The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Monday, April 4, 2011
TIME: 1:00 —3:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 880** Garcia (Similar CS/H 281)	Value Adjustment Boards; Requires a petitioner challenging ad valorem taxes before the value adjustment board to pay a specified percentage of the taxes by a certain date. Requires the board to deny the petition if the required amount of taxes is not timely paid. Deletes a provision providing for a discount for ad valorem taxes paid within 30 days after the mailing of a tax notice resulting from the action of the value adjustment board. CA 04/04/2011 BC	
2	**SB 1448** Garcia (Compare CS/H 619)	Sale or Lease of a Public Hospital; Requires that the sale or lease of a county, district, or municipal hospital to a for-profit or not-for-profit Florida corporation receive prior approval by the Attorney General. Requires the governing board to first determine whether there are any qualified purchasers or lessees of the hospital before considering whether to sell or lease the hospital. Authorizes the Attorney General to employ independent consultants to determine the fair marked value of the proposed sale or lease, etc. HR 03/22/2011 Favorable CA 04/04/2011 JU BC RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 1962** Garcia (Similar H 1269)	Revitalizing Municipalities; Provides for the transfer of certain sales tax revenues from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities. Provides for a distribution from the Revenue Sharing Trust Fund for Municipalities relating to an increase in sales tax collections over the preceding year to an eligible designated redevelopment agency of a sales tax increment redevelopment district. Authorizes specified governing bodies to create a sales tax increment redevelopment district within a municipality having a specified population, etc. CA 04/04/2011 GO BC	
4	**SB 1408** Bogdanoff (Similar H 1065)	Public Meetings/Pending Litigation; Revises an exemption from public meetings requirements which authorizes a board or commission of a state agency, authority, county, municipal corporation, or political subdivision and the chief administrative or executive officer of such governmental entity to meet in private with the entity's attorney to discuss pending litigation. Includes within the exemption a public employee or agent having relevant information needed by the entity's attorney, etc. CA 04/04/2011 GO JU	
5	**SB 1788** Bogdanoff (Identical H 4113)	Bicycle Regulations; Removes a requirement to keep one hand on the handlebars while operating a bicycle. Conforms a cross-reference to changes made by the act. TR 03/22/2011 Favorable CA 04/04/2011 HR	
6	**SB 1564** Fasano (Identical H 1053, Compare CS/CS/HJR 381, Link CS/SJR 658, S 1722)	Special Election; Provides for a special election to be held on the date of the presidential preference primary in 2012, pursuant to Section 5 of Article XI of the State Constitution, for the approval or rejection by the electors of this state of amendments to the State Constitution, proposed by joint resolution, to prohibit increases in the assessed value of homestead property if the fair market value of the property decreases, reduce the limitation on annual assessment increases applicable to nonhomestead real property, etc. CA 04/04/2011 RC BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 196** Fasano (Similar H 501)	Choose Life License Plates; Provides for the annual use fees to be distributed to Choose Life, Inc., rather than the counties. Provides for Choose Life, Inc., to redistribute a portion of such funds to nongovernmental, not-for-profit agencies that assist certain pregnant women. Authorizes Choose Life, Inc., to use a portion of the funds to administer and promote the Choose Life license plate program. TR 03/16/2011 Fav/1 Amendment CA 04/04/2011 BC	
8	**SB 1432** Fasano (Similar H 889)	County Government Funding; Provides circumstances under which a board of county commissioners may use certain revenues for a purpose other than that specified by law. Defines the term "eligible county." Specifies that county eligibility must be determined annually and exercised for a limited time. Prohibits the use of certain revenues for such purposes. CA 04/04/2011 BC	
9	**SB 580** Oelrich (Similar H 407)	Building Construction Standards; Prohibits a local enforcement agency or building code official from requiring the inspection of any portion of a residential structure that is not directly related to the purpose for which a building permit is sought. CA 04/04/2011 RI BC	
10	**SB 1010** Simmons (Identical H 781)	Neighborhood Improvement Districts; Revises the short title to become the "Neighborhoods Improvement Act." Authorizes the governing body of any municipality or county to form a neighborhood improvement district through the adoption of an ordinance rather than by a planning ordinance. Removes provisions pertaining to the creation and funding of safe neighborhood districts. Revises provisions authorizing a local governing body to create a local government neighborhood improvement district, etc. CA 04/04/2011 JU BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SB 1502** Military Affairs, Space, and Domestic Security / Simmons (Similar H 1141)	Ad Valorem Tax Exemption/Deployed Servicemembers; Provides for certain servicemembers who receive a homestead exemption and who are deployed in a military operation designated by the Legislature to receive an additional ad valorem tax exemption. Requires that a servicemember apply to the property appraiser to receive the exemption in the year following the year of a qualifying deployment. Requires the Secretary of the Senate and the Clerk of the House of Representatives to transmit a copy of a concurrent resolution designating qualifying military operations to the Department of Revenue, etc. MS 03/23/2011 Fav/CS CA 04/04/2011 BC	
12	**SB 1352** Hays (Similar H 923)	Public Works Projects; Prohibits the state and political subdivisions that contract for the construction, maintenance, repair, or improvement of public works from imposing certain conditions on certain contractors, subcontractors, or material suppliers or carriers. Provides an exception. Prohibits the state and political subdivisions from restricting qualified bidders from submitting bids, being awarded any bid or contract, or performing work on a public works project. Revises written protest filing requirements for protests to contract solicitations or awards, etc. CA 04/04/2011 GO BC	
13	**CS/SB 1570** Transportation / Evers (Compare H 1371)	Billboard Regulations; Revises requirements for an application for a permit to remove, cut, or trim trees or vegetation around a sign. Requires that the application include a vegetation management plan, a mitigation contribution to a trust fund, or a combination of both. Requires the Department of Transportation to provide notice to the sign owner of beautification projects or vegetation planting. Creates the tourist-oriented commerce signs pilot program. Exempts commercial signs that meet certain criteria from permit requirements, etc. TR 03/16/2011 Fav/CS CA 04/04/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**CS/CS/SB 1086** Health Regulation / Criminal Justice / Hill (Compare H 779)	Restraint of Incarcerated Pregnant Women; Prohibits use of restraints on a prisoner known to be pregnant during labor, delivery, and postpartum recovery unless a corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance requiring restraints. Provides that a doctor, nurse, or other health care professional treating the prisoner may request that restraints not be used, in which case the corrections officer or other official accompanying the prisoner shall remove all restraints, etc. CJ 03/14/2011 Fav/CS HR 03/22/2011 Fav/CS CA 04/04/2011 BC	
15	**CS/SB 934** Environmental Preservation and Conservation / Storms (Compare CS/H 389)	Stormwater Management Permits; Requires that the Department of Environmental Protection initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. Provides for statewide application of the general permit. Provides for any water management district or delegated local government to administer the general permit. Provides that the rules are not subject to any special rulemaking requirements relating to small business, etc. EP 03/17/2011 Fav/CS CA 04/04/2011 BC	
16	**SB 1766** Storms (Similar H 1189)	Assessment of Real Property/Challenge Proceedings; Deletes a provision authorizing certain administrative bodies having quasi-judicial powers from authorizing the disclosure of confidential property tax returns. Prohibits the value adjustment board from considering certain evidence or documentation that was not timely disclosed. Authorizes the trier of fact in an administrative or judicial proceeding challenging the assessment of nonhomestead property from considering the financial records of a taxpayer which the taxpayer failed to disclose as previously required, etc. CA 04/04/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	**SB 982** Norman (Similar CS/H 241)	Wage Protection for Employees; Cites this act as the "Florida Wage Protection Act." Provides legislative findings. Prohibits a county, municipality, or political subdivision of the state from adopting a wage theft ordinance or regulation that exceeds certain state and federal laws. Preempts such activities to the state. CA 04/04/2011 JU GO	
18	**SB 534** Wise (Identical H 331)	Firesafety; Revises the rulemaking authority and responsibilities of the State Fire Marshal relating to educational and ancillary plants. Revises requirements and procedures for inspections of buildings and equipment. Abolishes special state firesafety inspector classifications and certifications. Provides criteria, procedures, and requirements for special state firesafety inspectors to be certified as firesafety inspectors. Revises firesafety inspection requirements for educational institution boards to conform to certain codes, etc. BI 03/09/2011 Favorable ED 03/17/2011 Favorable CA 04/04/2011 HE BC	
19	**SB 1942** Bennett (Identical H 4031)	Local Government Services; Repeals provisions relating to efficiency and accountability in local government services. CA 04/04/2011 BC	

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 880
INTRODUCER:	Senator Garcia
SUBJECT:	Value Adjustment Boards
DATE:	March 23, 2011
REVISED:	

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

I. Summary:

This bill requires a value adjustment board petitioner to pay all non-ad valorem assessments and make a partial payment of at least 75 percent of taxes due before he or she can contest an assessment, classification or exemption. The bill requires the value adjustment board to deny the petition if the required payment is not timely made and provides that if the value adjustment board determines that the petitioner owes taxes in excess of the amounts paid, that the unpaid amount shall accrue interest at 12 percent per year from April 1.

This bill also deletes current provisions in law that provide a 4 percent tax discount for taxes that are paid within 30 days after the mailing of a tax notice resulting from value adjustment board action.

This bill creates an undesignated section of law and substantially amends s. 197.162, of the Florida Statutes.

II. Present Situation:

Property Tax Assessments

Chapters 193-195, Florida Statutes, address property assessment procedures. Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a

willing buyer would pay a willing seller for the property in an arm's length transaction.[1] Property appraisers are required to utilize the factors outlined in s. 193.011, F.S., to determine the property's just valuation as of January 1 of each year.

The State Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.[2]

Article VII of the Florida Constitution, also limits the amount by which assessed value may increase in a given year for certain classes of property, and permits a number of tax exemptions. These include exemptions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

The property appraiser's assessment roll must be completed and submitted to the executive director of the Department of Revenue for approval by July 1 of each year, unless good cause is shown for extension.[3] As provided by ch. 195, F.S., the Department of Revenue has general supervision of the assessment and valuation of the property. Taxpayers receive a Notice of Proposed Property Taxes (TRIM notice) in August of each year. This notice provides the taxable value of the property and the millage rate[4] necessary to fund each taxing authority's proposed budget based on the certified tax rolls submitted by the property appraiser.

Locally-elected governing boards prepare a tentative budget for operating expenses following certification of the tax rolls by the tax collector. The millage rate is then set based on the amount of revenue which needs to be raised in order to cover those expenses. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls. The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to end of said hearing.[5] The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original certification of value is more than 1% for municipalities, counties, school boards, and water management districts, or more than 3% for other taxing authorities.

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[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[2] Section 196.185, F.S.
[3] Section 193.1142, F.S.
[4] The millage rate is the rate at which the property is taxed and is set by county commissioners based on how much revenue is needed for operating expenses. *See* s. 200.069, F.S. *See also* Florida Department of Revenue website, *Local Government Property Tax Process*, available at http://dor.myflorida.com/dor/property/taxpayers/pdf/ptoinfographic.pdf (last visited on Nov. 3, 2010).
[5] Section 200.065, F.S.

Value Adjustment Board Hearings

Section 194.015, F.S., states that a value adjustment board (VAB) shall be created for each county composed of two members from the county governing board, one member from the school board and two citizen members. Section 194.035, F.S., requires counties with a population of more than 75,000, and allows counties with a population less than 75,000, to appoint special magistrates to take testimony and provide recommendations to the board.

The value adjustment board is required to meet no earlier than 30 and no later than 60 days after the mailing of assessment notices pursuant to s. 194.011, F.S. The value adjustment board shall meet for the following purposes:

- To hear petitions relating to assessments, pursuant to 194.011(3), F.S.;
- To hear complaints relating to homestead exemptions, pursuant to s. 196.151, F.S.;
- To hear appeals from tax exemptions that have been denied, or disputes pertaining to granted exemptions, filed pursuant to s. 196.011, F.S.; and
- To hear appeals concerning ad valorem tax deferrals and classifications.[6]

Chapter 194, F.S., provides taxpayers with the right to appeal a property appraiser's assessment, the denial of a classification, a tax exemption, or a tax deferral by filing a petition to the value adjustment board. Taxpayers must file assessment appeals within 25 days after the TRIM notice is mailed.[7] Tax exemption or classification appeals must be filed by the taxpayer within 30 days after the property appraiser mails a notice denying an application.[8] Appeals on denied tax deferrals must be filed within 20 days after the tax collector mails the denial.[9] A county value adjustment board may charge a taxpayer a nonrefundable fee up to $15 upon filing a petition.[10]

After filing a petition and at least 25 days prior to the hearing, the taxpayer receives notice of the date, time, and location of the hearing along with the property record card containing relevant information that was used in computing the taxpayer's current assessment.[11] Prior to the hearing, the taxpayer will be given the option to exchange evidence with the property appraiser; any information that is requested by the property appraiser and not provided by the taxpayer may not be used at the hearing.[12]
At the hearing, both the petitioner and the property appraiser may be represented by an attorney or agent and shall present testimony and other evidence.[13] The hearing shall be conducted in the manner prescribed by Department of Revenue rules, with the ability of either party to request that all witnesses be sworn in. Following the decision by the VAB, the property appraiser submits a revised certified tax roll to each taxing authority. If the taxpayer does not agree with

[6] Section 194.032(1)(a)1.-4., F.S.
[7] Section 194.011(3), F.S.
[8] *Id.*
[9] Florida Department of Revenue website, *Petitions to the Value Adjustment Board* available online at http://dor.myflorida.com/dor/property/vab/pdf/vabguide.pdf (last visited on March 7, 2011).
[10] *See* 194.013, F.S. "However, this fee is $5 per parcel in cases where a petition includes multiple parcels with similar characteristics." *See* Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process*, Report No. 10-64 (Dec. 2010).
[11] Section 194.032(2), F.S.
[12] Section 194.032(1)(d), F.S.
[13] Section 194.032(1)(a), F.S.

the VAB's final decision, he or she may appeal the decision within 60 days to the circuit court pursuant to the provisions in s. 194.171(2), F.S.

2010 OPPAGA Report

In December 2010, the Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report discussing the increased time and costs associated with county value adjustment board procedures.[14] The report indicated that the number of petitions filed has increased significantly over the years, lengthening the value adjustment board process. These delays have created problems for both taxpayers awaiting tax refunds and local governments waiting to certify their tax rolls which in some counties is taking up to two years. "Miami-Dade counties did not complete value adjustment board hearings for the 2008 tax year until 2010."[15] These delays can also create local government budget concerns for entities, such as school districts, waiting for funding.[16]

The report focused on four main areas that may have attributed to the substantial increase in the number of value adjustment board appeals:

- 2009 Legislation that eliminated the 'presumption of correctness' of property appraisers (prior to this the property appraiser had to overcome this burden of proof).
- Department administrative rule changes that allow petitioners to reschedule once for no cause, and allow the board to reschedule for good cause.
- Increasing no-shows by petitioners.
- More property owners are hiring property tax professionals to assist with their value adjustment board appeals.[17]

Counties that have a high volume of value adjustment board appeals have tried to combat the increased workload by "creating informal dispute resolution processes, establishing performance requirements in magistrate contracts, and using innovative scheduling techniques."[18]

Value adjustment board operating costs have also increased significantly in recent years. County officials report that the current $15 filing fee does not cover value adjustment board expenses. According to officials, filing fees only covered between 5.1% and 66.6% of board expenses in the 2009 tax year.[19] The report stated that VAB appeals can also have fiscal implications on local governments by reducing property values. In 2008, successful value adjustment board appeals reduced property values statewide by approximately $7.8 billion with a net property tax reduction of approximately $159 million.[20]

[14] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process,* Report No. 10-64 (Dec. 2010).
[15] *Id.* at 5.
[16] The report stated that "[a]s of November 2010, a number of school districts, including those in Miami-Dade, Duval, and Broward counties, were unable to recover $51.8 million in uncollected taxes for the Fiscal Year 2008-2009."
[17] *Id.* at 6-7.
[18] *Id.* at 8.
[19] *See id.* at 9.
[20] *Id.*

In response to these findings, OPPAGA recommended that the Legislature consider one of the following options should they choose to amend the value adjustment board process:

- Shorten the process;
- Address board costs and other fiscal implications; or
- Increase accountability in the process.[21]

Property Tax Discounts

Florida has provided a discount for early payment of property taxes since 1907. Pursuant to s. 197.162, F.S., when a taxpayer pays the full amount of their property tax bill by the end of November, they receive a 4% discount; by the end of December, a 3% discount; by the end of January, a 2% discount; and by the end of March, a 1% discount. Under current law, the initial 4% discount deadline is extended if the original tax notice is not mailed prior to November, and can be extended if an adjustment is made by a value adjustment board or if a deferral application is granted.

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law to require a petitioner before a value adjustment board that is challenging an assessment, denial of classification, or an exemption to pay all of the non-ad valorem assessments and to make a partial payment of at least 75 percent of the taxes due before April 1 of the year, less the applicable discount in s. 197.162, F.S. This section directs the value adjustment board to deny the petition if the required payment is not made by that date.

This section also provides that if the value adjustment board determines that the petitioner owes taxes in excess of the amounts paid, that the unpaid amount accrues interest at the rate of 12 percent per year from April 1.

Section 2 amends s. 197.162, F.S., to delete a current provision in law that provides a 4 percent discount for taxes paid within 30 days after the mailing of a tax notice resulting from value adjustment board action.

Section 3 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[21] *Id.* at 10.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

As a result of this bill, a petitioner before the value adjustment board will be required to pay all non-assessments and pay at least 75 percent of taxes due before contesting an assessment, classification or exemption. Taxes owed in excess of the amounts paid by the taxpayer will accrue 12 percent interest per year from April 1.

In addition, tax payers will no longer receive a 4 percent tax discount for taxes that are paid within 30 days after mailing of a tax notice resulting from a value adjustment board action.

B. Private Sector Impact:

As a result of this bill, value adjustment board petitioners will be required to pay all non-ad valorem assessments and pay at least 75 percent of taxes due before contesting an assessment, classification or exemption. Taxes owed in excess of the amounts paid by the taxpayer will accrue 12 percent interest per year from April 1.

In addition, tax payers will no longer receive a 4 percent tax discount for taxes that are paid within 30 days after mailing of a tax notice resulting from a value adjustment board action.

C. Government Sector Impact:

Value adjustment boards will be required to deny a petition to the board if the petitioner fails to timely pay the required amount of taxes as prescribed under this section.

As a result of this bill, the Florida Department of Revenue will need to make amendments to the following rules: Chapter 12D-13.002 and 13.005.[22]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[22] Florida Department of Revenue, *Senate Bill 880 Fiscal Analysis*, at 3 (Feb. 28, 2011) (on file with the Senate Committee on Community Affairs).

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.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (4) of section 155.40, Florida Statutes, are amended, subsections (5) through (8) are renumbered as subsections (14) through (17), respectively, and new subsections (5) through (13) are added to that section, to read:

155.40 Sale or lease of county, district, or municipal hospital; effect of sale.—

(1) In order for ~~that~~ citizens and residents of the state

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to ~~may~~ receive quality health care, any county, district, or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, may ~~shall have the authority to~~ sell or lease such hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with a for-profit or not-for-profit Florida corporation for the purpose of operating and managing such hospital and any or all of its facilities of whatsoever kind and nature. The term of any such lease, contract, or agreement and the conditions, covenants, and agreements to be contained therein shall be determined by the governing board of such ~~county, district, or municipal~~ hospital. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the public and must state the basis of such finding. The sale or lease of such hospital is subject to approval by a circuit court. ~~If the governing board of a county, district, or municipal hospital decides to lease the hospital, it must give notice in accordance with paragraph (4)(a) or paragraph (4)(b).~~

(4) If ~~In the event~~ the governing board of a county, district, or municipal hospital determines that it is no longer in the public interest to own or operate such hospital and elects to consider a sale or lease of the hospital to a third party, the governing board must first determine whether there are any qualified purchasers or lessees. In the process of evaluating any potential purchasers or lessees ~~elects to sell or lease the hospital~~, the board shall:

(a) ~~Negotiate the terms of the sale or lease with a for-profit or not-for-profit Florida corporation and~~ Publicly

advertise the meeting at which the proposed sale or lease will be considered by the governing board of the hospital in accordance with s. 286.0105; or

(b) Publicly advertise the offer to accept proposals in accordance with s. 255.0525 and receive proposals from all interested and qualified purchasers and lessees.

