the following
 281 material and information unless waived by the responsible public
 282 entity:
 283 1. A topographic map with a scale of 1:2,000 or other
 284 appropriate scale indicating the location of the qualifying
 285 project.
 286 2. A description of the qualifying project, including the
 287 conceptual design of such facility or facilities or a conceptual
 288 plan for the provision of services, and a schedule for the
 289 initiation of and completion of the qualifying project to
 290 include the proposed major responsibilities and timeline for

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291 activities to be performed by both the public and private
 292 entity.

293 3. A statement setting forth the method by which the
 294 private entity proposes to secure any necessary property
 295 interests required for the qualifying project.

296 4. Information relating to the current plans for
 297 development of facilities or technology infrastructure to be
 298 used by a public entity that is similar to the qualifying
 299 project being proposed by the private entity, if any, of each
 300 affected local jurisdiction.

301 5. A list of all permits and approvals required for the
 302 qualifying project from local, state, or federal agencies and a
 303 projected schedule for obtaining such permits and approvals.

304 6. A list of public water or wastewater management
 305 facilities, if any, that will be crossed by the qualifying
 306 project and a statement of the plans of the private entity to
 307 accommodate such crossings.

308 7. A statement setting forth the private entity's general
 309 plans for financing the qualifying project, including the
 310 sources of the private entity's funds and identification of any
 311 dedicated revenue source or proposed debt or equity investment
 312 on the behalf of the private entity.

313 8. The names and addresses of the persons who may be
 314 contacted for further information concerning the request.

315 9. User fees, lease payments, and other service payment
 316 over the term of an interim or comprehensive agreement and the
 317 methodology and circumstances for changes to such user fees,
 318 lease payments, and other service payments over time.

319 10. Additional material and information as the responsible

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320 public entity may reasonably request.

321 (c) Upon receipt of a proposal to develop or operate a
 322 qualifying project, the responsible public entity shall
 323 determine whether to accept the proposal for consideration. The
 324 responsible public entity may reject any proposal initiated by a
 325 private entity at any time. If the responsible public entity
 326 determines not to accept the proposal for consideration, the
 327 responsible public entity shall return the proposal to the
 328 private entity, including all fees and accompanying
 329 documentation.

330 (d) The responsible public entity may approve the
 331 development or operation of an education facility, a water or
 332 wastewater management facility and related infrastructure,
 333 technology infrastructure or other public infrastructure, or a
 334 government facility needed by a public entity as a qualifying
 335 project, or the design or equipping of a qualifying project so
 336 developed or operated, if:

337 1. There is a public need for or benefit derived from a
 338 project of the type the private entity proposes as a qualifying
 339 project.

340 2. The estimated cost of the qualifying project is
 341 reasonable in relation to similar facilities.

342 3. The private entity's plans will result in the timely
 343 acquisition, design, construction, improvement, renovation,
 344 expansion, equipping, maintenance, or operation of the
 345 qualifying project.

346 (e) In evaluating any request, the responsible public
 347 entity may rely upon internal staff reports prepared by
 348 personnel familiar with the operation of similar facilities or

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349 the advice of external advisors or consultants having relevant
350 experience.

351 (f) The responsible public entity may charge a reasonable
352 fee to cover the costs of processing, reviewing, and evaluating
353 the request, including, but not limited to, reasonable attorney
354 fees and fees for financial, technical, and other necessary
355 advisors or consultants.

356 (g) Upon approval of a qualifying project, the responsible
357 public entity shall establish a date for the commencement of
358 activities related to the qualifying project. The responsible
359 public entity may extend such date.

360 (h) Approval of a qualifying project by the responsible
361 public entity is subject to entering into a comprehensive
362 agreement with the private entity.

363 (6) INTERIM AGREEMENT.—Before or in connection with the
364 negotiation of a comprehensive agreement, the responsible public
365 entity may enter into an interim agreement with the private
366 entity proposing the development or operation of the qualifying
367 project. The interim agreement may:

368 (a) Permit the private entity to commence activities for
369 which it may be compensated related to the proposed qualifying
370 project, including, but not limited to, project planning and
371 development, design and engineering, environmental analysis and
372 mitigation, survey, and ascertaining the availability of
373 financing for the proposed facility or facilities.

374 (b) Establish the process and timing of the negotiation of
375 the comprehensive agreement.

376 (c) Contain any other provisions related to any aspect of
377 the development or operation of a qualifying project that the

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378 responsible public entity and the private entity deem
379 appropriate.