Any sale or lease must be for fair market value~~,~~ and ~~any sale or lease~~ must comply with all applicable state and federal antitrust laws. For the purposes of this section, the term "fair market value" means the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction.

(5) A determination by a governing board to accept a proposal for sale or lease must state, in writing, the findings and basis for supporting the determination.

(a) The findings must include, but need not be limited to, the governing board's determination that the proposal:

1. Represents fair market value.

2. Affects whether there will be a reduction or elimination of ad valorem or other tax revenues to support the hospital.

3. Ensures that quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.

4. Is otherwise in compliance with paragraph (9)(a).

(b) The findings must be accompanied by all information and documents relevant to the governing board's determination, including, but not limited to:

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1. The names and addresses of all parties to the transaction.

2. The location of the hospital and all related facilities.

3. A description of the terms of all proposed agreements.

4. A copy of the proposed sale or lease agreement and any related agreements, including, but not limited to, leases, management contracts, service contracts, and memoranda of understanding.

5. The estimated total value associated with the proposed agreement and the proposed acquisition price and other consideration.

6. Any valuations of the hospital's assets prepared during the 3 years immediately preceding the proposed transaction date.

7. Any financial or economic analysis and report from any expert or consultant retained by the governing board.

8. A fairness evaluation by an independent expert in such transactions.

9. Copies of all other proposals and bids the governing board may have received or considered in compliance with subsection (4).

(6) Within 120 days before the anticipated closing date of the proposed transaction, the governing board shall make publicly available all findings and documents required under subsection (5) and publish a notice of the proposed transaction in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located. The notice must include the names of the parties involved and the means by which a person may submit written comments about the proposed transaction to the governing board

and may obtain copies of the findings and documents required under subsection (5).

(7) Within 20 days after the date of publication of the public notice, any interested person may submit to the governing board a detailed written statement of opposition to the transaction. If a written statement of opposition has been submitted, the governing board or the proposed purchaser or lessee may submit a written response to the interested party within 10 days after the written statement of opposition due date.

(8) A governing board of a county, district, or municipal hospital may not enter into a sale or lease of a hospital facility without first receiving approval from a circuit court.

(a) The governing board shall file a petition in a circuit court seeking approval of the proposed transaction at least 30 days after publication of the notice of the proposed transaction. The petition must be filed in the circuit in which the majority of the physical assets of the hospital are located.

(b) The petition for approval filed by the governing board must include all findings and documents required under subsection (5) and certification by the governing board of compliance with all requirements of this section.

(c) Circuit courts have jurisdiction to approve the sale or lease of a county, district, or municipal hospital.

(9) Upon the filing of a petition for approval, the court shall issue an order requiring all interested parties to appear at a designated time and place within the circuit where the petition is filed and show why the petition should not be granted.

(a) Before the date set for the hearing, the clerk shall publish a copy of the order in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located at least once each week for 2 consecutive weeks, commencing with the first publication, which must be at least 20 days before the date set for the hearing. By these publications, all interested parties are made parties defendant to the action and the court has jurisdiction of them to the same extent as if named as defendants in the petition and personally served with process.

(b) Any interested person may become a party to the action by moving against or pleading to the petition at or before the time set for the hearing. At the hearing, the court shall determine all questions of law and fact and make such orders as will enable it to properly consider and determine the action and render a final judgment with the least possible delay.

(10) Upon conclusion of all hearings and proceedings, the court shall render a final judgment approving or denying the proposed transaction. In reaching its final judgment, the court shall determine whether:

(a) The proposed transaction is permitted by law.

(b) The proposed transaction unreasonably excludes a potential purchaser or lessee on the basis of being a for-profit or a not-for-profit Florida corporation.

(c) The governing board of the hospital publicly advertised the meeting at which the proposed transaction was considered by the board in compliance with s. 286.0105.

(d) The governing board of the hospital publicly advertised the offer to accept proposals in compliance with s. 255.0525.

(e) The governing board of the hospital exercised due diligence in deciding to dispose of hospital assets, selecting the proposed purchaser or lessee, and negotiating the terms and conditions of the disposition.

(f) Any conflict of interest was disclosed, including, but not limited to, conflicts of interest relating to members of the governing board and experts retained by the parties to the transaction.

(g) The seller or lessor will receive fair market value for the assets.

(h) The acquiring entity has made an enforceable commitment to ensure that quality health care will continue to be provided to all residents of the affected community, in particular the indigent, the uninsured, and the underinsured.

(i) The proposed transaction will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

(11) Any party to the action has the right to seek judicial review in the appellate district where the petition for approval was filed.

(a) All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the date of final judgment.

(b) In such judicial review, the reviewing court shall affirm the judgment of the circuit court, unless the decision is arbitrary, capricious, or not in compliance with this section.

(12) All costs shall be paid by the governing board, unless an interested party contests the action, in which case the court

may assign costs to the parties.

(13) Any sale or lease completed before March 9, 2011, is not subject to this section. Any lease that contained, on March 9, 2011, an option to renew or extend that lease upon its expiration is not subject to this section upon renewal or extension on or after March 9, 2011.

Section 2. Section 395.3036, Florida Statutes, is amended to read:

395.3036 Confidentiality of records and meetings of corporations that lease public hospitals or other public health care facilities.—The records of a private corporation that leases a public hospital or other public health care facility are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and the meetings of the governing board of a private corporation are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution if ~~when~~ the public lessor complies with the public finance accountability provisions of s. 155.40(14) ~~155.40(5)~~ with respect to the transfer of any public funds to the private lessee and if ~~when~~ the private lessee meets at least three of the five following criteria:

(1) The public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility.

(2) The public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds pursuant to subsection (5) ~~(2)~~.

(3) Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decisionmaking process of the public lessor.

(4) The lease agreement does not expressly require the lessee to comply with ~~the requirements of~~ ss. 119.07(1) and 286.011.

(5) The public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

Section 3. This act shall take effect January 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the sale or lease of a county, district, or municipal hospital; amending s. 155.40, F.S.; providing that the sale or lease of a county, district, or municipal hospital is subject to circuit court approval; requiring the hospital governing board to determine by certain public advertisements whether there are qualified purchasers or lessees before the sale or lease of such hospital; defining the term "fair market value"; requiring the board to state in writing specified criteria forming the basis of its acceptance of a proposal for sale or lease of the hospital; providing for publication of notice;

114164

authorizing submission of written statements of opposition to a proposed transaction, and written responses thereto, within a certain timeframe; requiring the board to file a petition for approval with the circuit court and receive approval before any transaction is finalized; specifying information to be included in such petition; providing for the circuit court to issue an order requiring all interested parties to appear before the court under certain circumstances; requiring the clerk of the court to publish the copy of the order in certain newspapers at specified times; providing that certain parties are made parties defendant to the action by the publication of the order; granting the circuit court jurisdiction to approve sales or leases of county, district, or municipal hospitals based on specified criteria; providing for a party to seek judicial review; requiring that in judicial review the reviewing court affirm the judgment of the circuit court unless the decision is arbitrary, capricious, or not in compliance with the act; requiring the board to pay costs associated with the petition for approval unless a party contests the action; providing an exemption for certain sale or lease transactions completed before a specified date; amending s. 395.3036, F.S.; conforming cross-references; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment to Amendment (114164) (with title amendment)

Delete line 112
and insert:

facility without first receiving approval by majority vote of the registered voters in the county, district, or municipality or, in the alternative, approval from a circuit court.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

887422

Delete lines 236 - 237

and insert:

district, or municipal hospital is subject to approval by the registered voters or the circuit court; requiring the hospital governing board

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 1448
INTRODUCER:	Senator Garcia and Senator Lynn
SUBJECT:	Sale or Lease of a Public Hospital
DATE:	March 25, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Favorable**
2.	Gizzi	Yeatman	CA	**Pre-meeting**
3.			JU	
4.			BC	
5.			RC	
6.				

I. Summary:

This bill amends s. 155.40, F.S., to require any sale or lease of a public hospital (owned by a county, district, or municipality) to be approved by the Attorney General (AG) prior to the sale or lease. Also, prior to the sale or lease, the governing board of the public hospital must publicly notice meetings earlier in the process. If the governing board decides to accept a proposal to purchase or lease the hospital, the sale or lease of the public hospital must be for a "fair market value," which is defined in the bill, and the board's decision must be in writing and clearly state certain facts and findings that support its decision to sell or lease the hospital.

After the AG receives a request for approval of the sale or lease of a public hospital, the AG must publish notice of the request and allow time for public comment about the proposed sale or lease. The bill delineates specific information that the request must include and gives the AG authority to demand additional information and testimony regarding the proposed sale or lease through the authority of a subpoena and to contract with experts or consultants in order to review the proposed sale or lease.

The AG must issue a report of his or her findings by making certain determinations and must report his or her decision to approve, with or without modification, or deny the sale or lease of the public hospital. The AG's decision must be published in the Florida Administrative Weekly.

This bill substantially amends the following sections of the Florida Statutes: 155.40 and 395.3036.

II. Present Situation:

Sale or Lease of Public Hospitals

County, district, and municipal hospitals are created by special enabling acts, rather than by general acts under Florida law.[1] The special act sets out the hospital ability or inability to levy taxes to support the maintenance of the hospital, the framework for the governing board and whether or not the governing board has the ability to issue bonds. There are currently 31 hospital districts in Florida under which public hospitals operate.[2]

The process for the sale of a public hospital is established by s. 155.40, F.S. Currently, the governing board of a public hospital has the authority to negotiate the sale or lease of the hospital. The hospital can be sold or leased to a for-profit or not-for-profit Florida corporation and such sale or lease must be in the best interest of the public. The board is required to publicly advertise the meeting at which the proposed sale or lease will be discussed in accordance with s. 286.0105, F.S., and the offer to accept proposals from all interested and qualified purchasers in accordance with s. 255.0525, F.S.

Section 155.40(2), F.S., requires any lease, contract, or agreement to:

- Provide that the articles of incorporation of the corporation are subject to approval of the board of directors or board of trustees of the hospital.
- Require that any not-for-profit corporation become qualified under s. 501(c)(3) of the U.S. Internal Revenue Code.
- Provide for the orderly transition of the operation and management of the facilities.
- Provide for the return of the facility to the county, municipality, or district upon the termination of the lease, contract, or agreement.
- Provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act[3] and ch. 87-92, Laws of Florida.

For the sale or lease to be considered "a complete sale of the public agency's interest in the hospital" under s. 155.40(8)(a), F.S., the purchasing entity must:

- Acquire 100 percent ownership of the hospital enterprise.
- Purchase the physical plant of the hospital facility and have complete responsibility for the operation and maintenance of the facility, regardless of the underlying ownership of the real property.
- Not allow the public agency to retain control over decision-making or policymaking for the hospital.
- Not receive public funding, other than by contract for services rendered to patients for whom the public agency seller has the responsibility to pay for hospital or medical care.
- Not receive substantial investment or loans from the seller.

[1] Section 155.04, F.S., allows a county, upon receipt of a petition signed by at least 5 percent of resident freeholders, to levy an ad valorem tax or issue bonds to pay for the establishment and maintenance of a hospital. Section 155.05, F.S., gives a county the ability to establish a hospital without raising bonds or an ad valorem tax, utilizing available discretionary funds. However, an ad valorem tax can be levied for the ongoing maintenance of the hospital.
[2] Information provided by the Agency for Health Care Administration via email on March 17, 2011.
[3] Sections 154.301-154.316, F.S.

- Not be created by the public agency seller.
- Primarily operate for its own interests and not those of the public agency seller.

A complete sale of the public agency's interest shall not be construed as:

- A transfer of governmental function from the county, district, or municipality to the private corporation or entity.
- A financial interest of the public agency in the private corporation or other private entity purchaser.
- Making the private corporation or other private entity purchaser an "agency" as that term is used in statute.
- Making the private entity an integral part of the public agency's decision-making process.
- Indicating that the private entity is "acting on behalf of a public agency," as that term is used in statute.

If the corporation that operates a public hospital receives more than $100,000 in revenues from the county, district, or municipality, it must account for the manner in which the funds are expended. The funds are to be expended by being subject to annual appropriations by the county, district, or municipality, or if there is a contract for 12 months or longer to provide revenues to the hospital, then the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.

Office of the Attorney General (Department of Legal Affairs)

The Attorney General (AG) is the statewide elected official directed by the Florida Constitution[4] to serve as the chief legal officer for the State of Florida. The AG is the agency head of the Office of the Attorney General (OAG), within the Department of Legal Affairs, and is responsible for protecting Florida consumers from various types of fraud and enforcing the state's antitrust laws. Additionally, the AG protects constituents in cases of Medicaid fraud, defends the state in civil litigation cases, and represents the people of Florida when criminals appeal their convictions in state and federal courts.[5] Within the OAG, there is an Office of Statewide Prosecution that investigates and prosecutes criminal offenses that extend across multiple jurisdictions.

The Antitrust Division (division) located within the OAG, is responsible for enforcing state and federal antitrust laws. The division works to stop violations that harm competition and adversely impact the citizens of Florida. Under ch. 542, F.S., the AG has the authority to bring actions against individuals or entities that commit state or federal antitrust violations, including bid-rigging, price-fixing, market or contract allocation, and monopoly-related actions.[6]

Several recent trends have emphasized the importance of this division in the OAG. In the antitrust area, there has been a dramatic increase over the last five years in the number of

[4] *See* FLA. CONST. art. IV., s. 4.
[5] Office of the Attorney General of Florida, *The Role and Function of the Attorney General*, available at: http://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F (Last visited on March 18, 2011).
[6] Department of Legal Affairs, Office of the Attorney General, *Long Range Program Plan FY 2011-12 through FY 2015-16*, available at: http://floridafiscalportal.state.fl.us/PDFDoc.aspx?ID=3463 (Last visited on March 18, 2011).

proposed mergers, acquisitions, and joint ventures. Along with the increase in these types of transactions, the economy has become unstable and consequently, companies and individuals may be more likely to collude with competitors to fix prices, rig bids on public entity procurement contracts, unlawfully fix prices, or illegally monopolize or attempt to monopolize a particular market or industry. In addition, the federal antitrust enforcement agencies have not been as aggressive in the past years in enforcing the federal antitrust laws and therefore, the division has had to compensate for such lack of enforcement.[7]

The General Civil Litigation Division (litigation division) also exists within the OAG. The litigation division discharges the AG's responsibilities under s. 16.01, F.S., by providing statewide representation on behalf of the state, its agencies, officers, employees, and agents at both the trial and appellate level. The AG has common law authority to protect the public's interest, which the Legislature declares to be in force pursuant to s. 2.01, F.S., and under which the litigation division serves to protect the public's interest. The Ethics Bureau within the litigation division prosecutes complaints before the Florida Commission on Ethics. Once the Commission on Ethics has received and investigated a sworn complaint alleging that a public officer or employee has breached the public trust, the commission's prosecutor (Advocate) provides recommendation as to whether the case should go forward. If the case goes forward the prosecutor conducts the prosecution under ch. 120, F.S., Administrative Procedure Act.[8]

The Department of Legal Affairs budget for Fiscal Year 2010-11 includes the following: $1,398,762 for the Florida Elections Commission; $183,502,762 for the Office of Attorney General; and $6,281,871for the Office of Statewide Prosecution.[9]

Recent Leases or Sales of Public Hospitals

The public hospital Bert Fish Medical Center entered into a controversial $80 million lease agreement with Adventist Health System, which was nullified by Circuit Court Judge Richard Graham because of 21 closed-door meetings that occurred during the negotiation process and violated Florida's Sunshine laws under s. 286.011, F.S.[10]

Other recent leases or sales or proposed leases or sales of public hospitals have been scrutinized, especially for the effect such sales or leases would have on taxpayers. For example, Helen Ellis Hospital was merged with Adventist Health in 2010 and currently there are proposals that would turn public hospital systems in Miami and Broward County into private hospitals.[11]

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[7] *Id.*
[8] *Id.*
[9] The Florida Legislature's Office of Program Policy Analysis & Government Accountability, *Office of the Attorney General (Department of Legal Affairs)*, available at: http://www.oppaga.state.fl.us/profiles/1026/ (Last visited on March 18, 2011).
[10] Linda Shrieves, Orlando Sentinel, *Judge rules Bert Fish must cut ties with Florida Hospital*, February 24, 2011, available at: http://articles.orlandosentinel.com/2011-02-24/health/os-bert-fish-decision-20110224_1_sunshine-laws-open-meetings-hospital-board (Last visited on March 19, 2011).
[11] Anne Geggis, Daytona Beach News-Journal, *Bills reflect problems at Bert Fish*, March 8, 2011, available at: http://www.news-journalonline.com/news/local/southeast-volusia/2011/03/08/bills-reflect-problems-at-bert-fish.html (Last visited on March 19, 2011).

III. Effect of Proposed Changes:

Section 1 amends s. 155.40, F.S., to require any sale or lease of a public hospital (owned by a county, district, or municipality) to be approved by the AG prior to the sale or lease. Also, prior to the sale or lease, the governing board of the public hospital must determine whether there are qualified purchasers or lessees of the hospital by publicly advertising the meeting at which the proposed sale or lease will be considered by the governing board or publicly advertise the offer to accept proposals. However, the bill amends s. 155.40, F.S., to no longer allow the board to make such a determination by negotiation of the terms of the sale or lease with a for-profit or not-for-profit Florida corporation.

If the governing board decides to accept a proposal to purchase or lease the hospital, the sale or lease of the public hospital must be for a "fair market value," which is defined in the bill as "the most likely price that the assets would bring in a sale or lease in a competitive and open market under all conditions requisite to a fair sale or lease, with the buyer or lessee, and seller or lessor, each acting prudently, knowledgeably, and in their own best interest, and with a reasonable time being allowed for exposure in the open market."

The board's decision to accept a proposal to purchase or lease the hospital must be in writing and clearly state facts and findings that support its decision to sell or lease the hospital. The facts and findings must state whether the proposal:

- Represents the fair market value of the hospital;
- Constitutes the best use of the hospital and its attendant facilities;
- Will have a positive effect on the reduction or elimination of certain tax revenues to support the hospital; and
- Ensures that the quality of health care will continue to be provided to residents of the affected community, especially the indigent, the uninsured, and the underinsured.

In order for the governing board of the public hospital to receive approval from the AG to sell or lease the hospital, it must file a request for approval with the AG not less than 120 days before the anticipated closing date of the sale or lease. The request for approval must contain the following information:

- The name and address of all parties to the transaction;
- The location of the hospital and all related facilities;
- A description of the terms of all proposed agreements;
- A copy of the proposed sale or lease agreement and related agreements, including leases, management contracts, service contracts, and memoranda of understanding;
- The estimated total value associated with the proposed agreement, the proposed acquisition price, and other consideration;
- Any valuations of the hospital's assets prepared 3 years immediately preceding the proposed transaction date;
- An analysis of the financial or economic status of the hospital and a report from any financial expert or consultant retained by the governing board;
- A fairness evaluation by an independent expert in such transactions;
- Copies of all other proposals and bids; and
- Any other information requested by the AG.

Within 30 days after the AG receives this request along with the information required above, the AG must publish notice of the proposed sale or lease in one or more newspapers of general circulation in the county where the main campus of the hospital is located and must also publish such notice in the Florida Administrative Weekly. The notice must provide the names of the parties in the transaction and provide the means by which persons may submit written comments about the proposed transaction. A person must submit written comments in support or in opposition of the sale or lease of the hospital within 20 days after the public notice of such sale or lease is published by the AG in the Florida Administrative Weekly. The governing board, the proposed purchaser or lessee, or any other interested person may submit a written response to such comments no later than 10 days after the general comment period to the public notice ends.

The bill gives the AG authority to demand additional information and testimony regarding the proposed sale or lease through the authority of a subpoena.

The bill authorizes the AG to contract with experts or consultants in order to review the proposed sale or lease and determine the fair market value of the proposed transaction and such contracts must be paid for by the acquiring entity. The acquiring entity, when billed for the contract services, has 30 days to pay the bill.

Sixty days after the date the public notice of sale or lease is published, the AG must issue a report of his or her findings and must report his or her decision to approve, with or without modification, or deny the sale or lease of the public hospital. In making his or her decision, the AG must determine whether:

- The proposed sale or lease is permitted by law;
- The proposed sale or lease would result in the best use of the hospital facilities and assets;
- The proposed sale or lease discriminates among potential purchasers or lessees depending on whether the entity is a for-profit or not-for-profit Florida corporation;
- The governing board of the hospital publicly advertised the meeting at which the proposed transaction was considered by the board in compliance with s. 286.0105, F.S.;
- The governing board of the hospital publicly advertised the offer to accept proposals in compliance with s. 255.0525, F.S.;
- The governing board of the hospital exercised due diligence in deciding to dispose of hospital assets, selecting the transacting entity, and negotiating the terms and conditions of the disposition;
- The procedures used by the governing board of the hospital in making its decision to dispose of its assets were fair and reasonable;
- Any conflict of interest was disclosed;
- The seller or lessor will receive fair market value for the assets;
- Charitable assets are placed at an unreasonable risk if the transaction is financed in part by the seller or lessor;
- The terms of any management or services contract negotiated in conjunction with the transaction are fair and reasonable;
- The acquiring entity made an enforceable commitment to provide health care to the indigent, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care; and

- The proposed transaction will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

The AG's decision must be published in the Florida Administrative Weekly.

Section 2 amends s. 395.3036, F.S., to fix a cross-reference to reflect changes made by this bill.

Section 3 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill will provide more disclosure of the sale or lease process of a public hospital by requiring the hospital to make available to the public its facts and findings that support its decision to sell or lease the hospital and by requiring publication of a notice of the sale or lease by the AG. Additionally, the bill ensures more oversight over the sale or lease process by requiring the AG to determine whether the public has been put on notice as to any meetings at which the proposed sale or lease is to be considered or as to any offer to accept the proposal for sale or lease prior to the AG's approval of the sale.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There would be an indeterminate negative fiscal impact on those entities seeking to purchase or lease a public hospital because of the requirements in the bill. For example, the acquiring entity must pay a bill for contract services obtained by the AG to review the proposed sale or lease agreement, including contract services to determine the fair market value of the proposed transaction.

C. Government Sector Impact:

The OAG has estimated that it will have to expend approximately $250,129 to comply with the requirements of the bill.[12]

VI. Technical Deficiencies:

On line 218 of the bill, the word "whether" should be deleted as it is redundant.

VII. Related Issues:

Because this bill requires the AG to take an "agency action" by requiring the AG to approve or deny the sale or lease of a public hospital, a person would have recourse to challenge the AG's decision under ch. 120, F.S.

Many of the terms or standards provided for in the bill may be subject to judicial interpretation. For example see, "reasonable time being allowed for exposure in the open market,"[13] "fairness evaluation,"[14] "best use of the hospital facilities and assets,"[15] and that the procedures used by the board "were fair and reasonable."[16]

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.

[12] Office of Attorney General (OAG), *FY 2011-2012 Fiscal Impact of HB 619* (companion bill to SB 1448) (on file with the Senate Health Regulation Committee).
[13] Line 110, SB 1448.
[14] Line 152, SB 1448.
[15] Lines 118-119, SB 1448.
[16] Lines 225-227, SB 1448.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/04/2011	.	
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The Committee on Community Affairs (Dockery) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (2) of section 212.096, Florida Statutes, is amended to read:

212.096 Sales, rental, storage, use tax; enterprise zone jobs credit against sales tax.—

(2)

(b) The credit shall be computed as 20 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, unless the business is

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located within a rural enterprise zone pursuant to s. 290.004(10) ~~s. 290.004(6)~~, in which case the credit shall be 30 percent of the actual monthly wages paid. If no less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the credit shall be computed as 30 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, unless the business is located within a rural enterprise zone, in which case the credit shall be 45 percent of the actual monthly wages paid. If the new employee hired when a new job is created is a participant in the welfare transition program, the following credit shall be a percent of the actual monthly wages paid: 40 percent for $4 above the hourly federal minimum wage rate; 41 percent for $5 above the hourly federal minimum wage rate; 42 percent for $6 above the hourly federal minimum wage rate; 43 percent for $7 above the hourly federal minimum wage rate; and 44 percent for $8 above the hourly federal minimum wage rate. For purposes of this paragraph, monthly wages shall be computed as one-twelfth of the expected annual wages paid to such employee. The amount paid as wages to a new employee is the compensation paid to such employee that is subject to unemployment tax. The credit shall be allowed for up to 24 consecutive months, beginning with the first tax return due pursuant to s. 212.11 after approval by the department.

Section 2. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated


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unconstitutionally collected.—

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

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

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

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

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

4. After the distributions under subparagraphs 1., 2., and 3., 2.0440 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for

Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3409 percent of the available proceeds, plus the amount required under s. 290.017(3), shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

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

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

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

c. Beginning 30 days after notice by the Office of Tourism,

Trade, and Economic Development to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

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

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

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

218.23 Revenue sharing with units of local government.—

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

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

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

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guaranteed entitlement.

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

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

(e) Fifth, after the adjustments provided in paragraphs (b), (c), and (d), the funds remaining in the respective trust fund for municipalities shall be distributed to the appropriate governing body eligible for a distribution under s. 290.017.

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

Section 4. Paragraph (a) of subsection (1) of section 220.181, Florida Statutes, is amended to read:

220.181 Enterprise zone jobs credit.—

(1)(a) There shall be allowed a credit against the tax imposed by this chapter to any business located in an enterprise zone which demonstrates to the department that, on the date of application, the total number of full-time jobs is greater than the total was 12 months prior to that date. The credit shall be

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computed as 20 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, as defined under s. 220.03(1)(ee), unless the business is located in a rural enterprise zone, pursuant to s. 290.004(10) ~~s. 290.004(6)~~, in which case the credit shall be 30 percent of the actual monthly wages paid. If no less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the credit shall be computed as 30 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, unless the business is located in a rural enterprise zone, in which case the credit shall be 45 percent of the actual monthly wages paid, for a period of up to 24 consecutive months. If the new employee hired when a new job is created is a participant in the welfare transition program, the following credit shall be a percent of the actual monthly wages paid: 40 percent for $4 above the hourly federal minimum wage rate; 41 percent for $5 above the hourly federal minimum wage rate; 42 percent for $6 above the hourly federal minimum wage rate; 43 percent for $7 above the hourly federal minimum wage rate; and 44 percent for $8 above the hourly federal minimum wage rate.

Section 5. Paragraph (c) of subsection (5) of section 288.1175, Florida Statutes, is amended to read:

288.1175 Agriculture education and promotion facility.—

(5) The department shall competitively evaluate applications for funding of an agriculture education and promotion facility. If the number of applicants exceeds three, the department shall rank the applications based upon criteria

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developed by the department, with priority given in descending order to the following items:

(c) The location of the facility in a brownfield site as defined in s. 376.79(3), a rural enterprise zone as defined in s. 290.004(10) ~~s. 290.004(6)~~, an agriculturally depressed area as defined in s. 570.242(1), a redevelopment area established pursuant to s. 373.461(5)(g), or a county that has lost its agricultural land to environmental restoration projects.

Section 6. Section 290.004, Florida Statutes, is amended to read:

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

(1) "Bond" means any bonds, notes, or other instruments issued by the governing body pursuant to s. 290.015 and secured by tax increment revenues or other security authorized in this chapter.

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

(3) ~~(2)~~ "Director" means the director of the Office of Tourism, Trade, and Economic Development.

(4) ~~(3)~~ "Governing body" means the council or other legislative body charged with governing the county or municipality.

(5) ~~(4)~~ "Minority business enterprise" has the same meaning as in s. 288.703.


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(6) ~~(5)~~ "Office" means the Office of Tourism, Trade, and Economic Development.

(7) "Retail development costs" mean any costs associated with, or arising out of, or incurred in connection with:

(a) A retail development project;

(b) The issuance of, or debt service or any other payments in respect of, the bonds, including costs of issuance, capitalized interest, credit enhancement fees, reserve funds, or working capital; or

(c) The relocation of any business in which the purpose of relocation is to make space for a retail development project.

(8) "Retail development project" means the establishment of a business within an urban enterprise zone engaged in direct onsite retail sales to consumers or providing unique entertainment attractions, including the following: acquisition, purchasing, construction, reconstruction, improvement, renovation, rehabilitation, restoration, remodeling, repair, remediation, expansion, extension, and the furnishing, equipping, and opening of the business. A retail development project shall create at least 500 jobs and generate more than $1 million in taxes and fees collected pursuant to s. 212.20(6)(d). A retail development project includes restaurants, grocery and specialty food stores, art galleries, and businesses engaged in sales of home furnishings, apparel, and general merchandise goods to specialized customers, or providing a unique entertainment attraction. A retail development project specifically excludes:

(a) Liquor stores;

(b) Adult entertainment nightclubs;

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(c) Adult book clubs; and

(d) The relocation of a business to the retail development project from another location within the urban enterprise zone, unless the relocation involves a significant expansion of the size of the business.

(9) "Retail development project developer" means any person sponsoring a retail development project.

(10) ~~(6)~~ "Rural enterprise zone" means an enterprise zone that is nominated by a county having a population of 75,000 or fewer, or a county having a population of 100,000 or fewer which is contiguous to a county having a population of 75,000 or fewer, or by a municipality in such a county, or by such a county and one or more municipalities. An enterprise zone designated in accordance with s. 290.0065(5)(b) or s. 379.2353 is considered to be a rural enterprise zone.

(11) "Sales tax TIF area" means a retail development project that has been authorized by a governing body to receive TIF proceeds or bond proceeds pursuant to an executed development agreement between the governing body and a retail development project developer to underwrite retail development costs.

(12) ~~(7)~~ "Small business" has the same meaning as in s. 288.703.

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

(14) "TIF" means tax increment financing.

Section 7. Paragraph (a) of subsection (9) of section 290.0056, Florida Statutes, is amended, and present subsections

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(11) and (12) of that section are redesignated as subsections (12) and (13), respectively, and a new subsection (11) is added to that section, to read:

290.0056 Enterprise zone development agency.—

(9) The following powers and responsibilities shall be performed by the governing body creating the enterprise zone development agency acting as the managing agent of the enterprise zone development agency, or, contingent upon approval by such governing body, such powers and responsibilities shall be performed by the enterprise zone development agency:

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

(11) Contingent upon the governing board's designation of a sales tax TIF area, the board shall also exercise the following additional powers for the purpose of providing local financing for public and private improvements that will foster job growth and enhance the base of retailers within an urban enterprise zone unless otherwise prohibited by ordinance:

(a) Enter into cooperative contracts and agreements with a county, municipality, governmental agency, or private entity for services and assistance;

(b) Acquire, own, convey, construct, maintain, improve, and manage property and facilities and grant and acquire licenses, easements, and options with respect to such property;

(c) Expend incremental sales tax revenues to promote and advertise the commercial advantages of the district in order to attract new businesses and encourage the expansion of existing businesses; and

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(d) Expend incremental sales tax revenues to promote and advertise the district to the public and engage in cooperative advertising programs with businesses located in the district.

Section 8. Subsection (1) of section 290.0057, Florida Statutes, is amended to read:

290.0057 Enterprise zone development plan.—

(1) Any application for designation as a new enterprise zone must be accompanied by a strategic plan adopted by the governing board ~~body~~ of the municipality or county, or the governing board ~~bodies~~ of the county and one or more of the municipalities together. At a minimum, the plan must:

(a) Briefly describe the community's goals for revitalizing the area.

(b) Describe the ways in which the community's approaches to economic development, social and human services, transportation, housing, community development, public safety, and educational and environmental concerns will be addressed in a coordinated fashion, and explain how these linkages support the community's goals.

(c) Identify and describe key community goals and the barriers that restrict the community from achieving these goals, including a description of poverty and general distress, barriers to economic opportunity and development, and barriers to human development.

(d) Describe the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process.

(e) Commit the governing body or bodies to enact and

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maintain local fiscal and regulatory incentives, if approval for the area is received under s. 290.0065. These incentives may include the municipal public service tax exemption provided by s. 166.231, the economic development ad valorem tax exemption provided by s. 196.1995, the business tax exemption provided by s. 205.054, local impact fee abatement or reduction, or low-interest or interest-free loans or grants to businesses to encourage the revitalization of the nominated area.

(f) Identify the amount of local and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, community colleges, small business development centers, black business investment corporations, certified development corporations, and other private and public entities.

(g) Indicate how state enterprise zone tax incentives and state, local, and federal resources will be utilized within the nominated area.

(h) Identify the funding requested under any state or federal program in support of the proposed economic, human, community, and physical development and related activities.

(i) Identify baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan.

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

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

(9) Within urban enterprise zones, the designation of a

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sales tax TIF area.

Section 10. Section 290.0136, Florida Statutes, is created to read:

290.0136 Sales tax TIF area; intent and purpose.—

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

(2) The Legislature finds that by authorizing local governing bodies of an urban enterprise zone to designate a sales tax TIF area, the counties or municipalities may share with the state any annual increase in sales tax collections occasioned by a retail development project and advance the revitalization of such counties and municipalities. Through the sharing of any annual increases in sales tax collections within a sales tax TIF area resulting from the advancement of a retail development project, the Legislature intends to provide local financing for public and private improvements that will foster job growth for the residents of economically distressed areas and enhance the base of local retailers serving residents of the urban enterprise zones and the surrounding communities.

Section 11. Section 290.0137, Florida Statutes, is created to read:

290.0137 Designation of sales tax TIF area; review and approval by the office.—

(1) Any municipality having a population of at least 250,000 residents which has designated an enterprise zone, or

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all the governing bodies in the case of a county and one or more municipalities having been designated an enterprise zone if the county has a population of at least 750,000 residents, may adopt a resolution following a public hearing designating a sales tax TIF area to support the development of a retail development project.

(2) The resolution creating a sales tax increment redevelopment district, at a minimum, shall:

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

1. Is essential to the advancement of a retail development project;

2. Will provide needed retail amenities within the urban enterprise;

3. Will result in the creation of a total of 500 new jobs and not less than $1 million in sales tax increment revenue annually; and

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

(b) Fix the geographic boundaries of the sales tax TIF area necessary to support the advancement of a retail development project;

(c) Establish the term of the life of the sales tax TIF area, which term shall not exceed 30 years from the earlier date the sales tax TIF area is approved following review by the office;

(d) Establish the base year for determination of sales tax receipts collected pursuant to s. 212.20(6), less the amount

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required under s. 290.0138(1); and

(e) Authorize staff of the governing body to negotiate a development agreement with the retail development project developer.

(3) A copy of the resolution adopted by the governing body designating the sales tax TIF area shall be transmitted to the office for its review. The office, in consultation with Enterprise Florida, Inc., shall determine whether the designation of the sales tax TIF area complies with the requirements of this chapter.

(4) Upon determining that the designation by the governing body complies with the requirements of this chapter, a copy of the resolution establishing the sales tax TIF area redevelopment district shall be transmitted to the Department of Revenue.

Section 12. Section 290.0138, Florida Statutes, is created to read:

290.0138 Calculation of tax increment revenue contribution to governing body.—

(1) The governing body of a designated sales tax TIF area shall be eligible for a percentage distribution of from the Revenue Sharing Trust Fund for Municipalities 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:

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

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

(c) Fifty percent of the increased monthly collections

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greater than $425,000 but $675,000 or less.

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

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

(2) The specific amount payable to each eligible governing body shall be determined monthly by the Department of Revenue for distribution to the appropriate eligible governing body in accordance with subsection (1). The Department of Revenue shall determine monthly the aggregate amount of sales tax revenue that is required for distribution to eligible governing body under this section and 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. All amounts transferred to the Revenue Sharing Trust Fund for Municipalities shall be distributed as provided in s. 218.23(3)(e). At no time shall the total distribution provided to the eligible governing body exceed the total tax increment revenue contribution set forth in the retail project development agreement required pursuant to s. 290.0139.

(3) Each governing body receiving percentage distribution pursuant to the subsection (1) shall establish a separate tax increment revenue account within its general fund for the deposit of the sales tax increment for each sales tax TIF area.

Section 13. Section 290.0139, Florida Statutes, is created to read:

290.0139 Retail development project agreement.—

(1) A retail development project developer desiring to use tax increment revenues to underwrite retail development costs

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shall enter into a retail development project agreement with the governing body of the county or municipality designating a sales tax TIF area. The agreement shall set forth:

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

(b) Requirements for leasing of retail space within the retail development project which will advance the goals and objectives;

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

(d) The total amount of the tax increment revenue to be contributed to pay retail development costs within the sales tax TIF area;

(e) Goals for the hiring of minority business enterprises to perform construction or operations work, which goal shall equal an amount not less than 25 percent of the total amount of tax increment revenue contributed towards the payment of retail development costs within the sales tax TIF area;

(f) Goals for the hiring of urban enterprise zone residents for the new jobs created by the retail development project, which goal shall equal at least 35 percent of the new jobs created;

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

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

(2) Tax increment revenues or bond proceeds may not be

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advanced to pay retail development costs until such time as the retail development project is open to the general public.

(3) A retail project development agreement shall be approved by resolution of the governing body following a public hearing.

Section 14. Section 290.014, Florida Statutes, is amended to read:

290.014 Issuance of tax increment revenue bonds; use of bond proceeds; funding agreement ~~Annual reports on enterprise zones~~.—

(1) If authorized or approved by resolution of the governing body that designated the sales tax TIF area created the sales tax increment redevelopment district, following a public hearing, tax increment revenues may be used to support the issuance of revenue bonds to finance retail redevelopment costs of a retail development project, including the payment of principal and interest upon any advances for surveys and plans or preliminary loans.

(2) Bonds issued under this section do not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and are not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this section are declared to be issued for an essential public and governmental purpose, and the interest and income from the bonds are exempt from all taxes, except taxes imposed by chapter 220 on corporations.

(3) Bonds issued under this section may be issued in one or more series and may bear such date or dates, be payable upon

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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 a premium, be secured in such manner, and have such other characteristics as may be provided by the resolution or ordinance authorizing their issuance. Bonds issued under this section may be sold in such manner, either at public or private sale, and for such price as the designated redevelopment agency may determine will effectuate the purposes of this section.

(4) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this section, any bond that recites in substance that it has been issued by the governing body in connection with the sales tax increment district for a purpose authorized under this section is conclusively presumed to have been issued for that purpose, and any project financed by the bond is conclusively presumed to have been planned and carried out in accordance with the intended purposes of this section.

~~(1) By February 1 of each year, the Department of Revenue shall submit an annual report to the Office of Tourism, Trade, and Economic Development detailing the usage and revenue impact by county of the state incentives listed in s. 290.007.~~

~~(2) By March 1 of each year, the office shall submit an annual report to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The report~~


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~~shall include the information provided by the Department of Revenue pursuant to subsection (1) and the information provided by enterprise zone development agencies pursuant to s. 290.0056. In addition, the report shall include an analysis of the activities and accomplishments of each enterprise zone.~~

Section 15. Section 290.015, Florida Statutes, is created to read:

290.015 Annual reports on enterprise zones.—

(1) By February 1 of each year, the Department of Revenue shall submit an annual report to the Office of Tourism, Trade, and Economic Development detailing the usage and revenue impact by county of the state incentives listed in s. 290.007.

(2) By March 1 of each year, the office shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall include the information provided by the department pursuant to subsection (1) and the information provided by enterprise zone development agencies pursuant to s. 290.0056. In addition, the report shall include an analysis of the activities and accomplishments of each enterprise zone.