380 (7) COMPREHENSIVE AGREEMENT.—

381 (a) Before developing or operating the qualifying project,
382 the private entity shall enter into a comprehensive agreement
383 with the responsible public entity. The comprehensive agreement
384 shall provide for:

385 1. Delivery of maintenance, performance, and payment bonds
386 and letters of credit in connection with the development or
387 operation of the qualifying project, in the forms and amounts
388 satisfactory to the responsible public entity for those
389 components of the qualifying project that involve construction.

390 2. Review of plans and specifications for the qualifying
391 project by the responsible public entity and approval by the
392 responsible public entity if the plans and specifications
393 conform to standards acceptable to the responsible public
394 entity. This subparagraph does not require the private entity to
395 complete the design of a qualifying project prior to the
396 execution of a comprehensive agreement.

397 3. Inspection of the qualifying project by the responsible
398 public entity to ensure that the operator's activities are
399 acceptable to the responsible public entity in accordance with
400 the provisions of the comprehensive agreement.

401 4. Maintenance of a policy or policies of public liability
402 insurance, copies of which shall be filed with the responsible
403 public entity accompanied by proofs of coverage, and self-
404 insurance, each in the form and amount satisfactory to the
405 responsible public entity and reasonably sufficient to insure
406 coverage of tort liability to the public and employees and to

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407 enable the continued operation of the qualifying project.

408 5. Monitoring the practices of the private entity by the
 409 responsible public entity to ensure that the qualifying project
 410 is properly maintained.

411 6. Reimbursement to be paid to the responsible public
 412 entity for services provided by the responsible public entity.

413 7. Filing of appropriate financial statements on a periodic
 414 basis.

415 8. Policies and procedures governing the rights and
 416 responsibilities of the responsible public entity and the
 417 private entity in the event the comprehensive agreement is
 418 terminated or there is a material default by the private entity.
 419 Such policies and guidelines shall include conditions governing
 420 assumption of the duties and responsibilities of the private
 421 entity by the responsible public entity and the transfer or
 422 purchase of property or other interests of the private entity by
 423 the responsible public entity.

424 9. User fees, lease payments, or service payments as may be
 425 established by agreement of the parties. A copy of any service
 426 contract shall be filed with the responsible public entity. In
 427 negotiating user fees under this subsection, the parties shall
 428 establish payments or fees that are the same for persons using
 429 the facility under like conditions and that will not materially
 430 discourage use of the qualifying project. The execution of the
 431 comprehensive agreement or any amendment thereto shall
 432 constitute conclusive evidence that the user fees, lease
 433 payments, or service payments provided for comply with this
 434 section. User fees or lease payments established in the
 435 comprehensive agreement as a source of revenues may be in

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436 addition to, or in lieu of, service payments.

437 10. Duties of the private entity, including terms and
 438 conditions that the responsible public entity determines serve
 439 the public purpose of this section.

440 (b) The comprehensive agreement may include:

441 1. An agreement by the responsible public entity to make
 442 grants or loans to the private entity from amounts received from
 443 the federal, state, or local government or any agency or
 444 instrumentality thereof.

445 2. Provisions under which the responsible public entity
 446 agrees to provide notice of default and cure rights for the
 447 benefit of the private entity and the persons specified therein
 448 as providing financing for the qualifying project, including
 449 terms and conditions to which the private entity and the
 450 responsible public entity mutually agree, including but limited
 451 to, provisions regarding unavoidable delays or a loan of public
 452 funds to the private entity to develop or operate one or more
 453 qualifying projects.

454 3. Provisions where the authority and duties of the private
 455 entity under this section shall cease, and the qualifying
 456 project is dedicated to the responsible public entity or, if the
 457 qualifying project was initially dedicated by an affected local
 458 jurisdiction, to such affected local jurisdiction for public
 459 use.

460 (c) Any changes in the terms of the comprehensive
 461 agreement, as agreed upon by the responsible public entity and
 462 the private entity, shall be added to the comprehensive
 463 agreement by written amendment.

464 (d) The comprehensive agreement may provide for the

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 465 development or operation of phases or segments of the qualifying
 466 project.

467 (8) AFFECTED LOCAL JURISDICTIONS.—

468 (a) Any private entity requesting approval from, or
 469 submitting a proposal to, a responsible public entity shall
 470 notify each affected local jurisdiction by furnishing a copy of
 471 its request or proposal to each affected local jurisdiction.

472 (b) Each affected local jurisdiction that is not a
 473 responsible public entity for the respective qualifying project
 474 shall, within 60 days after receiving such notice, submit any
 475 comments it may have in writing on the proposed qualifying
 476 project to the responsible public entity and indicate whether
 477 the facility is compatible with the local comprehensive plan,
 478 local infrastructure development plans, the capital improvements
 479 budget, or other government spending plan. Such comments shall
 480 be given consideration by the responsible public entity before
 481 entering a comprehensive agreement with a private entity.