Section 16. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to revitalizing municipalities; amending s. 212.096, F.S.; conforming a cross-

reference; amending s. 212.20, F.S.; providing for the transfer of certain sales tax revenues from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities; amending s. 218.23, F.S.; 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; amending ss. 220.181 and 288.1175, F.S.; conforming cross-references; amending s. 290.004, F.S.; providing definitions; amending s. 290.0056, F.S.; revising provisions relating to the enterprise zone development agency; providing powers of the governing board upon the designation of a sales tax TIF area; amending s. 290.0057, F.S.; revising provisions relating to an enterprise zone development plan to conform to changes made by the act; amending s. 290.007, F.S.; providing an economic incentive within urban enterprise zones designated as sales tax TIF areas; creating ss. 290.0136, 290.0137, 290.0138, and 290.0139, F.S.; providing legislative intent and purposes; authorizing specified governing bodies to create a sales tax TIF areas within a county or municipality having a specified population; providing that the governing body for an enterprise zone where a sales tax TIF area is located is eligible for specified percentage distributions of increased state sales tax collections under certain circumstances;

requiring the Department of Revenue to determine the amount of increased sales tax collections to be distributed to each eligible designated redevelopment agency and to transfer the aggregate amount due to all such agencies to the Revenue Sharing Trust Fund for Municipalities for distribution; granting specified powers to a governing body for a sales tax TIF area for the purpose of providing financing and fostering certain public and private improvements, including issuing revenue bonds; requiring that an agreement between a designated redevelopment agency and private sponsor of a project include a requirement that a specified number of jobs be created under certain circumstances; amending s. 290.014, F.S.; providing for the issuance of tax increment revenue bonds and the use of such bonds; creating s. 290.015, F.S.; requiring that the Department of Revenue submit an annual report to the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor which details the usage and revenue impact by county of the state incentives by a specified date; requiring that the office submit an annual report to the Governor and the Legislature which includes the information provided by the department and enterprise zone development agencies by a specified date; providing an effective date.

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (2) of section 212.096, Florida Statutes, is amended to read:

212.096 Sales, rental, storage, use tax; enterprise zone jobs credit against sales tax.—

(2)

(b) The credit shall be computed as 20 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, unless the business is

located within a rural enterprise zone pursuant to s. 290.004(10) ~~s. 290.004(6)~~, in which case the credit shall be 30 percent of the actual monthly wages paid. If no less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the credit shall be computed as 30 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, unless the business is located within a rural enterprise zone, in which case the credit shall be 45 percent of the actual monthly wages paid. If the new employee hired when a new job is created is a participant in the welfare transition program, the following credit shall be a percent of the actual monthly wages paid: 40 percent for $4 above the hourly federal minimum wage rate; 41 percent for $5 above the hourly federal minimum wage rate; 42 percent for $6 above the hourly federal minimum wage rate; 43 percent for $7 above the hourly federal minimum wage rate; and 44 percent for $8 above the hourly federal minimum wage rate. For purposes of this paragraph, monthly wages shall be computed as one-twelfth of the expected annual wages paid to such employee. The amount paid as wages to a new employee is the compensation paid to such employee that is subject to unemployment tax. The credit shall be allowed for up to 24 consecutive months, beginning with the first tax return due pursuant to s. 212.11 after approval by the department.

Section 2. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated

unconstitutionally collected.—

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

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

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

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

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

4. After the distributions under subparagraphs 1., 2., and 3., 2.0440 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for

Counties pursuant to s. 218.215.

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

6. Of the remaining proceeds:

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

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

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

c. Beginning 30 days after notice by the Office of Tourism,

Trade, and Economic Development to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

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

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

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

218.23 Revenue sharing with units of local government.—

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

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

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


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guaranteed entitlement.

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

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

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

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

Section 4. Paragraph (a) of subsection (1) of section 220.181, Florida Statutes, is amended to read:

220.181 Enterprise zone jobs credit.—

(1)(a) There shall be allowed a credit against the tax imposed by this chapter to any business located in an enterprise zone which demonstrates to the department that, on the date of application, the total number of full-time jobs is greater than

the total was 12 months prior to that date. The credit shall be computed as 20 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, as defined under s. 220.03(1)(ee), unless the business is located in a rural enterprise zone, pursuant to s. 290.004(10) ~~s. 290.004(6)~~, in which case the credit shall be 30 percent of the actual monthly wages paid. If no less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the credit shall be computed as 30 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, unless the business is located in a rural enterprise zone, in which case the credit shall be 45 percent of the actual monthly wages paid, for a period of up to 24 consecutive months. If the new employee hired when a new job is created is a participant in the welfare transition program, the following credit shall be a percent of the actual monthly wages paid: 40 percent for $4 above the hourly federal minimum wage rate; 41 percent for $5 above the hourly federal minimum wage rate; 42 percent for $6 above the hourly federal minimum wage rate; 43 percent for $7 above the hourly federal minimum wage rate; and 44 percent for $8 above the hourly federal minimum wage rate.

Section 5. Paragraph (c) of subsection (5) of section 288.1175, Florida Statutes, is amended to read:

288.1175 Agriculture education and promotion facility.—

(5) The department shall competitively evaluate applications for funding of an agriculture education and promotion facility. If the number of applicants exceeds three,

the department shall rank the applications based upon criteria developed by the department, with priority given in descending order to the following items:

(c) The location of the facility in a brownfield site as defined in s. 376.79(3), a rural enterprise zone as defined in s. 290.004(10) ~~s. 290.004(6)~~, an agriculturally depressed area as defined in s. 570.242(1), a redevelopment area established pursuant to s. 373.461(5)(g), or a county that has lost its agricultural land to environmental restoration projects.

Section 6. Section 290.004, Florida Statutes, is amended to read:

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

(1) "Bond" means any bonds, notes, or other instruments issued by the governing body pursuant to s. 290.015 and secured by tax increment revenues or other security authorized in this chapter.

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

(3) ~~(2)~~ "Director" means the director of the Office of Tourism, Trade, and Economic Development.

(4) ~~(3)~~ "Governing body" means the council or other legislative body charged with governing the county or municipality.

(5) ~~(4)~~ "Minority business enterprise" has the same meaning

as in s. 288.703.

(6)~~(5)~~ "Office" means the Office of Tourism, Trade, and Economic Development.

(7) "Retail development costs" mean any costs associated with, or arising out of, or incurred in connection with:

(a) A retail development project;

(b) The issuance of, or debt service or any other payments in respect of, the bonds, including costs of issuance, capitalized interest, credit enhancement fees, reserve funds, or working capital; or

(c) The relocation of any business in which the purpose of relocation is to make space for a retail development project.

(8) "Retail development project" means the establishment of a business within an enterprise zone engaged in direct onsite retail sales to consumers or providing unique entertainment attractions, including the following: acquisition, purchasing, construction, reconstruction, improvement, renovation, rehabilitation, restoration, remodeling, repair, remediation, expansion, extension, and the furnishing, equipping, and opening of the business. A retail development project shall create at least 500 jobs and generate more than $1 million in taxes and fees collected pursuant to s. 212.20(6)(d). A retail development project includes restaurants, grocery and specialty food stores, art galleries, and businesses engaged in sales of home furnishings, apparel, and general merchandise goods to specialized customers, or providing a unique entertainment attraction. A retail development project specifically excludes:

(a) Liquor stores;

(b) Adult entertainment nightclubs;

(c) Adult book clubs; and

(d) The relocation of a business to the retail development project from another location within the enterprise zone, unless the relocation involves a significant expansion of the size of the business.

(9) "Retail development project developer" means any person sponsoring a retail development project.

(10) ~~(6)~~ "Rural enterprise zone" means an enterprise zone that is nominated by a county having a population of 75,000 or fewer, or a county having a population of 100,000 or fewer which is contiguous to a county having a population of 75,000 or fewer, or by a municipality in such a county, or by such a county and one or more municipalities. An enterprise zone designated in accordance with s. 290.0065(5)(b) or s. 379.2353 is considered to be a rural enterprise zone.

(11) "Sales tax TIF area" means a retail development project that has been authorized by a governing body to receive TIF proceeds or bond proceeds pursuant to an executed development agreement between the governing body and a retail development project developer to underwrite retail development costs.

(12) ~~(7)~~ "Small business" has the same meaning as in s. 288.703.

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

(14) "TIF" means tax increment financing.

Section 7. Paragraph (a) of subsection (9) of section 290.0056, Florida Statutes, is amended, and present subsections

(11) and (12) of that section are redesignated as subsections (12) and (13), respectively, and a new subsection (11) is added to that section, to read:

290.0056 Enterprise zone development agency.—

(9) The following powers and responsibilities shall be performed by the governing body creating the enterprise zone development agency acting as the managing agent of the enterprise zone development agency, or, contingent upon approval by such governing body, such powers and responsibilities shall be performed by the enterprise zone development agency:

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

(11) Contingent upon the governing board's designation of a sales tax TIF area, the board shall also exercise the following additional powers for the purpose of providing local financing for public and private improvements that will foster job growth and enhance the base of retailers within an enterprise zone unless otherwise prohibited by ordinance:

(a) Enter into cooperative contracts and agreements with a county, municipality, governmental agency, or private entity for services and assistance;

(b) Acquire, own, convey, construct, maintain, improve, and manage property and facilities and grant and acquire licenses, easements, and options with respect to such property;

(c) Expend incremental sales tax revenues to promote and advertise the commercial advantages of the district in order to attract new businesses and encourage the expansion of existing businesses; and

(d) Expend incremental sales tax revenues to promote and advertise the district to the public and engage in cooperative advertising programs with businesses located in the district.

Section 8. Subsection (1) of section 290.0057, Florida Statutes, is amended to read:

290.0057 Enterprise zone development plan.—

(1) Any application for designation as a new enterprise zone must be accompanied by a strategic plan adopted by the governing board ~~body~~ of the municipality or county, or the governing board ~~bodies~~ of the county and one or more of the municipalities together. At a minimum, the plan must:

(a) Briefly describe the community's goals for revitalizing the area.

(b) Describe the ways in which the community's approaches to economic development, social and human services, transportation, housing, community development, public safety, and educational and environmental concerns will be addressed in a coordinated fashion, and explain how these linkages support the community's goals.

(c) Identify and describe key community goals and the barriers that restrict the community from achieving these goals, including a description of poverty and general distress, barriers to economic opportunity and development, and barriers to human development.

(d) Describe the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process.

(e) Commit the governing body or bodies to enact and

maintain local fiscal and regulatory incentives, if approval for the area is received under s. 290.0065. These incentives may include the municipal public service tax exemption provided by s. 166.231, the economic development ad valorem tax exemption provided by s. 196.1995, the business tax exemption provided by s. 205.054, local impact fee abatement or reduction, or low-interest or interest-free loans or grants to businesses to encourage the revitalization of the nominated area.

(f) Identify the amount of local and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, community colleges, small business development centers, black business investment corporations, certified development corporations, and other private and public entities.

(g) Indicate how state enterprise zone tax incentives and state, local, and federal resources will be utilized within the nominated area.

(h) Identify the funding requested under any state or federal program in support of the proposed economic, human, community, and physical development and related activities.

(i) Identify baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan.

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

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

(9) Within enterprise zones, the designation of a sales tax

TIF area.

Section 10. Section 290.01351, Florida Statutes, is created to read:

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

Section 11. Section 290.0136, Florida Statutes, is created to read:

290.0136 Sales tax TIF area; intent and purpose.—

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

(2) The Legislature finds that by authorizing local governing bodies of an enterprise zone to designate a sales tax TIF area, the counties or municipalities may share with the state any annual increase in sales tax collections occasioned by a retail development project and advance the revitalization of such counties and municipalities. Through the sharing of any annual increases in sales tax collections within a sales tax TIF area resulting from the advancement of a retail development project, the Legislature intends to provide local financing for public and private improvements that will foster job growth for the residents of economically distressed areas and enhance the base of local retailers serving residents of the enterprise zones and the surrounding communities.

Section 12. Section 290.0137, Florida Statutes, is created to read:

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290.0137 Designation of sales tax TIF area; review and approval by the office.—

(1) Any municipality having a population of at least 250,000 residents which has designated an enterprise zone, or all the governing bodies in the case of a county and one or more municipalities having been designated an enterprise zone if the county has a population of at least 750,000 residents, may adopt a resolution following a public hearing designating a sales tax TIF area to support the development of a retail development project.

(2) The resolution creating a sales tax increment redevelopment district, at a minimum, shall:

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

1. Is essential to the advancement of a retail development project;

2. Will provide needed retail amenities within the enterprise;

3. Will result in the creation of a total of 500 new jobs and not less than $1 million in sales tax increment revenue annually; and

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

(b) Fix the geographic boundaries of the sales tax TIF area necessary to support the advancement of a retail development project;

(c) Establish the term of the life of the sales tax TIF area, which term shall not exceed 15 years from the earlier date


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the sales tax TIF area is approved following review by the office;

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

(e) Authorize staff of the governing body to negotiate a development agreement with the retail development project developer.

(3) A copy of the resolution adopted by the governing body designating the sales tax TIF area shall be transmitted to the office for its review. The office, in consultation with Enterprise Florida, Inc., shall determine whether the designation of the sales tax TIF area complies with the requirements of this chapter.

(4) Upon determining that the designation by the governing body complies with the requirements of this chapter, a copy of the resolution establishing the sales tax TIF area redevelopment district shall be transmitted to the Department of Revenue.

Section 13. Section 290.0138, Florida Statutes, is created to read:

290.0138 Calculation of tax increment revenue contribution to governing body.—

(1) The governing body of a designated sales tax TIF area shall be eligible for a percentage distribution of from the Revenue Sharing Trust Fund for Municipalities 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:

(a) Eighty-five percent of the increased monthly

collections of $85,000 or less.

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

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

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

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

(2) The specific amount payable to each eligible governing body shall be determined monthly by the Department of Revenue for distribution to the appropriate eligible governing body in accordance with subsection (1). The Department of Revenue shall determine monthly the aggregate amount of sales tax revenue that is required for distribution to eligible governing body under this section and 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. All amounts transferred to the Revenue Sharing Trust Fund for Municipalities shall be distributed as provided in s. 218.23(3)(e). At no time shall the total distribution provided to the eligible governing body exceed the total tax increment revenue contribution set forth in the retail project development agreement required pursuant to s. 290.0139.

(3) Each governing body receiving percentage distribution pursuant to the subsection (1) shall establish a separate tax increment revenue account within its general fund for the deposit of the sales tax increment for each sales tax TIF area.

Section 14. Section 290.0139, Florida Statutes, is created

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to read:

290.0139 Retail development project agreement.—

(1) A retail development project developer desiring to use tax increment revenues to underwrite retail development costs shall enter into a retail development project agreement with the governing body of the county or municipality designating a sales tax TIF area. The agreement shall set forth:

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

(b) Requirements for leasing of retail space within the retail development project which will advance the goals and objectives;

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

(d) The total amount of the tax increment revenue to be contributed to pay retail development costs within the sales tax TIF area;

(e) Goals for the hiring of minority business enterprises to perform construction or operations work, which goal shall equal an amount not less than 25 percent of the total amount of tax increment revenue contributed towards the payment of retail development costs within the sales tax TIF area;

(f) Goals for the hiring of enterprise zone residents for the new jobs created by the retail development project, which goal shall equal at least 35 percent of the new jobs created;

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

(h) Such other matters as the governing body designating

the sales tax TIF area may determine to be necessary and appropriate.

(2) Tax increment revenues or bond proceeds may not be advanced to pay retail development costs until such time as the retail development project is open to the general public.

(3) A retail project development agreement shall be approved by resolution of the governing body following a public hearing.

Section 15. Section 290.01391, Florida Statutes, is amended to read:

290.01391 Issuance of tax increment revenue bonds; use of bond proceeds; funding agreement.—

(1) If authorized or approved by resolution of the governing body that designated the sales tax TIF area created the sales tax increment redevelopment district, following a public hearing, tax increment revenues may be used to support the issuance of revenue bonds to finance retail redevelopment costs of a retail development project, including the payment of principal and interest upon any advances for surveys and plans or preliminary loans.

(2) Bonds issued under this section do not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and are not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this section are declared to be issued for an essential public and governmental purpose, and the interest and income from the bonds are exempt from all taxes, except taxes imposed by chapter 220 on corporations.

(3) Bonds issued under this section 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 a premium, be secured in such manner, and have such other characteristics as may be provided by the resolution or ordinance authorizing their issuance. Bonds issued under this section may be sold in such manner, either at public or private sale, and for such price as the designated redevelopment agency may determine will effectuate the purposes of this section.

(4) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this section, any bond that recites in substance that it has been issued by the governing body in connection with the sales tax increment district for a purpose authorized under this section is conclusively presumed to have been issued for that purpose, and any project financed by the bond is conclusively presumed to have been planned and carried out in accordance with the intended purposes of this section.

Section 16. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause

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and insert:

A bill to be entitled

An act relating to revitalizing municipalities; amending s. 212.096, F.S.; conforming a cross-reference; amending s. 212.20, F.S.; providing for the transfer of certain sales tax revenues from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities; amending s. 218.23, F.S.; 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; amending ss. 220.181 and 288.1175, F.S.; conforming cross-references; amending s. 290.004, F.S.; providing definitions; amending s. 290.0056, F.S.; revising provisions relating to the enterprise zone development agency; providing powers of the governing board upon the designation of a sales tax TIF area; amending s. 290.0057, F.S.; revising provisions relating to an enterprise zone development plan to conform to changes made by the act; amending s. 290.007, F.S.; providing an economic incentive within enterprise zones designated as sales tax TIF areas; creating ss. 290.01351, 290.0136, 290.0137, 290.0138, and 290.0139, F.S.; creating the Municipal Revitalization Act; providing legislative intent and purposes; authorizing specified governing bodies to create a sales tax TIF areas within a county or

municipality having a specified population; providing that the governing body for an enterprise zone where a sales tax TIF area is located is eligible for specified percentage distributions of increased state sales tax collections under certain circumstances; requiring the Department of Revenue to determine the amount of increased sales tax collections to be distributed to each eligible designated redevelopment agency and to transfer the aggregate amount due to all such agencies to the Revenue Sharing Trust Fund for Municipalities for distribution; granting specified powers to a governing body for a sales tax TIF area for the purpose of providing financing and fostering certain public and private improvements, including issuing revenue bonds; requiring that an agreement between a designated redevelopment agency and private sponsor of a project include a requirement that a specified number of jobs be created under certain circumstances; amending s. 290.01391, F.S.; providing for the issuance of tax increment revenue bonds and the use of such bonds; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1962
INTRODUCER:	Senator Garcia
SUBJECT:	Revitalizing Municipalities
DATE:	March 28, 2011
REVISED:	

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

I. Summary:

This bill allows municipalities that have a population greater than 250,000 and that are located within an enterprise zone to create sales tax increment redevelopment districts by resolution. It also allows the designated redevelopment agency for the enterprise zone where the sales tax increment redevelopment district is located to share with the state any annual increase in sales tax collections.

The bill states that the sales tax increment redevelopment district shall be eligible for a percentage distribution from the Revenue Sharing Trust Fund for Municipalities 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 in the prior year.

The bill directs the Department of Revenue to determine monthly, the specific amount payable to each designated redevelopment agency and the aggregate amount of sales tax revenue that is required for distribution. The bill further directs the Department to transfer that amount from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities.

The bill outlines the powers of the designated redevelopment agency and provides for the use of the distribution of sales tax proceeds under this section, including the issuance of bonds to finance the redevelopment of the sales tax increment redevelopment district.

This bill substantially amends sections 212.20 and 218.23 of the Florida Statutes.

This bill creates section 290.017 of the Florida Statutes.

II. Present Situation:

Municipal Revenue Sharing Program[1]
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. This Act also created the Revenue Sharing Trust Fund for Municipalities. Currently the trust fund receives:

- 1.3409 percent of sales and use tax collections = 70.98 percent of total Program funding.[2]
- The net collections from the one-cent municipal fuel tax on motor fuel = 29.01 percent of total Program funding.[3]
- 12.5 percent of the state alternative fuel user decal fee collections = 0.01 percent of total Program funding.[4]

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 Municipal Revenue Sharing Program (Program) is administered by the Department of Revenue (DOR). Monthly distributions shall be made under this program 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 Revenue Sharing Trust Fund (Trust Fund).

Once each fiscal year, the DOR shall compute apportionment factors for use during the fiscal year.[5] The computation shall be made prior to July 25 of each fiscal year and shall be based upon information submitted and certified to the DOR prior to June 1 of each year. Except in the case of error, the apportionment factors shall 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 the DOR in a timely manner.

A local government's failure to provide timely information authorizes the 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 shall waive its right to challenge the DOR's determination as to the jurisdiction's share of program revenues.

Eligibility to Participate in Revenue Sharing Program
In order to be eligible to participate in revenue sharing beyond the minimum entitlement in any

[1] The information in the Present Situation Section of this bill analysis was obtained from the 2010 Local Government Financial Information Handbook. *See* Florida Legislature, Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, at 85-91 (Oct. 2010) (on file with the Senate Committee on Community Affairs). Available online at http://edr.state.fl.us/Content/local-government/reports/lgfih10.pdf (last visited March 28, 2011).
[2] *Id.* citing s. 212.20(6)(d)5., F.S.
[3] *Id.* citing s. 206.605(1), F.S.
[4] *Id.* citing s. 206.879(1), F.S.
[5] *Id.* citing s. 218.26, F.S.

fiscal year, a municipal government must have satisfied a number of statutory requirements outlined in subsection (1) of s. 218.23, F.S.[6] As it relates to municipal revenue sharing, s. 218.21(7), F.S., defines "minimum entitlement" as:

> the amount of revenue, as certified by the municipal government and determined by the Department of Revenue (DOR), which must be shared with the municipality so that the municipality will receive the amount of revenue necessary to meet its obligations as the result of pledges, assignments, or trusts entered into which obligated funds received from revenue sources or proceeds distributed out of the Trust Fund.

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.[7]
- *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 no unit of local government receives less than its 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.[8]
- Fifth- Any remaining Trust Fund monies shall be distributed to eligible units of local government that qualify to receive additional monies beyond the guaranteed entitlement in proportion to the total remainder.

A.) Distributions under s. 212.20(6)(d)5. F.S. [9] **—** Section 212.20(6), F.S., provides for the distribution of sales and use tax proceeds and communication services tax proceeds. Under Florida law, funds are first distributed under the requirements of s. 212.20(6)(a)-(d)4., F.S., then 1.3409% of the remaining proceeds are transferred to

[6] *Id.* citing s. 218.23(1)(a)-(f), F.S.
[7] *See* definition for "guaranteed entitlement" in s. 218.21(6), F.S.
[8] *See* definition for "minimum entitlement" in s. 218.21(7), F.S.
[9] Ch.2000-355, Laws of Fla. ". . . restructured the Municipal Revenue Sharing Program by transferring the portions of cigarette tax that previously funded the former Municipal Financial Assistance Trust Fund and Revenue Sharing Trust Fund for Municipalities to the state's General Revenue Fund and provided for a separate distribution from state and sales taxes to the Revenue Sharing Trust Fund for Municipalities." *See* Florida Legislature, Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK supra, note 1, at 88.

the Revenue Sharing Trust Fund for Municipalities under subparagraph 212.20(6)(d)5., F.S.,[10] which provides that:

> If the total revenue to be distributed is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

B.) Distributions under s. 218.245(3).F.S.— Chapter 2003-402, Laws of Florida reduced the proportion of state sales and use tax transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and Revenue Sharing Trust Fund for counties and increased the proportion of state sales and use taxes transferred to the Revenue Sharing Trust Fund for Municipalities to offset the losses from the Local Government Half-cent Sales Tax Reduction. One year later, through ch. 2004-265, Laws of Florida, the Legislature created subsection (3) in s. 218.245, F.S., to provide that increases to individual municipalities resulting from the increased share of state sales and use taxes transferred to the Revenue Sharing Trust Fund for Municipalities shall be distributed in proportion to their respective loss from the Local Government Half-cent Sales Tax Program.

Each eligible local government's allocation shall be based on the amount it received from the Local Government Half-cent Sales Tax Program under s. 218.61, F.S., in the prior state fiscal year divided by the total receipts under the same authority in the prior state fiscal year for all eligible local governments provided, however, for the purpose of calculating this distribution, the amount received in the prior state fiscal year by a consolidated unit of local government (i.e., City of Jacksonville/Duval County) shall be reduced by 50 percent for such local government and for the total receipts. For eligible municipalities that began participating in this allocation in the previous state fiscal year, their annual receipts shall be calculated by dividing their actual receipts by the number of months they participated, and the results multiplied by 12.

[10] Department of Revenue, *SB 1962 Agency Analysis*, at 2 (March 25, 2011) (on file with the Senate Committee on Community Affairs).

Apportionment Factor

An "apportionment factor" is calculated for each eligible municipality using a formula consisting of the following equally weighted factors: adjusted municipal population, the derived municipal sales tax collections, and the municipality's ability to raise revenue.[11]

A.) Adjusted Municipal Population.— The adjusted municipal population factor is calculated by multiplying a given municipality's population by the appropriate adjustment factor and dividing that product by the total adjusted statewide municipal population. Depending on the municipality's population, one of the following adjustment factors is used:

Population Class	Adjustment Factor
0- 2,000	1.0
2,001 - 5,000	1.135
5,001 - 20,000	1.425
20,001 - 50,000	1.709
Over 50,000	1.791

Inmates and residents residing in institutions operated by the federal government as well as the Florida Departments of Corrections, Health, and Children and Family Services are not considered to be residents of the county in which the institutions are located for the purpose of calculating the distribution proportions.[12]

B.) Derived Municipal Sales Tax Collections.— In order to calculate the municipal sales tax collection factor, it is first necessary to allocate a share of the sales tax collected within a county to each of its respective municipalities. This allocation is derived on the basis of population. First, the municipality's population is divided by the total countywide population. Second, the resulting quotient is multiplied by the countywide sales tax collections to determine the sales tax collected within a given municipality. The municipal sales tax collection factor is then calculated by dividing the sales tax collected within a given municipality by the total sales tax collected within all eligible municipalities in the state.

C.) Municipality's Relative Ability to Raise Revenue.— The municipality's relative ability to raise revenue is determined by a three-step process involving a series of calculations. First, the per capita taxable real and personal property valuation of all eligible municipalities in the state is divided by the per capita taxable real and personal property valuation of a given municipality. Second, a given municipality's quotient, as calculated in the first step, is multiplied by the municipality's population. For discussion purposes, this product is referred to as the recalculated population. Third, a given municipality's recalculated population is divided by the total recalculated population of all eligible municipalities in the state. This quotient represents the municipality's relative ability to raise revenue factor.

[11] Section 218.245(2), F.S.
[12] Section 186.901, F.S.

D.) Adjustment for a Metropolitan or Consolidated Government.— For a metropolitan or consolidated government, as provided in Article VIII, sections 3, and 6(e) or (f) of the Florida Constitution (i.e., Miami-Dade County and City of Jacksonville-Duval County), the factors are further adjusted by multiplying the adjusted or recalculated population or sales tax collections, as the case may be, by a percentage that is derived by dividing the total amount of ad valorem taxes levied by the county government on real and personal property in the area of the county outside of municipal limits or urban service district limits by the total amount of ad valorem taxes levied on real and personal property by the county and municipal governments.[13]

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.

According to the DOR, municipalities may assume that 29.01 percent of their estimated 2011 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 those transportation-related purposes specifically mentioned in the preceding paragraph.

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.[14] 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.[15] Consequently, it is possible that some portion of a municipality's growth monies will become available as a pledge for bonded indebtedness.

According to the Florida Department of Revenue, the following is the estimated statewide distributions to municipal governments under the Municipal Revenue Sharing Program for the 2011 Fiscal Year:[16]

[13] Section 218.245(2)(d), F.S.
[14] Section 218.25(1), F.S.
[15] Section 218.25(4), F.S
[16] Florida Legislature, Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, at 98 (Oct. 2010) (on file with the Senate Committee on Community Affairs). Available online at http://edr.state.fl.us/Content/local-government/reports/lgfih10.pdf (last visited March 28, 2011).

	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	$122,178,265	$18,588,385	$44,200,000	$309,650,014

Florida Enterprise Zone Act

The Florida Legislature created the Florida Enterprise Zone Program in 1982 to encourage economic development in economically depressed areas of the state by providing incentives to induce private investments in such areas. Located in ss. 290.001-290.016, F.S., the Florida Enterprise Zone Act, seeks to revitalize and redevelop severely distressed areas throughout the state by providing "investments, tax incentives and local government regulatory relief to encourage businesses to invest and locate in designated zones and residents to improve their property."[17] The Legislature requires enterprise zones to meet several criteria before being created. As of January 2011, there were 59 enterprise zones through the state: 29 urban and 30 rural.

III. Effect of Proposed Changes:

Section 1 amends subparagraph 212.20(6)(d)5., F.S., to state that the amounts required under s. 290.017(3), as created in this bill, shall also be distributed monthly to the Revenue Sharing Trust Fund for Municipalities.

Section 2 creates paragraph 218.23(3)(e), F.S., relating to the distribution formula, to require distributions to municipalities that have a sales tax increment redevelopment district under s. 290.017, F.S., prior to the final adjustment. The distributions shall be made to the appropriate designated redevelopment agency eligible for distribution under s. 290.017, F.S.

Section 3 creates s. 290.017, F.S., to authorize the creation, by local resolution, of sales tax increment redevelopment districts within municipalities that have a population greater than 250,000 and that are located within a designated enterprise zone, and to allow the designated redevelopment agency for the enterprise zone where the sales tax increment redevelopment district is located to share with the state any annual increase in sales tax collections. Using the data provided by the Office of Economic and Demographic Research, as of April 2010, three municipalities had a population over 250,000 and have designated one or more enterprise zones: Jacksonville, Miami, and Tampa.[18]

[17] Office of Program Policy Analysis and Gov't Accountability (OPPAGA),Florida Legislature, *Few Businesses Take Advantage of Enterprise Zone Benefits; the Legislature Could Consider Several Options to Modify the Program*, at 1, Report No. 11-01(Jan. 2011), available online at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1101rpt.pdf (last visited on April 1, 2011).

[18] Office of Economic and Demographic Research, *Florida Population by County and Municipality* available online at http://edr.state.fl.us/Content/population-demographics/data/Population-city-county.pdf (last visited on April 1, 2011). **Note**, As of April 2010, St. Petersburg had a population of 246,378 and Orlando had a population of 233,160, it is unknown whether these cities will break the 250,000 population threshold in the April 2011 data.

Legislative Intent
The Legislative intent is to improve the economic conditions within the enterprise zone, particularly within the economically depressed area of a municipality that comprises a sales tax increment redevelopment district and to provide local financing for public and private improvements that will foster job growth and enhance the commercial base of local merchants.

Distribution Percentage
The designated redevelopment agency is eligible for distribution from the Revenue Sharing Trust Fund for Municipalities in the amount of the increased state sales tax collections realized during any month by the municipality over the same monthly period in the prior year as follows:

- 85% of the increase in collections of less than $1 million.
- 75% of the increased collections of $1 million or more, but less than $5 million.
- 50% of the increased collections of $5 million or more, but less than $8 million.
- 25% of the increased collections of $8 million or more, but less than $12 million.
- 0% of the increased collections of $12 million or more.

Department of Revenue Duties
The bill requires the Department of Revenue to determine monthly, the specific amount payable to each eligible designated redevelopment agency 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, in accordance with s. 212.20(6)(d)5., F.S., created in this bill. All amounts transferred must be distributed as provided in s. 218.23(3)(e), F.S., created in this bill.

Designated Redevelopment Agency Powers
The bill outlines the powers of the designated redevelopment agency, which shall be empowered to:

- Enter into cooperative contracts and agreements with a county, municipality, governmental agency, or private entity for services and assistance.
- Acquire, own, convey, construct, maintain, improve, and manage property and facilities, and grant and acquire licenses, easements, and options with respect to such property.
- Accept grants and donations of property, labor, or other things of value from any public or private source.
- Control the expenditure of funds legally available to it, subject to limitations imposed by law or any valid agreement or contract.
- Promote and advertise the commercial advantages of the district in order to attract new businesses and encourage the expansion of existing businesses.
- Promote and advertise the district to the public and engage in cooperative advertising programs with businesses located in the district.
- Identify areas with blighted influences and develop programs for remediating such influences.
- Issue bonds subject to authorization or approval by resolution or ordinance of the governing body that created the sales tax increment redevelopment district.

Issuance of Bonds
The bill also authorizes the designated redevelopment agency, if authorized or approved by resolution or ordinance of the government body, to use the distribution of sales tax proceeds provided for under this section for the purpose of issued revenue bonds to finance redevelopment of the district, including the payment of principal and interest upon any advances for surveys and plans or preliminary loans. Such bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and are not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. The bonds are to be issued for an essential public and governmental purpose, and the interest and income from the bonds are exempt from all taxes, except the corporate income tax in ch. 220, F.S.

Bonds issued under this paragraph 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 redevelopment agency may determine will effectuate the purposes of this section.

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 designated redevelopment agency in connection with the sales tax increment redevelopment district 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.

Expenditures that Directly Benefit Privately Sponsored Projects
The expenditure of any sales tax proceeds that directly benefit a privately sponsored project in a designated enterprise zone or in a sales tax increment redevelopment district must be contingent upon a negotiated development agreement between the private sponsor and the applicable redevelopment agency which includes a binding term requiring the creation of no fewer than 500 full-time jobs.

Section 4 provides that this act shall take effect on July 1, 2011.

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 sales tax increment redevelopment district 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 designated redevelopment agencies as provided in the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Any increase in sales tax collections shared by a sales tax increment redevelopment district will be transferred from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities and distributed to eligible designated redevelopment agencies in an amount determined by the Department of Revenue.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Municipalities that have a population greater than 250,000 and that are located within a designated enterprise zone will be authorized to create a sales tax increment redevelopment district by resolution. The designated redevelopment agency of such district is granted certain powers, including the power to issue bonds to finance the redevelopment of the sales tax increment redevelopment district.

The Department of Revenue will be required to determine monthly, the specific amount payable to each designated redevelopment agency 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)

VI. Technical Deficiencies:

The semicolon on line 255 of the bill should be changed to a period in order to be consistent with the other provisions under subsection 4 of s. 290.017, F.S., in the bill.

VII. Related Issues:

The Department of Revenue has articulated that it "does not collect tax information at a boundary level lower than a county (within a city or within an enterprise zone)." The Department further emphasizes that "based on the current sales tax reporting system, the Department does not collect the tax information necessary to calculate the 'increased sales tax collections' within a municipality as proposed in the bill and is unable to make the proposed distribution to the sales tax increment redevelopment zone agency."[19] The Department provides that this issue cannot be resolved through rulemaking and can only be resolved by amending the bill.[20]

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.

[19] Department of Revenue, *SB 1962 Agency Analysis*, at 4 (March 25, 2011) (on file with the Senate Committee on Community Affairs).
[20] *Id.*

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 1408
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Public Meetings
DATE:	March 29, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			GO	
3.			JU	
4.				
5.				
6.				

I. Summary:

This bill expands a public meetings exemption for boards and specified officials to meet with their entity's attorney to discuss pending litigation to include a public employee or agent who possesses relevant information needed by the entity's attorney. It also changes the content of the meeting with the attorney to cover "advice" rather than "settlement negotiations or strategy sessions."

This exemption is subject to legislative review and repeal under the Open Government Sunset Review Act.

Since this bill creates a new public meetings exemption, it requires a two-thirds vote of the membership of each house of the Legislature for passage.

This bill substantially amends section 286.011 of the Florida Statutes.

II. Present Situation:

Public Meetings

Article I, section 24(b) of the Florida Constitution and s. 286.011, F.S., the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken. No

resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.[1]

Although the Florida Constitution provides that records and meetings are to be open to the public, it also provides the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Currently, there are approximately 90 exemptions to the open meetings law and more than 970 exemptions to the public records law.[2] Article I, section 24(c) of the Florida Constitution governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of public necessity justifying the exemption. Further, the constitution provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Under article I, Section 24(b), all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, is subject to the open meetings law. Section 286.011, F.S., provides that meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision are subject to the open meeting laws.

Open Government Sunset Review Act

The Open Government Sunset Review Act[3] provides for the review and repeal of any public records or meetings exemptions that is created or substantially amended in 1996 and subsequently. The act defines the term "substantial amendment" for purposes of triggering a review and repeal of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings, as well as records. The law clarifies an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.[4] The law was amended by chapter 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review process.

Under the Open Government Sunset Review Act, an exemption may be created, revised, or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;

[1] Section 286.011, F.S.
[2] Florida Commission on Open Government Reform, *Reforming Florida's Open Government Laws in the 21st Century*, 3 and 5 (Final Report, January 2009), *available at* http://www.flgov.com/og_commission_home (last visited Mar. 29, 2010).
[3] Section 119.15, F.S.
[4] Section 119.15(4)(b), F.S.

- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.[5]

Under s. 119.15, F.S., any exemption to the open meetings law or public records law is automatically repealed five years after it is enacted or substantially amended, unless it is reenacted by the Legislature after the review. If an exemption is reenacted during the five-year review, it is no longer required to be subject to the Open Government Sunset Review Act.

Under s. 119.15(8), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment. Further, one session of the Legislature may not bind a future Legislature. As a result, a new session of the Legislature could maintain an exemption that does not meet the standards set forth in the Open Government Sunset Review Act of 1995.

Attorney-Client Meetings

In the absence of a legislative exemption, discussions between a public board and its attorney are subject to s. 286.011, F.S.[6]

Current law provides a public meeting exemption for certain discussions by any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity. Such board or commission and the chief administrative or executive officer may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency. The exemption afforded by this provision for "pending litigation" does not apply when no lawsuit has been filed even though the

[5] Section 119.15(6)(b), F.S.

[6] *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985) (s. 90.502, F.S., which provides for the confidentiality of attorney-client communications under the Florida Evidence Code, does not create an exemption for attorney-client communications at public meetings; application of the Sunshine Law to the discussions of a public commission with its attorney does not usurp the constitutional authority of the Supreme Court to regulate the practice of law, nor is it at odds with Florida Bar rules providing for attorney-client confidentiality). *Cf.*, s. 90.502(6), F.S., stating that a discussion or activity that is not a meeting for purposes of s. 286.011, F.S., shall not be construed to waive the attorney-client privilege. *And see, Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978), stating that all decisions taken by legal counsel to a public board need not be made or approved by the board; thus, the decision to appeal made by legal counsel after private discussions with the individual members of the board did not violate s. 286.011, F.S.

parties involved believe litigation is inevitable.[7] This exception must be strictly construed; "substantial compliance" with the statutorily specified conditions is insufficient.[8] Additionally, the following conditions are met:

- The attorney must advise the entity at a public meeting that he or she desires advice concerning the litigation.
- The subject matter of the meeting must be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- The entire closed session must be recorded by a certified court reporter, including the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking.[9]
- The entity must give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session must commence at an open meeting at which the persons chairing the meeting must announce the commencement and estimated length of the attorney-client session and the names of the persons attending.[10]
- The transcript must be made part of the public record upon conclusion of the litigation.[11]

Only the entity, the entity's attorney, the chief administrative officer of the entity, and the court reporter are authorized to attend a closed attorney-client session. Other staff members or consultants are not allowed to be present.[12] However, because the entity's attorney is permitted to attend the closed session, if the entity hires outside counsel to represent it in pending litigation, both the entity's attorney and the litigation attorney may attend a closed session.[13]

Finally, qualified interpreters for the deaf are treated by the Americans with Disabilities Act as auxiliary aids in the nature of hearing aids and other assistive devices and may attend litigation strategy meetings of a board or commission to interpret for a deaf board member without violating s. 286.011(8), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 286.011, F.S., to expand a public meetings exemption for boards and specified officials to meet with their entity's attorney to discuss pending litigation to include a public employee or agent who possesses relevant information needed by the entity's attorney. It also changes the content of the meeting with the attorney to cover "advice" rather than

[7] Op. Att'y Gen. Fla. 98-21 (1998).
[8] *City of Dunnellon v. Aran*, 662 So. 2d 1026 (Fla. 5th DCA 1995).
[9] The court reporter's notes must be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
[10] At the conclusion of the attorney-client session, the meeting must be reopened and the person chairing the meeting must announce the termination of the session.
[11] Section 286.011(8), F.S.
[12] *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d at 101. *And see, Zorc v. City of Vero Beach*, 722 So. 2d 891, 898 (Fla. 4th DCA 1998), *review denied*, 735 So. 2d 1284 (Fla. 1999) (city charter provision requiring that city clerk attend all council meetings does not authorize clerk to attend closed attorney-client session; municipality may not authorize what the Legislature has expressly forbidden); and Attorney General Opinion 01-10 (clerk of court not authorized to attend).
[13] Attorney General Opinion 98-06. *And see, Zorc v. City of Vero Beach*, 722 So. 2d at 898 (attendance of Special Counsel authorized).