482 (9) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

483 (a) The private entity has all power allowed by law
 484 generally to a private entity having the same form of
 485 organization as the private entity and shall have the power to
 486 develop or operate the qualifying project and collect lease
 487 payments, impose user fees, or enter into service contracts in
 488 connection with use thereof.

489 (b) The private entity may own, lease, or acquire any other
 490 right to use or operate the qualifying project.

491 (c) Any financing of the qualifying project may be in such
 492 amounts and upon such terms and conditions as may be determined
 493 by the private entity. Without limiting the generality of the

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 494 foregoing, the private entity may issue debt, equity, or other
 495 securities or obligations; enter into sale and leaseback
 496 transactions; and secure any financing with a pledge of,
 497 security interest in, or lien on any or all of its property,
 498 including all of its property interests in the qualifying
 499 project.

500 (d) In operating the qualifying project, the private entity
 501 may make classifications according to reasonable categories for
 502 assessment of user fees and, with the consent of the responsible
 503 public entity, make and enforce reasonable rules to the same
 504 extent that the responsible public entity may make and enforce
 505 rules with respect to similar facilities.

506 (e) The private entity shall:

507 1. Develop or operate the qualifying project in a manner
 508 that is acceptable to the responsible public entity, all in
 509 accordance with the provisions of an interim or comprehensive
 510 agreement.

511 2. Maintain, or provide by contract for the maintenance or
 512 upgrade of the qualifying project, if required by an interim or
 513 comprehensive agreement.

514 3. Cooperate with the responsible public entity in making
 515 best efforts to establish any interconnection with the
 516 qualifying project requested by the responsible public entity.

517 4. Comply with the provisions of an interim or
 518 comprehensive agreement and any lease or service contract.

519 (f) A private entity of a qualifying project is not
 520 prohibited from providing additional services for the qualifying
 521 project to public or private entities other than the responsible
 522 public entity so long as the provision of additional service

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523 does not impair the private entity's ability to meet its
 524 commitments to the responsible public entity pursuant to an
 525 interim or comprehensive agreement.

526 (10) MATERIAL DEFAULT; REMEDIES.—

527 (a) In the event of a material default by the private
 528 entity, the responsible public entity may elect to assume the
 529 responsibilities and duties of the private entity of the
 530 qualifying project, and in such case, it shall succeed to all of
 531 the right, title, and interest in such qualifying project,
 532 subject to any liens on revenues previously granted by the
 533 private entity to any person providing financing thereof.

534 (b) Any responsible public entity having the power of
 535 condemnation under state law may exercise such power of
 536 condemnation to acquire the qualifying project in the event of a
 537 material default by the private entity. Any person who has
 538 provided financing for the qualifying project, and the private
 539 entity, to the extent of its capital investment, may participate
 540 in the condemnation proceedings with the standing of a property
 541 owner.

542 (c) The responsible public entity may terminate, with
 543 cause, an interim or comprehensive agreement and exercise any
 544 other rights and remedies that may be available to it at law or
 545 in equity.

546 (d) The responsible public entity may make or cause to be
 547 made any appropriate claims under the maintenance, performance,
 548 or payment bonds, or lines of credit.

549 (e) In the event the responsible public entity elects to
 550 take over a qualifying project, the responsible public entity
 551 may develop or operate the qualifying project, impose user fees,

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552 impose and collect lease payments for the use thereof and comply
 553 with any service contracts as if it were the private entity. Any
 554 revenues that are subject to a lien shall be collected for the
 555 benefit of and paid to secured parties, as their interests may
 556 appear, to the extent necessary to satisfy the private entity's
 557 obligations to secured parties, including the maintenance of
 558 reserves. Such liens shall be correspondingly reduced and, when
 559 paid off, released. Before any payments to, or for the benefit
 560 of, secured parties, the responsible public entity may use
 561 revenues to pay current operation and maintenance costs of the
 562 qualifying project, including compensation to the responsible
 563 public entity for its services in developing and operating the
 564 qualifying project. The right to receive such payment, if any,
 565 shall be considered just compensation for the qualifying
 566 project. The full faith and credit of the responsible public
 567 entity shall not be pledged to secure any financing of the
 568 private entity by the election to take over the qualifying
 569 project. Assumption of the development or operation of the
 570 qualifying project shall not obligate the responsible public
 571 entity to pay any obligation of the private entity from sources
 572 other than revenues.