"settlement negotiations or strategy sessions." This subsection is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 presents a statement of public need as required by the Florida Constitution. Specifically, allowing government employees or agents to attend meetings with the government's attorney will allow the government entity to fully explore the facts of the case, obtain the best possible legal advice, and make better-informed decisions with respect to pending litigation. The Legislature also finds that this measure will ensure fair treatment of a public body as part of the judicial and administrative process.

Section 3 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Vote Requirement: Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Subject Requirement: Section 24(c), Art. I of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

Public Necessity Statement: Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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 1788
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Bicycle Regulations
DATE:	March 28, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	**Favorable**
2.	Wood	Yeatman	CA	**Pre-meeting**
3.			HR	
4.				
5.				
6.				

I. Summary:

This bill removes the requirement to keep at least one hand on a handlebar while operating a bicycle. In addition, this bill renumbers cross-references to conform to the amendment incorporated into ss. 316.2065 and 322.27, F.S.

This bill substantially amends ss. 316.2065 and 322.27 of the Florida Statutes.:

II. Present Situation:

Section 316.2065(7), F.S., specifies that operators of a bicycle must keep at least one hand upon the handlebars. Violators of this section are subject to a general civil traffic violation for pedestrian/bicycle infractions. The base fine is $15 plus $8.50 in required fees. Other fees depend upon the county in which the violation occurs, either because only certain counties are eligible to assess the fee by statute or because the option and amount is determined by ordinance.[1] The total cost of the violation generally varies between $56.50 and $82.50.[2]

Pedestrian and bicycle infractions overall accounted for 16,792 of the 4.9 million tickets issued statewide in 2009. It is unknown how many, if any, were issued for not having at least one hand

[1] These fees are authorized by ss. 318.1215, 318.18, 938.15, and 938.19, F.S.

[2] Florida Association of Court Clerks and Comptrollers, *Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs, and Fines Effective July 2010*, 15 (July 24, 2010), http://www.flclerks.com/Pub_info/2010_Pub_Info/2010_Distribution_Schedule_of_Court_Related_Funds_FACC_0610FINAL.pdf (last visited Mar. 11, 2011)

on the handlebar while operating a bicycle. No specific statistics are kept as to the distribution of these infractions, but this infraction is believed to be a very small percentage.[3]

III. Effect of Proposed Changes:

Section 1 removes the requirement for having at least one hand on the handlebars when operating a bicycle as specified in s. 316.2065(7), F.S. The section also renumbers subsections (8) through (20), F.S., and cross-references contained therein. According to the Florida Department of Transportation (FDOT) it is unsafe not to keep at least one hand on the handlebars when riding a bicycle. Because this regulatory change may disincentivise the safe operation of bicycles by some users, the FDOT believes it could result in an increased number of injuries due to bicycle accidents and an increase in related personal injury costs and possibly litigation costs.[4] The Florida Department of Highway Safety and Motor Vehicles (HSMV) likewise believes that the change "will result in bicycles being operated in a less safe manner, which could increase bicycle accidents."[5]

Section 2 amends cross-references in s. 322.27, F.S., to reflect the renumbering of s. 316.2065(7) done in Section 1.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[3] Conversation with Richard Mechlin, Florida Highway Patrol (Mar. 29, 2011).
[4] E-mail from Cindy Price, Florida Department of Transportation, to Shirlyne Everette, Senate Transportation Committee (Mar. 15, 2011) (on file with the Senate Committee on Community Affairs).
[5] Department of Highway Safety and Motor Vehicles, *Senate Bill 788 Bill Analysis* (Feb. 3, 2011) (on file with the Senate Committee on Community Affairs).

B. Private Sector Impact:

According to both FDOT[6] and HSMV[7], costs due to personal injury may increase by an unquantified amount. The FDOT also expressed concerns about resulting litigation.

C. Government Sector Impact:

The HSMV states that local governments may see additional costs for increased emergency medical services if bicycle-related accidents increase.[8]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[6] E-mail from Cindy Price, Florida Department of Transportation, to Shirlyne Everette, Senate Transportation Committee (Mar. 15, 2011) (on file with the Senate Committee on Community Affairs).
[7] Department of Highway Safety and Motor Vehicles, *Senate Bill 788 Bill Analysis* (Feb. 3, 2011) (on file with the Senate Committee on Community Affairs).
[8] *Id.*

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 1564
INTRODUCER:	Senator Fasano
SUBJECT:	Special Election
DATE:	March 25, 2011
REVISED:	

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

I. Summary:

This bill provides for a special election to be held on the date of the presidential primary in 2012 for statewide elector approval or rejection of the amendments to the Florida Constitution proposed in Senate Joint Resolution (SJR) 658 or House Joint Resolution (HJR) 381.

This bill will require approval by a three-fourths vote by the membership of each house of the Legislature and adoption of SJR 658 or HJR 381 by both houses of the Legislature for passage.

This bill creates an undesignated section of law.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

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

B.) Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[3] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.[4] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[5] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[6] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[7] Certain working waterfront property is assessed based upon the property's current use.[8]

C.) Additional Assessment Limitations

Sections 4(g) and (h), Article VII, of the Florida Constitution, were created in January 2008, when Florida electors voted to provide an assessment limitation for residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units **must** be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature **may** provide that such property shall be assessed at just value after a change of ownership or control.[9]

Article XII, section 27 of the Florida Constitution, provides that the amendments creating a limitation on annual assessment increases in subsections (f) and (g) are repealed effective January 1, 2019, and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

D.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[10]

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[2] The constitutional provisions in article VII, section 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[3] FLA. CONST. art. VII, s. 4(a).
[4] FLA. CONST. art. VII, s. 4(c).
[5] FLA. CONST. art. VII, s. 4(e).
[6] FLA. CONST. art. VII, s. 4(f).
[7] FLA. CONST. art. VII, s. 4(i).
[8] FLA. CONST. art. VII, s. 4(j).
[9] FLA. CONST. art. VII, s. 4(g) and (h).
[10] FLA. CONST. art. VII, ss. 3 and 6.

Homestead Exemption

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

Additional Homestead Exemption, Amendment 3 Proposed for 2010 Ballot *(2009 SJR 532)*

In 2009, the Legislature passed SJR 532 which was scheduled to go before the voters as Amendment 3 on the November 2010 ballot. The proposed amendment 3 sought to reduce the annual assessment limitation from 10 to 5 percent annually and to provide an additional homestead exemption for "a person or persons" who have not owned a principal residence in the previous *eight* years that is equal to *25 percent* of the just value of the homestead in the first year for all levies, up to *$100,000*. The amount of the additional homestead exemption decreases by 20 percent of the initial exemption each succeeding five years until it is no longer available in the sixth and subsequent years.[11]

However, in August 2010, the Florida Supreme Court removed Amendment 3 from the 2010 Ballot, on the grounds that the ballot title and summary were misleading and failed to comply with the constitutional accuracy requirement implicitly provided in Art. XI, section 5(a) of the Florida Constitution.[12] The Court stated that the accuracy requirement is implicitly indicated in section 5(a) through the statement that the proposed amendment "shall be submitted to the electors at the next general election." Specifically, the Court stated that:

> Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.[13]

The Court further stated that the accuracy requirement is codified in Florida Statutes in s. 106.161(1), F.S., which in part provides that:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . .

In determining whether a ballot title and summary are in compliance with the accuracy requirement, courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public'."[14]

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[11] Fla. CS for SJR 532, 1st Eng. (2009) (Senator Lynn and others).
[12] *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010).
[13] *Id.* at 657, citing *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (further reiterating that the accuracy requirement is codified in s. 106.161(1), F.S. (2009)).
[14] *Id.* at 659, citing *Florida Dep't of State v. Slough,* 992 So. 2d 142, 147 (Fla. 2008).

Based on this test, the Florida Supreme Court determined that the ballot title and summary for Amendment 3 were "neither accurate nor informative" and "are confusing to the average voter."[15] The Court supported its holding based on the following:

- Neither the title nor the summary provided notice that the additional exemption is only available for properties purchased on or after January 1, 2010. Stating that the "lack of an effective date renders it impossible for a voter to know which homeowners would qualify for the exemption."[16]
- The term "new homestead owners" in the title coupled with "first-time homestead" in the summary is ambiguous as it conveys the message that to be eligible for the additional exemption, the property owner must have both not owned a principal residence during the preceding eight years *and* have never previously declared the property homestead.[17]
- The use of both the terms "principal residence" and "first-time homestead" in the ballot title and summary is misleading.[18]
- There is a material omission in the ballot title and summary, as they fail to "note that the additional exemption is not available to a person whose spouse has owned a principal residence in the preceding eight years."[19]

2011 Regular Session: Senate Joint Resolution 658 and House Joint Resolution 381

A.) Senate Joint Resolution 658

Senate Joint Resolution (SJR) 658 proposes an amendment to Article VII, section 4 of the Florida Constitution, to prohibit increases in the assessed value of homestead property if the just value of the property decreases, and reduces the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 3 percent.[20]

SJR 658 also proposes an amendment to Article VII, section 6 of the Florida Constitution, to create an additional homestead exemption for specified homestead owners. This amendment allows individuals that are entitled to a homestead exemption under s. 6(a), Art. VII of the Florida Constitution, that have not previously received a homestead exemption in the past three calendar years to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property up to $200,000 for a period of five years or until the property is sold. The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies.[21]

B.) House Joint Resolution 381[22]

HJR 381 makes similar amendments to sections 4 and 6 of Article VII, of the Florida Constitution. However, the recapture provision in HJR 381 is permissive and it also applies to certain non-homestead properties that are addressed in Article VII, section 4 (g) and (h), of the

[15] *Id.* at 657 and 660.
[16] *Id.*
[17] *Id.*
[18] *Roberts*, at 657 and 660.
[19] *Id.* at 657 and 661.
[20] *See* CS/SJR 658 (2011 Regular Session).
[21] *Id.*
[22] *See* CS/CS/CS HJR 381 (2011 Regular Session).

Florida Constitution. HJR 381 proposes to remove language in the constitution which would have repealed subsections (f) and (g) of Section 4 of Art. VII, effective January 1, 2019.

HJR 381 also provides different effective dates for the proposed constitutional amendments.

- Amendments to Article VII, section 4 of the Florida Constitution, prohibiting increases in the assessed value of homestead property if the just value of the property decreases and reducing the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 3 percent.
    - SJR 658: takes effect January 1 2013.
    - HJR 381: bifurcates the effective date
        - If submitted to the electors at a special election on the date of the 2012 presidential primary, it shall take effect upon elector approval and operate retroactively to January 1, 2012.
        - If submitted to the electors at the 2012 general election, it shall take effect on January 1, 2013.
- The amendment to Article VII, section 6 of the Florida Constitution, providing an additional homestead exemption for homestead property owners who have not owned homestead property in the previous three calendar years.
    - SJR 658: applies to properties purchased on or after January 1, 2012, and takes effect January 1, 2013.
    - HJR 381: bifurcates the effective date
        - If submitted to the electors at a special election on the date of the 2012 presidential primary, it shall apply to properties purchased on or after January 1, 2011, and shall take effect upon approval by the electors and operate retroactively to January 1, 2012.
        - If submitted to the electors at the 2012 general election, it shall apply to properties purchased on or after January 1, 2012, and shall take effect January 1, 2013.

Constitutional Amendments

Section 5, Art. XI, of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. To submit the joint resolution at an earlier special election, the Legislature must adopt a separate legislation indicating for such special election that must be passed by a three-fourths vote of the membership of each house of the Legislature. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held 90 days after filing for that purpose.

Section 5(d), Art. XI, of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

Section 5(e), Art. XI, of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

Special Elections and Primaries

Article XI, Section 5(a), of the Florida Constitution allows the Legislature to submit a joint resolution "at an earlier special election pursuant to a law that is enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision."

Section 100.101(3), F.S., allows for a special election or special primary election "if it is necessary to elect presidential electors, by reason of the offices of the President and Vice President both having become vacant." All laws applicable to general elections shall be applicable to special elections or special primary elections.[23] "The Department of State shall verify the expenses of each special election and each special primary election and authorize payment for reimbursement to each county affected."[24]

III. Effect of Proposed Changes:

Section 1 provides for a special election to be held on the date of the presidential primary in 2012, pursuant to Article XI, section 5 of the Florida Constitution, to submit for state elector approval or rejection, the amendments to the State Constitution proposed in Senate Joint Resolution 658 or House Joint Resolution 381.

The special election shall be held concurrently with other statewide elections held on that day.

Section 2 requires publication of notice be provided in accordance with Article XI, section 5 of the Florida Constitution, and that the special election be held as other special elections are held.

Section 3 appropriates $560,000 in nonrecurring funds from the General Revenue Fund to the Department of State for the 2011-2012 Fiscal Year for the purpose of advertising the constitutional amendments being submitted to the electors of this state at the special election called by this Act.

Section 4 provides that this act shall take effect upon becoming law if enacted by a vote of at least three-fourths of the membership of each house of the Legislature and if Senate Joint Resolution 658 or House Joint Resolution 381 is adopted by both houses of the Legislature.

[23] Section 100.191, F.S.
[24] Section 100.102, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill seeks to implement the proposed constitutional amendments to sections 4 and 6 of Article VII of the Florida Constitution, contained in SJR 658 or HJR 658, 2011 Regular Session, subject to voter approval. For these reasons, the bill does not fall under the mandate provisions in Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill appropriates $560,000 in nonrecurring funds from the General Revenue Fund to the Department of State for the 2011-2012 Fiscal Year for the Department to advertise the constitutional amendments being submitted to the electors of this state at the special election called by this Act.

If SJR 658 or HJR 381 is approved by the voters, this bill will provide ad valorem tax relief to specified homestead owners. Owners of specified residential rental and commercial real property will experience further reduction in tax assessments due to the 3 percent assessment limitation. The provisions of this bill, as implemented by either joint resolution, will have an effect on local government revenue.

B. Private Sector Impact:

Special Election
As a result of this bill, electors of the state will be able to vote on the constitutional amendments proposed in SJR 658 or HJR 381 during a special election held concurrent with the 2012 presidential preference primary.

SJR 658 and HJR 381
A.) Assessment Limitation on Homestead Property (Recapture Rule)
If SJR 658 or HJR 381 is approved by the voters, taxes will be reduced for those taxpayers whose homesteads have depreciated but are still assessed at less than just value. The joint resolution will redistribute the tax burden. It may benefit homestead property that has a "Save Our Homes" differential; however, non-homestead and recently established homestead property will pay a larger proportion of the cost of local services. To the extent that local governments do not raise millage rates, taxpayers may experience

a reduction in government and education services due to any reductions in ad valorem tax revenues.

B.) Assessment Limitation on Non-Homestead Property and Residential & Non-Residential Property

If SJR 658 or HJR 381 is approved by the voters, owners of existing residential rental and commercial real property may experience property tax savings and will not see their taxes increase significantly in a single year. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value and will be at a competitive disadvantage compared to older properties with respect to their tax burden.

C.) Additional Homestead Exemption for Specified Homestead Owners

If SJR 658 or HJR 381 is approved by the voters, specified homestead owners will experience temporary reductions in ad valorem taxes. The value of the reduction will decrease by one-fifth each year and will disappear in the sixth year after the homestead is established. During this period, the ad valorem taxes levied on the homestead will increase significantly each year. Other property owners in the taxing jurisdiction will pay higher taxes if the jurisdiction adjusts the millage rate to offset the loss to the tax base.

C. Government Sector Impact:

Constitutional Amendment Publication Costs

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week, preceding the general election.[25] Costs for advertising vary depending upon the length of the amendment. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

This bill appropriates $560,000 in nonrecurring funds from the General Revenue Fund to the Department of State for the 2011-2012 Fiscal Year for the Department to advertise the constitutional amendments being submitted to the electors of this state at the special election called by this Act.

SJR 658 and HJR 381

If SJR 658 or HJR 381 is approved by the voters and the provisions of this bill take effect, local governments may experience a reduction in the ad valorem tax base. The revenue estimating conference adopted an indeterminate negative estimate for SJR 658 and HJR 381 since those amendments would require voter approval.

A.) Assessment Limitation on Homestead Property (Recapture Rule)

The Revenue Estimating Conference has not reviewed the recapture provisions of SJR 658, however when addressing similar legislation on the recapture amendment in

[25] FLA. CONST. art. XI, s. 5(d).

SJR 210 (2011), the Revenue Estimating Conference determined that the fiscal impact on school taxes, should the joint resolution be approved by the voters, would be as follows for :

FY 2013-14	FY 2014-15	Recurring Impact
-$5.0 million	-$8.0 million	-$17.0 million

[26]

The fiscal impact on non-school taxes would be as follows:

FY 2013-14	FY 2014-15	Recurring Impact
-$6.0 million	-$11.0 million	-$18.0 million

[27]

B.) Assessment Limitation on Non-Homestead Property

Should either joint resolution be approved by the Florida voters, the Revenue Estimating Conference has determined that the statewide impact on non-school taxes for reducing the limitation on annual assessment increases for non-homestead property from 10 percent to 3 percent would be as follows:[28]

For the January 1, 2013, effective date (SJR 658):

FY 2013-14	FY 2014-15	FY 2015-16
-$225.0 million	-$526.1 million	-$903.9 million

For the January 1, 2012, effective date (HJR 381):[29]

FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
-$121.6 million	-$326.1 million	-$619.6 million	-$990.9 million

C.) Additional Homestead Exemption for Specified Homestead Owners

Should either joint resolution be approved by the Florida voters, the Revenue Estimating Conference determined that the statewide impact on non-school taxes for the additional homestead exemption for specified homestead owners would be as follows:

For the January 1, 2013, effective date (SJR 658):[30]

FY 2013-14	FY 2014-15	Recurring Impact
-$94.5 million	-$186.5 million	-$344.5 million

[26] Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (Feb. 17, 2011).
[27] Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (Feb. 17, 2011).
[28] Revenue Estimating Conference, *Reduction of annual assessment limitation for non-homestead property from 10% to 3%, HJR 381, SJR 658* (March 14, 2011).
[29] **NOTE:** The Revenue Estimating Conference adopted their fiscal analysis on HJR 381 prior to the amendments to HJR 381 that were adopted on March 29, 2011.
[30] Revenue Estimating Conference, *First-Time Homesteaders part of SJR 658 & HJR 381* (Feb. 20, 2011) (assuming that 40 percent of homesteaders will be first-time homesteaders to account for the definition of first-time homebuyers).

For the January 1, 2012, effective date (HJR 381):[31]

FY 2012-13	FY 2013-14	FY 2014-15	Recurring Impact
-$110.0 million	-$165.1 million	-$221.0 million	-$281.0 million

VI. Technical Deficiencies:

The Department of Revenue recommends replacing the term "fair market value" on lines 9 and 10 in the title of the bill and inserting "just value." The Florida Department of Revenue has stated that the use of different terms could generate a perception that two different things are intended.[32] The Department also states that the term "just value" statutorily includes a deduction for costs of sale and that there is currently an operational and quantitative difference between market value and just value in Florida's property tax system pursuant to ss. 193.011(8) and 192.001(18), F.S.[33]

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[31] Revenue Estimating Conference, *First-Time Homesteaders part of HJR 381* (March 9, 2011) (assuming that 40 percent of homesteaders will be first-time homesteaders to account for the definition of first-time homebuyers). **NOTE:** The Revenue Estimating Conference adopted their fiscal analysis on HJR 381 prior to the amendments to HJR 381 that were adopted on March 29, 2011.
[32] Florida Department of Revenue, *SB 1564 Fiscal Analysis,* at 3 (March 29, 2011)(on file with the Senate Committee on Community Affairs).
[33] *Id.*

933664

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment to Amendment (397918)

Delete line 19
and insert:
distribute each county's share of the funds to nongovernmental, not-for-profit agencies within each county

652510

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment to Amendment (397918)

Delete line 40
and insert:
capital expenditures. However, a maximum of 15 percent of the

635898

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment to Amendment (397918)

Delete line 44
and insert:
3. If no qualified agency applies to receive funds in a county any year, that county's Choose Life funds shall be distributed pro-rata to any qualified agencies that apply and maintain a place of business within a one hundred mile radius of the county seat of such county. If no qualified agencies apply, the funds shall be held by Choose Life, Inc. until a qualified agency under this section applies for the funds.
4.~~3.~~ Each agency that receives such funds must submit an

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 196
INTRODUCER:	Senators Fasano and Evers
SUBJECT:	Choose Life License Plates
DATE:	March 30, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	**Fav/1 amendment**
2.	Wolfgang	Yeatman	CA	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☐	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☒	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

This bill revises the distribution of funds collected from the sale of "Choose Life" license plates. Instead of returning funds to counties where the plates were sold, the Department of Highway Safety and Motor Vehicles (DHSMV or department) will distribute funds collected to Choose Life, Inc. Choose Life, Inc., will distribute these funds to agencies committed to pregnant women who are making an adoption plan for their children. Finally, this bill allows Choose Life, Inc., to use a maximum of 20 percent of the total funds received annually for administrative expenses.