573 (11) FEDERAL, STATE, AND LOCAL FINANCING.—

574 (a) Any financing of a qualifying project may be in such
 575 amounts and upon such terms and conditions as determined by an
 576 interim or comprehensive agreement between the responsible
 577 public entity and the private entity. Without limiting the
 578 generality of the terms and conditions of the financing, the
 579 private entity and the responsible public entity may propose to
 580 use any and all funding resources that may be available and may,

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581 to the fullest extent permitted by applicable law, issue debt,
 582 equity, or other securities or obligations; enter into leases;
 583 access any designed trust funds; borrow or accept grants from
 584 any state infrastructure bank; and secure any financing with a
 585 pledge of, security interest in, or lien on, any or all of its
 586 property, including all of its property interests in the
 587 qualifying facility.

588 (b) The responsible public entity may take any action to
 589 obtain federal, state, or local assistance for a qualifying
 590 project that serves the public purpose of this section and may
 591 enter into any contracts required to receive such assistance. If
 592 the responsible public entity is a state agency, any funds
 593 received from the state or federal government or any agency or
 594 instrumentality thereof shall be subject to appropriation by the
 595 Legislature. The responsible public entity may determine that it
 596 serves the public purpose of this section for all or any portion
 597 of the costs of a qualifying project to be paid, directly or
 598 indirectly, from the proceeds of a grant or loan made by the
 599 local, state, or federal government or any agency or
 600 instrumentality thereof.

601 (12) SOVEREIGN IMMUNITY.—This section does not waive the
 602 sovereign immunity of the state, any responsible public entity,
 603 any affected local jurisdiction, or any officer or employee
 604 thereof with respect to the participation in, or approval of all
 605 or any part of the qualifying project or its operation,
 606 including, but not limited to, interconnection of the qualifying
 607 project with any other infrastructure or project. Counties,
 608 cities, and towns in which a qualifying project is located
 609 possess sovereign immunity with respect to the project's design,

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610 construction, and operation.

611 (13) CONSTRUCTION AND EFFECT.—This section shall be
 612 liberally construed to effectuate the purposes thereof. This
 613 section does not affect the authority of the responsible public
 614 entity to take action that would impact the debt capacity of the
 615 state.

616 (14) PUBLIC-PRIVATE PARTNERSHIP ADVISORY COMMISSION.—

617 (a) The Public-Private Partnership Advisory Commission is
 618 established to review the implementation of this section and to
 619 provide recommendations for any revisions necessary to further
 620 support public-private partnership opportunities in the state.

621 (b) The commission shall consist of 12 members, as follows:

622 1. Two members of the House of Representatives, appointed
 623 by the Speaker of the House of Representatives.

624 2. Two members of the Senate, appointed by the President of
 625 the Senate.

626 3. Eight members appointed by the Governor, as follows:

627 a. Four local government officials.

628 b. Two state agency representatives.

629 c. Two representatives of the private sector.

630
 631 All terms are for 4 years, except those members of the House of
 632 Representatives and Senate, who shall serve on the commission
 633 until the expiration of their terms of office or until their
 634 successors qualify.

635 (c) The members of the commission shall elect a chairperson
 636 and a vice chairperson. The commission shall hold public
 637 meetings at least quarterly or upon the call of the chairperson.
 638 A majority of the commission constitutes a quorum.

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639 (d) Members of the commission are entitled to receive per
640 diem and travel expenses as provided in s. 112.061.

641 (e) Administrative staff support shall be provided by the
642 Executive Office of the Governor, as appropriate.

643 (f) A copy of the minutes from each commission meeting
644 shall be provided to and maintained by the Governor, the
645 President of Senate, and the Speaker of the House of
646 Representatives.

647 (g) Beginning on December 13, 2013, and each year
648 thereafter, the commission shall submit a report providing
649 comments on the implementation of this section and
650 recommendations for future revisions to the Governor, the
651 President of the Senate, and the Speaker of the House of
652 Representatives.

653 Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB 576
Meeting Date

Topic Public Private Partnership Bill Number 576
(if applicable)

Name Richard Watson Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

Address P.O. Box 10038 Phone 850 222-0000
Street

Tallahassee FL 32302 E-mail rick@watsonand
City State Zip Associates.com

Speaking: For Against Information Amendment & Bill

Representing Associated Builders & Contractors of FL

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/2012

Meeting Date

Topic _____

Bill Number 576
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic Public-Private Partnership

Bill Number 576
(if applicable)

Name David Cruz

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address P.O. Box 1757

Phone 305-322-3643

Street

Tallahassee FL 32302

E-mail DCruz@FLcities.com

City

State

Zip

Speaking: For Against Information

Representing League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

10:50:28 AM Senator Storms question
10:50:58 AM Senator Bennett response
10:51:10 AM Follow up question
10:52:30 AM Response by Bennett
10:53:40 AM Roll Call
10:54:06 AM Senator Bennett has the chair
10:54:13 AM Move to close meeting