This bill amends s. 320.08058 of the Florida Statutes.

II. Present Situation:

Section 320.08058(29), F.S., specifies that fees collected should be distributed annually to counties in the ratio that county bears on the total fees collected. According to the DHSMV, in Fiscal Year 2009-10, $682,999 was distributed to participating counties; however, several counties did not participate and a total of $557,451.63 remains undistributed since the program's inception due to lack of existing programs within primarily rural counties.

This statute also specifies that each participating county should distribute the fees to nongovernmental, not-for-profit agencies within the county whose services are limited to counseling and meeting the physical needs of pregnant women who will place their children for adoption. Funds are not to be distributed to any agencies that are associated with abortion or abortion related procedures. Agencies that receive funds must use at least 70 percent of their funds for pregnant women who are placing their children for adoption including expenses related to transportation, clothing, housing, medical care, food, and utilities. Remaining funds must be used for counseling and advertising purposes which promote adoption. Unused funds that exceed 10 percent of the funds received annually by an agency must be returned to the county.

III. Effect of Proposed Changes:

This bill amends s. 320.08058, F.S., to provide the following proposed changes:

- This bill directs the distribution of funds from the sale of "Choose Life" license plates to Choose Life, Inc.
- Choose Life, Inc., will distribute funds to participating nongovernmental, not-for-profit agencies within the State of Florida that assist pregnant women who are making an adoption plan for their children. Funds will be distributed based on an annual DHSMV sales per county report.
- This bill removes the minimum amount of funds used by agencies to provide materials to pregnant women making an adoption plan, and it extends the use of funds to birth mothers for 60 days after delivery.
- The bill provides that Choose Life, Inc., may use a maximum of 20 percent of funds collected annually for administration and promotion of "Choose Life" specialty license plates. Unused funds by agencies that exceed 10 percent of funds collected annually must be returned to Choose Life, Inc.
- By October 1, 2011, all funds collected by DHSMV from the sale of "Choose Life" license plates shall be transferred to Choose Life, Inc. This change will allow the department to distribute the $557,451.63 in funds held due to lack of participating counties.

This bill shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Motor vehicle owners who choose this specialty license plate will continue to pay $20 in additional fees. Choose Life, Inc., will receive fees in lieu of multiple counties; as a result, local private agencies could be impacted by the decisions of Choose Life, Inc., regarding the disbursement of annual use fees.

C. Government Sector Impact:

Programming cost to effect this change will be absorbed within existing funds per the DHSMV agency bill analysis. Since local governments would no longer have the responsibility of fund allocation, there may be a reduction in administrative costs associated with the distribution of "Choose Life" license plate sales funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

Barcode 397918 by Transportation on March 16, 2011:
Agencies that receive the funds collected dispersed through Choose Life, Inc., are to provide pregnant women who are making an adoption plan for their children including, but not limited to, clothing, housing, medical care, food utilities, and transportation.

397918

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/17/2011	.	
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The Committee on Transportation (Storms) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (29) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.—

(29) CHOOSE LIFE LICENSE PLATES.—

(a) The department shall develop a Choose Life license plate as provided in this section. The word “Florida” must appear at the bottom of the plate, and the words “Choose Life”

must appear at the top of the plate.

(b) The annual use fees shall be distributed annually to Choose Life, Inc., along with a report that specifies ~~each county in~~ the ratio that the annual use fees collected by each county bear ~~bears~~ to the total fees collected for the plates within the state. Choose Life, Inc., ~~Each county~~ shall distribute the funds to nongovernmental, not-for-profit agencies that assist ~~within the county, which agencies' services are limited to counseling and meeting the physical needs of~~ pregnant women who are making an adoption plan for their children ~~committed to placing their children for adoption~~. Funds may not be distributed to any agency that is involved or associated with abortion activities, including counseling for or referrals to abortion clinics, providing medical abortion-related procedures, or proabortion advertising, and funds may not be distributed to any agency that charges women for services received.

1. Agencies that receive the funds must use ~~at least 70 percent of~~ the funds to provide for the material needs of pregnant women who are making an adoption plan for their children ~~committed to placing their children for adoption~~, including, but not limited to, clothing, housing, medical care, food, utilities, and transportation. Such funds may also be expended on birth mothers for 60 days after delivery and on infants awaiting placement with adoptive parents.

2. ~~The remaining~~ Funds may also be used for adoption-related ~~adoption,~~ counseling, training, or advertising~~,~~ but may not be used for administrative expenses, legal expenses, or capital expenditures. However, a maximum of 20 percent of the total funds received annually may be used by Choose Life, Inc.,

397918

for the administration and promotion of the Choose Life license plate program.

3. Each agency that receives such funds must submit an annual attestation to Choose Life, Inc. ~~the county.~~ Any unused funds that exceed 10 percent of the funds received by an agency each ~~during its fiscal~~ year must be returned to Choose Life, Inc. ~~the county~~, which shall distribute the funds ~~them~~ to other qualified agencies.

(c) By October 1, 2011, the department and each county shall transfer all of its Choose Life license plate funds to Choose Life, Inc.

Section 2. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to Choose Life license plates; amending s. 320.08058, F.S.; providing for the annual use fees to be distributed to Choose Life, Inc., rather than the counties; providing for Choose Life, Inc., to redistribute a portion of such funds to nongovernmental, not-for-profit agencies that assist certain pregnant women; authorizing Choose Life, Inc., to use a portion of the funds to administer and promote the Choose Life license plate program; providing an effective date.


251036

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/04/2011	.	
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The Committee on Community Affairs (Wise) recommended the following:

Senate Amendment

Delete everything after the enacting clause and insert:

Section 1. Section 125.595, Florida Statutes, is created to read:

125.595 Economic distress flexibility.—

(1) The board of county commissioners of an eligible county may, by a two-thirds vote of the membership of the board, use revenues from distributions of state taxes to the county or from taxes authorized by the Legislature to be imposed by the county for a purpose other than that specified in the law providing for

the distributions or authorizing the imposition of the taxes.

(2) As used in this section, the term "eligible county" means a county that meets two or more of the following criteria, as determined by the Office of Economic and Demographic Research:

(a) The just value of property subject to ad valorem tax as of January 1 was lower than it was on the previous January 1.

(b) The annual per capita personal income of the county for the most recent calendar year was lower than for the prior calendar year.

(c) State sales tax remitted from within the county during the most recent calendar year was less than during the prior calendar year.

(d) The unemployment rate in the county in the previous calendar year was greater than 8 percent.

(3) A county that was included in a major federal disaster or emergency declaration in the previous calendar year shall be considered an eligible county for purposes of this section.

(4) The determination that a county is an eligible county must be made no later than July 1 of each year, and the annual determination of county eligibility must be posted on the Office of Economic and Demographic Research's website. The authority granted under this section may be exercised only one fiscal year at a time.

(5) The authority granted under this section does not apply to revenues that may be used only for a purpose specified in the State Constitution or to revenues from taxes levied with the approval of the voters.

Section 2. This act shall take effect upon becoming a law.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 125.595, Florida Statutes, is created to read:

125.595 Economic distress flexibility.—

(1) The board of county commissioners of an eligible county may, by a two-thirds vote of the membership of the board, use revenues from distributions of state taxes to the county, or from taxes authorized by the Legislature to be imposed by the county, in order to reduce the proposed millage rate for the

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county, notwithstanding other purposes specified in law for the use of those revenues.

(2) As used in this section, the term "eligible county" means a county having a proposed millage rate pursuant to s. 200.065(2)(a) and (b) which is greater than the adopted millage rate for the previous year and which meets three of the following criteria, as determined by the Office of Economic and Demographic Research:

(a) The just value of property subject to ad valorem tax as of January 1 was lower than it was on the previous January 1.

(b) The annual per capita personal income of the county for the most recent calendar year was lower than for the prior calendar year.

(c) State sales tax remitted from within the county during the most recent calendar year was less than during the prior calendar year.

(d) The unemployment rate in the county in the previous calendar year was greater than 8 percent.

(3) A county that was included in a major federal disaster or emergency declaration in the previous calendar year shall be considered an eligible county for purposes of this section.

(4) The determination that a county is an eligible county must be made no later than July 1 of each year, and the annual determination of county eligibility must be posted on the Office of Economic and Demographic Research's website. The authority granted under this section may be exercised only one fiscal year at a time.

(5) The authority granted under this section does not apply to revenues that may be used only for a purpose specified in the


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State Constitution or to revenues from taxes levied with the approval of the voters.

Section 2. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to county government funding; creating s. 125.595, F.S.; providing circumstances under which a board of county commissioners may use certain revenues to reduce the proposed millage rate for ad valorem taxes; defining the term "eligible county"; specifying that county eligibility must be determined annually and exercised for a limited time; prohibiting the use of certain revenues for such purposes; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1432
INTRODUCER:	Senator Fasano
SUBJECT:	County Government Funding
DATE:	March 29, 2011 REVISED:

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

I. Summary:

This bill provides circumstances under which the board of county commissioners of an eligible county may use certain revenues for a purpose other than that specified by law. The bill defines the term "eligible county" and provides that county eligibility must be determined annually and may only be exercised one fiscal year at a time.

The authority granted under this bill does not apply to revenues that may be used only for a purpose specified in the Florida Constitution or to revenues from taxes levied with the approval of the voters.

This bill creates section 125.595 of the Florida Statutes.

II. Present Situation:

Local government revenues stem from three major sources:

- Revenues authorized by the Florida Constitution,
- Revenues based on a local government's Home Rule Authority, and
- Revenues authorized by the Legislature.

Revenues Authorized by the Florida Constitution

Article, VII, section 9 of the Florida Constitution, provides that counties, cities, and special districts may levy ad valorem taxes as provided by law and subject to the following millage limitations:

- Ten mills for county purposes.

- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage rate fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by the voters for special districts.
- A millage of not more than 1 mill for water management purposes in all areas of the state except the northwest portion of the state which is limited to 1/20th of 1 mill (.05).[1]

The Florida Constitution provides two exceptions to the millage caps: one for taxes levied for the payment of bonds and the other for taxes levied for a period not longer than two years when authorized by vote of the electors who are owners of freeholds therein.[2]

County Millages[3]**—** County government millages are composed of four categories of millage rates:

1. County general millage is the non-voted millage rate set by the county's governing body.
2. County debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Article VII, section 12 of the Florida Constitution.
3. County voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Article VII, section 9(b) of the Florida Constitution.
4. County dependent special district millage is set by the municipality's governing body pursuant to s. 200.001(5), F.S., and added to the county's millage to which the district is dependent.

As provided in Article VII, section 9 of the Florida Constitution, a county furnishing municipal services is authorized to levy additional taxes within the limits fixed by general law for municipal purposes through the establishment of a municipal service taxing unit (MSTU).[4] "The creation of the MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a particular municipal-type service or services."[5] Section 200.071(3), F.S., provides that ad valorem taxes levied within such taxing units may be levied up to 10 mills.

Municipal Millages[6]**—** Municipal government millages are composed of four categories of millage rates:

1. Municipal general millage is the non-voted millage rate set by the municipality's governing body.

[1] FLA. CONST. art. VII, s. 9.
[2] *Id.*
[3] The following information was obtained from The Florida Legislature's Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 4 (Oct. 2010) (on file with Senate Committee on Community Affairs) *referencing* s. 200.001(1), F.S.
[4] *Id.* at 4. In determining the difference between an MSTU and a MSBU: an MSTU is used to fund county services derived through taxes whereas an MSBU is used to provide county services funded through service charges or special assessments.
[5] *Id.*
[6] *See* Florida Legislature's Office of Economic and Demographic Research, *supra* note 3, at 5.

2. Municipal debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Article VII, section 12 of the Florida Constitution.
3. Municipal voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Article VII, section 9(b) of the Florida Constitution.
4. Municipal dependent special district millage is set by the municipality's governing body pursuant to s. 200.001(5), F.S., and added to the municipal millage to which the district is dependent and included as municipal millage for the purpose of the ten-mill cap.

The statutory authority for school districts and independent special districts to assess millage is provided in subsections (3) and (4) of s. 200.001, F.S. The statutory authority and the maximum rate at which water management districts may assess millage are provided in s. 373.503, F.S.[7]

Revenues Based on Home Rule Authority

Local governments are granted broad home rule powers under the Florida Constitution.[8] Article VIII, section 1(g), of the Florida Constitution, grants charter counties all powers of local self-government not inconsistent with general law. Similarly, Article VIII, section 2(b) of the Florida Constitution, grants municipalities governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The term "municipal purpose" has been defined very broadly by Florida Courts.[9]

Local government revenues based on home rule authority are typically generated through proprietary fees, regulatory fees, and special assessments.

***Proprietary Fees*—** Proprietary fees are fees that are charged in exchange for a particular government service. Propriety fees are based on the assertion that the local government has the exclusive legal right to impose such fees.[10] Examples of propriety fees include utility fees, user fees, franchise fees, and admissions fees. The imposed fee must be reasonably related to the government-provided privilege or service.

Regulatory Fees[11]**—**Regulatory fees are fees that are imposed pursuant to a local government's police powers. Examples of regulatory fees include building permit fees, impact fees, inspection fees, and storm water fees. Regulatory fees must meet two elements to be valid: the fee must not exceed the regulated activity's cost and shall generally solely apply to the regulated activity's cost for which the fee is imposed.

[7] *See* ss. 200.001 and 373.503, F.S., for more information.
[8] *See also* chapters 125 and 166, F.S.
[9] *See Fla. Dep't of Rev. v. City of Gainesville*, 918 So. 2d 250 (Fla. 2005) (stating that the broad construction of municipal powers remains in force under Article VIII, section 2(b)); *See also City of Boca Raton v. Gidman*, 440 So. 2d 1277 (Fla. 1983*)* (providing funding for a day care is a valid municipal purpose); *See also McLeod v. Orange County*, 645 So. 2d 411 (Fla.1994) (charter county's ordinance imposing municipal utility tax is for a valid municipal purpose).
[10] Florida Legislature's Office of Economic and Demographic Research, *supra* note 3, at 11.
[11] The following information was obtained from the Florida Legislature's Office of Economic and Demographic Research. *See* Florida Legislature's Office of Economic and Demographic Research, *supra* note 3, at 13.

Special Assessments[12]**—**Special assessments are a revenue source that may be used by local governments to fund certain services and maintain capital facilities. Unlike taxes, these assessments are directly linked to a particular service or benefit. Examples of special assessments include fees for garbage disposal, sewer improvements, fire protection, and rescue services.[13] Counties and municipalities have the authority to levy special assessments based on their home rule powers. Special districts derive their authority to levy these assessments through general law or special act**.**

As established in Florida case law, an assessment must meet two requirements in order to be classified as a valid special assessment:

1) The assessment must directly benefit the property, and
2) The assessment must be apportioned fairly and reasonably amongst the beneficiaries of the service.[14]

These special assessments are generally collected on the annual ad valorem tax bills and characterized as a "non-ad valorem assessment" under the statutory procedures in ch. 197, F.S.[15] Section 197.3632(1)(d), F.S., defines a non-ad valorem assessment as "those assessments that are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution."[16]

Revenues Authorized by the Legislature[17]

Local governments also have revenue sources that have been authorized by the Legislature. The Office of Economic and Demographic Research divides these revenue sources into two categories: 1) state-imposed fees or taxes shared with local governments or school districts, or 2) other local revenue sources.

State-Shared Revenues**—**Generally, state revenue programs allocate all or some portion of a state-collected fee or tax to specified local governments based on eligibility requirements. In some cases, a formula is developed for the allocation of funds between units of local government. While general law restricts the use of several shared revenues, proceeds derived from other shared revenues may be used for the general revenue needs of local governments. The following revenues are included in the category of state-shared revenues:

- Alcoholic Beverage License Tax

[12] The following information was obtained from The Florida Legislature's Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 15 (Oct. 2010) (on file with Senate Committee on Community Affairs).
[13] *See Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So. 2d 578 (Fla. 2d DCA 1977); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380 (Fla. 1973); and *Sarasota County v. Sarasota Church of Christ*, 641 So. 2d 900 (Fla. 2d DCA 1994).
[14] *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).
[15] *Primer on Home Rule & Local Government Revenue Sources* at 35 (June 2008).
[16] Article X, section 4(a) of the Florida Constitution, provides, in pertinent part that "[t]here shall be exempt from forced sale under process of any court, and no judgment, decree, or execution shall be a lien thereon, except for the payment of taxes and assessments thereon …."
[17] The following information was obtained from the Florida Legislature's Office of Economic and Demographic Research, *See* Florida Legislature's Office of Economic and Demographic Research, *supra* note 3, at 17-19.

- Constitutional Fuel Tax
- County Fuel Tax
- County & Municipal Revenue Sharing Programs
- Distribution of Sales and Use Taxes to Counties
- Emergency Management Assistance
- Enhanced 911 Fee
- Fuel Tax Refunds and Credits
- Insurance License Tax
- Intergovernmental Radio Communication Program
- Local Government Half-cent Sales Tax Program
- Miami-Dade County Lake Belt Mitigation Fee
- Miami-Dade County Lake Belt Water Treatment Plant Fee
- Mobile Home License Tax
- Oil, Gas, and Sulfur Production Tax
- Phosphate Rock Severance Tax
- State Housing Initiatives Partnership Program
- Support for School Capital Outlay Purposes
- Vessel Registration Fee[18]

Other Local Revenue Sources— The Legislature has also authorized a number of other local revenue sources. In many instances, in order to levy the fee, tax, or surcharge, the local government must enact an ordinance providing for its levy and collection. However, in some cases, referendum approval is required. For a number of revenue sources included in this category, general law restricts the expenditure use of the generated funds. The following revenues are included in the category of other local revenue sources:

- Communication Services Tax
- Convention Development Taxes
- Discretionary Surtax on Documents
- Green Utility Fee
- Gross Receipts Tax on Commercial Hazardous Waste Facilities
- Insurance Premium Tax
- Local Business Tax
- Local Discretionary Sales Surtaxes
- Local Option Food and Beverage Taxes
- Motor Fuel and Diesel Fuel Taxes (Ninth-Cent and Local Options)
- Municipal Pari-mutuel Tax
- Municipal Parking Facility Space Surcharges
- Municipal Resort Tax
- Public Service Tax
- Tourist Development Taxes
- Tourist Impact Tax[19]

[18] *Id.* at 17-18.
[19] *Id.* at 18-19.

III. Effect of Proposed Changes:

This bill creates s. 125.595, F.S., to allow the board of county commissioners of an eligible county, by a two-thirds vote of the membership of the board, to use state tax revenues that have been distributed to their county, or tax revenues that the Legislature has authorized their county to impose, for purposes other than the uses specified in the law providing for the distribution or the authorization to impose taxes.

The bill defines the term "eligible county" to mean a county that meets three of the following criteria, as determined by the Office of Economic and Demographic Research:

- The just value of property subject to ad valorem tax as of January 1 was lower than it was on the previous January 1.
- The annual per capita personal income of the county for the most recent calendar year was lower than for the prior calendar year.
- State sales tax remitted from within the county during the most recent calendar year was less than during the prior calendar year.
- The unemployment rate in the county in the previous calendar year was greater than 8 percent.
- The county was included in a major federal disaster or emergency declaration in the previous calendar year.[20]

The determination that a county is an "eligible county" must be made each year by the Office of Economic and Demographic Research, and the authority granted under this section may only be exercised for one fiscal year at a time.

The authority granted under this section does not apply to revenue that may be used only for a purpose specified in the Florida Constitution or to revenues from taxes levied with the approval of the voters.

This bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[20] *See* Government Sector Impact below, for the Office of Economic and Demographic Research current estimate on the number of counties in the State that would classify as "eligible counties" under the provisions of this bill, based on current financial records.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Eligible counties, as determined in the bill, may use certain revenues for purposes other than that specified by law, subject to the approval by a two-thirds vote of the board of county commissioners.

The authority granted under this section does not apply to revenue that may be used only for a purpose specified in the Florida Constitution or to revenues from taxes levied with the approval of the voters.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill would allow the board of county commissioners of an "eligible county", as determined each year by the Office of Economic and Demographic Research, to use certain revenues for a purpose other than that specified by law.

Each year, the Office of Economic and Demographic Research will be responsible for determining whether a county is an eligible county, pursuant to criteria provided in the bill. Based on current financial records, the Office of Economic and Demographic Research has determined that 38 of the 67 counties in the state would classify as "eligible counties" under the provisions of this bill.[21]

VI. Technical Deficiencies:

The Office of Economic and Demographic Research (EDR) has addressed the following two concerns with SB 1432:

- Page 1, line 24, states "… means a county that meets three of the following criteria, . . ."
    - They suggest that this line should read "… means a county that meets three or more of the following criteria, as …", in order to conform with the intent of the bill.
- Page 2, lines 38-40, states "(3) The determination that a county is an eligible county must be made each year, and the authority granted under this section may be exercised only one fiscal year at a time."
    - They suggest that this language be modified to include a deadline for the EDR's annual determination of county eligibility, which is several months prior to the October 1 start of the county government fiscal year, and the language should include a mechanism for the EDR's reporting of this annual determination. For

[21]Email from Steve O'Cain, Senior Legislative Analyst, Office of Economic and Demographic Research (EDR), to Dana Gizzi, Legislative Analyst, Senate Committee on Community Affairs (March 30, 2011) (on file with the Senate Committee on Community Affairs) (noting that the number of eligible counties per this criterion and in total is subject to change since the 2009 per capita personal income data by county will be released by the U.S. Department of Commerce's Bureau of Economic Analysis in late April).

example, page 2, lines 38-40 could read "(3) The determination that a county is an eligible county must be made no later than July 1 of each year, and the annual determination of county eligibility must be posted on the Office of Economic and Demographic Research's website. The authority granted under this section may be exercised only one fiscal year at a time."[22]

VII. Related Issues:

The bill states that the authority granted herein does not apply to revenue that may be used only for a purpose specified in the Florida Constitution or to revenues from taxes levied with the approval of the voters; however, the bill does not specify which types of revenues the authority *does* apply to, which indicates that it applies to all local government revenues.

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.

[22] *Id.*

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (17) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(17)(a) A local enforcement agency, and any local building code administrator, inspector, or other official or entity, may not require as a condition of issuance of a one- or two-family residential building permit the inspection of any portion of a building, structure, or real property that is not directly

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impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought.

(b) This subsection does not apply to a building permit sought for:

1. A substantial improvement as defined in s. 161.54 or as defined in the Florida Building Code.

2. A change of occupancy as defined in the Florida Building Code.

3. A conversion from residential to nonresidential or mixed use pursuant to s. 553.507(2)(a) or as defined in the Florida Building Code.

4. An historic building as defined in the Florida Building Code.

(c) This subsection does not prohibit a local enforcement agency, or any local building code administrator, inspector, or other official or entity, from:

1. Citing any violation inadvertently observed in plain view during the ordinary course of an inspection conducted in accordance with the prohibition in paragraph (a).

2. Inspecting a physically nonadjacent portion of a building, structure, or real property that is directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought in accordance with the prohibition in paragraph (a).

3. Inspecting any portion of a building, structure, or real property for which the owner or other person having control of the building, structure, or real property has voluntarily

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consented to the inspection of that portion of the building, structure, or real property in accordance with the prohibition in paragraph (a).

4. Inspecting any portion of a building, structure, or real property pursuant to an inspection warrant issued in accordance with ss. 933.20-933.30.

(d) This subsection expires upon receipt by the Secretary of State of the written certification by the chair of the Florida Building Commission that the commission has adopted an amendment to the Florida Building Code which substantially incorporates this subsection, including the prohibition in paragraph (a), as part of the code and such amendment has taken effect.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to residential building permits; amending s. 553.79, F.S.; prohibiting local enforcement agencies and building code officials or entities from requiring certain inspections of buildings, structures, or real property as a condition of issuance of certain residential building permits; providing certain exceptions to the application of the act; providing for expiration of the act following an amendment to the Florida Building Code by the Florida

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Building Commission which incorporates the provisions of the act; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 580
INTRODUCER:	Senator Oelrich
SUBJECT:	Building Construction Standards
DATE:	March 26, 2011
REVISED:	

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

I. Summary:

This bill prohibits local enforcement agencies, inspectors, building officials, and other entities from requiring the inspection of any portion of a residential structure that is not directly related to the activity for which a permit is sought as a condition for issuance of that permit.

This bill substantially amends section 553.79 of the Florida Statutes.

II. Present Situation:

The Florida Building Code

The purpose and intent of the Florida Building Codes Act, located in part IV of ch. 553, F.S., is "to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single unified state building code," known as the Florida Building Code.[1] Section 553.72, F.S., defines the Florida Building Code as a "single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state" which establishes minimum standards that shall be enforced by authorized state and local government enforcement agencies. The Florida Building Code consists of seven volumes which include: Building, Residential, Mechanical, Plumbing, Fuel Gas, Existing Building, and Test Protocols for High-Velocity Hurricane Zones.

[1] Section 553.72(1), F.S.

Florida Building Commission

The Florida Building Commission is established in ch. 553, F.S., within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.[2] The Commission is responsible for adopting and enforcing the Florida Building Code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.[3] The Commission is required to update the Florida Building Code triennially based upon the "code development cycle of the national model building codes, ..."[4] Pursuant to s. 553.73, F.S., the Commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the building code.[5]

Section 553.79(9), F.S., allows state agencies whose enabling legislation authorizes the enforcement of the Florida Building Code to enter into agreements with other governmental units in order to delegate their code enforcement powers and to utilize public funds for permit and inspection fees so long as the fees are not greater than the fees charged to others.

Building Permits

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity from constructing, erecting, altering, modifying, repairing, or demolishing any building within this state without first obtaining a permit from the appropriate enforcing agency.[6] An enforcing agency may not issue a permit for these activities until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code to ensure compliance with the Code and until a certified firesafety inspector ensures compliance with the Florida Fire Prevention Code.

Existing Building Permits.—The Existing Buildings Volume of the Florida Building Code provides construction requirements for the repair, alteration, change of occupancy, addition, and relocation of existing buildings.[7] Pursuant to this volume of the Code, the Department of Community Affairs (Department) states that the following situations are examples of construction activities that may require the inspection of an existing building or structure prior to issuing a permit for the proposed improvement:

- Change of occupancy Permit may be necessary to substantiate the proposed improvements and insure that the existing building systems are sufficient to accommodate the new occupancy classification.
- Repair to damaged buildings A full inspection of a damaged building may be necessary before issuing a permit for improvement to ensure that the proposed improvements will eliminate any existing dangerous conditions.

[2] *See* s. 553.74(1)(a)-(w), F.S.
[3] Sections 553.73 and 553.74, F.S.
[4] Florida Building Commission, *Report to the 2009 Legislature*, at 2 (January 2009) (on file with the Florida Senate Committee on Regulated Industries).
[5] *See* ss. 553.76, 553.775, and 553.73(7), F.S., respectively.
[6] Section 553.79(1), F.S.
[7] Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 3 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).

- Addition or modification Permit may be necessary to determine whether the proposed addition/modification would impact the existing building or structure, and whether the addition creates or extends any nonconformity in the existing building to which the addition is being made in regards to accessibility, structural strength, fire safety, means of egress, or the capacity of mechanical, plumbing, or electrical systems.

Local Code Enforcement.—The Department states that it is commonplace for local governments to adopt the International Property Maintenance Code through a local ordinance in order to establish minimum maintenance requirements for existing buildings, and to provide authority to inspect such existing buildings or structures for property maintenance, code violation, and unsafe structures.[8]

Florida Fire Prevention Code.—The Florida Fire Prevention Code has been adopted by the State Fire Marshal and is enforced locally by the local fire officials. The Florida Fire Prevention Code is updated every three years and contains all firesafety regulations relating to the construction and modification of building structures.[9] The State Fire Marshal is required to notify local fire departments no later than 180 days prior to the triennial adoption of the Florida Fire Prevention Code in order to consider whether local amendments should be implemented. The Florida Fire Prevention Code also applies to existing buildings, to the extent that the local fire official determines that a threat to firesafety or property exists.

Classification of Residential Buildings

Chapter three of the Florida Building Code classifies the term "residential building" to include single-family dwellings, two-family dwellings, multi-family dwellings, transient residential buildings, adult care facilities, and childcare facilities.[10]

Pursuant to s. 310 of the Florida Building Code, Residential Group R includes the use of a building or structure, or a portion thereof, for sleeping purposes. Residential Group R is broken down into four groups labeled R-1 through R-4, which are based on the residential occupancy of the structure.[11] The residential group occupancy classifications are as follows:

- Group R-1 are residential occupancies containing sleeping units where the occupants are primarily transient in nature. R-1 occupancies include transient boarding houses, hotels and motels.
- Group R-2 are residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature. R-2 occupancies include apartment houses, non-transient boarding houses, convents, dormitories, fraternities/sororities, non-transient hotels and motels, monasteries, and vacation timeshare properties.
- Group R-3 are residential occupancies where the occupants are primarily permanent in nature and are not classified as Group R-1, R-2, R-4 or Institutional Group I. R-3 occupancies include buildings that do not contain more than two dwelling units, adult and

[8] *Id.* at 4.
[9] Section 633.0215(1), F.S.
[10] Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 2 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).
[11] *Id.*

child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours, and congregate living facilities with 16 or fewer persons.

- Group R-4 are residential occupancies that include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.[12]

III. Effect of Proposed Changes:

This bill would create subsection (17) within s. 552.79, F.S., to prohibit a local enforcement agency, local building code administrator, inspector, and other officials and entities from requiring the inspection of any portion of a residential structure that is not directly related to the construction, erection, alteration, modification, repair, or demolition for which a permit is sought, as a condition for issuance of that permit.

This act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of this bill will have an impact on builders, contractors, engineers, and architects in relation to the issuance of residential building permits.[13]

C. Government Sector Impact:

Local enforcement agencies and other officials and entities will not be allowed to require, as a condition of issuance of a residential building permit, the inspection of any portion of

[12] *Id.* at 2-3.
[13] *Id.* at 5.

a residential structure that is not directly related to the activity for which a permit is sought.

The Department of Community Affairs has articulated that this bill will have an impact on the Florida Building Commission and may impede upon local code enforcement authority to inspect and determine whether an existing structure is unsafe.[14]

VI. Technical Deficiencies:

The Department of Community Affairs recommends clarification of the term "residential building" in section one of this bill. The Department states that the term "residential building" as used in this bill is vague and inconsistent with the classification of residential property in the Section 310 of the Florida Building Code (s*ee* present situation for discussion).[15]

The Department further recommends the term "not directly related" be clarified, since it currently may be interpreted to prohibit inspections of existing buildings.[16]

As a result of these two concerns, the Department has suggested the following amendment:

(17) **Except as required by the Florida Building Code, a** local enforcement agency or local building code administrator, inspector, or other official or entity may not require, as a condition of issuance of a **detached single-family dwelling** ~~residential building~~ permit, the inspection of any portion of a building**,** ~~or~~ structure **real property, or building systems** that is not directly related to the construction, erection, alteration, modification, repair, or demolition of the building**, structure** or **real property** ~~parcel~~ for which the permit is sought. **This section does not apply to existing buildings, structures, or systems that are unsafe and/or of imminent danger of failure of collapse.**[17]

VII. Related Issues:

The Department of Community Affairs is unsure whether the provisions of this bill are in conflict with the Florida Fire Prevention Code.[18]

VIII. Additional Information:

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

None.

[14] Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 5 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).
[15] *Id.* at 4.
[16] *Id.* at 5.
[17] *Id.* at 7.
[18] *Id.* (stating that "it is advisable to refer the proposed language to the State Fire Marshal for input").

B. Amendments:

None.

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 1010
INTRODUCER:	Senator Simmons
SUBJECT:	Neighborhood Improvement Districts
DATE:	March 18, 2011 REVISED:

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

I. Summary:

This bill renames the Safe Neighborhoods Act as the "Neighborhoods Improvement Act" and makes conforming changes to reflect new Legislative intent. This bill also authorizes local government neighborhood improvement districts (NIDs) to borrow money, issue bonds, collect special assessments, charge user fees, and levy ad valorem taxes upon real and tangible personal property within the district by resolution of the governing body, and if required by the Florida Constitution, obtain the affirmative vote of the district electors.

The bill allows special NIDs, community redevelopment NIDs, and property owners' association NIDs to make and collect special assessments for improvements and reasonable operating expenses subject to referendum approval. The bill also allows NIDs to contract with county or municipal government for legal advice, and to plan for certain public improvements.

This bill substantially amends the following sections of the Florida Statutes: 163.501, 163.502, 163.503, 163.5035, 163.504, 163.5055, 163.506, 163.508, 163.511, 163.512, 163.514, 163.5151, and 163.516.

This bill repeals the following sections of the Florida Statutes: 163.513, 163.517, 163.519, 163.521, 163.5215, 163.522, 163.523, 163.524, and 163.526.

II. Present Situation:

Neighborhood Improvement Districts

Part IV of chapter 163, F.S., is known as the "Safe Neighborhoods Act." The intent of this Act is to:

- Guide and accomplish the coordinated, balanced, and harmonious development of safe neighborhoods;
- Promote the health, safety, and general welfare of these areas and their inhabitants, visitors, property owners, and workers;
- Establish, maintain, and preserve property values and foster the development of attractive neighborhoods and business environments;
- Prevent overcrowding and congestion;
- Improve or redirect traffic and provide pedestrian safety; and
- Reduce crime rates.

Section 163.503(1) defines the term "neighborhood improvement district" to mean:

> A district located in an area in which more than 75 percent of the land is used for residential purposes, or in an area in which more than 75 percent of the land is used for commercial, office, business, or industrial purposes, excluding the land area used for public facilities, and where there is a plan to reduce crime through the implementation of crime prevention through environmental design, environmental security or defensible space techniques, or through community policing innovations. . . .

This Safe Neighborhoods Act allows county or municipal governing bodies to create Neighborhood Improvement Districts (NIDs) through the adoption of a planning ordinance. Under current law, there are four types of NIDs: local government NIDs, property owners' association NIDs, special NIDs, and community redevelopment NIDs.[1] Each NID that is established is required to register within 30 days with both the Department of Community Affairs and the Department of Legal Affairs and provide the name, location, size, and type of NID.[2] To date, there are approximately 25 NIDs in the state of Florida.[3]

Although NIDs have various powers, they do not have bond authority. Of the 25 neighborhood improvement districts in the state of Florida, eight NIDs reported that they do not have *any* type of revenue source and some have reported that they are inactive due to such lack of funding.[4]

In 2006, the Florida Attorney General issued Advisory Legal Opinion 2006-49, stating that an NID created by ordinance pursuant to s. 163.511, F.S., does not have the authority to borrow money for district purposes.[5] The Attorney General's Office reasoned that a statutorily created

[1] *See* ss. 163.506-163.512, F.S.
[2] Section 163.5055, F.S.
[3] Florida Department of Community Affairs, *SB 1010 Agency Analysis*, at 2 (March 11, 2011) (on file with the Senate Committee on Community Affairs).
[4] *Id.*
[5] Op. Atty Gen. Fla. 2006-49 (2006).

entity is limited to such powers expressly granted or reasonably implanted by law. The opinion further stated that "[w]hen the Legislature has directed how a thing shall be done, that is in effect a prohibition against its being done any other way."

Duties of the Department of Legal Affairs.—The Safe Neighborhoods Act is administered by the Department of Legal Affairs, whose duties include, but are not limited to, the authority to:

- Develop program design and criteria for funding NIDs;
- Develop application and review procedures;
- Review and evaluate applications for planning and technical assistance;
- Utilize staff to provide crime prevention through community policing innovations, environmental design, environmental security, and defensible space training; and
- Review and approve or disapprove safe neighborhood improvement plans prior to the adoption by the local governing body.[6]

Safe Neighborhoods Program.—Section 163.517, F.S., provides for the creation of the Safe Neighborhoods Program. The purpose of this program is to "provide planning grants and technical assistance on a 100-percent matching basis to neighborhood improvement districts." Under this section, planning grants are to be awarded as follows:

- Property owners' association NIDs may receive up to $20,000.
- Local government NIDs may receive up to $100,000.
- Special NIDs may receive up to $50,000.
- Community redevelopment NIDs may receive up to $50,000.

Grants are awarded to eligible applicants based on evaluation of specified criteria provided in subsections (2) and (3) of s. 163.517, F.S.

According the State Attorney General's Office, funding under the Safe Neighborhood Program has not been provided to NIDs since 1993.[7]

Safe Neighborhood Improvement Plan.—All NIDs are currently required to prepare a safe neighborhood improvement plan that addresses the statutory criteria provided in s. 163.516, F.S. The safe neighborhood improvement plan must be consistent with the adopted county or municipal comprehensive plan and must be "sufficiently complete to indicate such land acquisition, demolition and removal of structures, street modifications, redevelopment, and rehabilitation as may be proposed to be carried out in the district."[8]

Neighborhood Preservation and Enhancement Program.—The governing body of a municipality or county may authorize participation in the Neighborhood Preservation and Enhancement Program through the adoption of a local ordinance. Neighborhood Preservation and Enhancement Districts shall be created by the residents of a particular neighborhood or through county or municipality initiative by identifying those areas which are in need of enhancement. Neighborhood Preservation and Enhancement plans shall be enforced through an

[6] *See* s. 163.519(1)-(11), F.S.
[7] Conversation with Legislative Affairs Staff at the Office of the State Attorney General (March 22, 2011).
[8] Section 163.516(3), F.S.

agency created by the local government which may be composed of the local code department or any other agency that will provide adequate enforcement of the plan.

After the boundaries and size of the Neighborhood Preservation and Enhancement District have been defined, the residents therein shall create a Neighborhood Council, consisting of five elected members who shall have the authority to receive grants from the Safe Neighborhoods Program under s. 163.517, F.S. The established Neighborhood Council and local government designated enforcement agency shall have such powers and duties as provided under s. 163.526, F.S.

Neighborhood Improvement Districts inside Enterprise Zones.—The local governing body of any municipality or county in which the boundaries of an enterprise zone, in whole or in part, include a NID, may request the Department of Legal Affairs to submit provisions to fund capital improvements within its budget request to the Legislature.[9] Local governments must demonstrate the ability to implement the project within two years after the date of appropriation. All requests received for capital improvement functions must be ranked by the Department of Legal Affairs based on the following:

- The necessity of the improvements to overall implementation of the safe neighborhood plan;
- The degree to which the improvements help the plan achieve crime prevention through community policing innovations, environmental design, environmental security, and defensible space objectives;
- The effect of the improvements on residents of low or moderate income; and
- The fiscal inability of a local government to perform the improvements without state assistance.[10]

Community Organization Involvement.—Section 163.523, F.S., authorizes local governments to cooperate and seek the involvement of certain community organizations to assist in the creation of safe neighborhood improvements districts. Except for the preparation of safe neighborhood improvement plans, NIDs may contract with such community organizations to carry out any activities therein and may compensate such organizations for the value of their services in an amount not to exceed 1 percent of the total annual budget of the NID.

III. Effect of Proposed Changes:

Section 1 amends s. 163.501, F.S., to rename part IV of ch.163, F.S., as the "Neighborhood Improvement Act."

Section 2 amends s. 163.502, F.S., to amend the Legislative findings and purposes for this Act to include "lack of adequate public improvements such as streets, street lights, street furniture, street landscaping, sidewalks, traffic signals, way-finding signs, mass transit, stormwater systems, and other public utilities and improvements."

[9] Section 163.521, F.S.
[10] *Id.*

Section 3 amends s. 163.503, F.S., to amend the definition for "neighborhood improvement district," and to delete the definitions for the following terms: "environmental security," "crime prevention through environmental design," "defensible space," "enterprise zone," and "community policing innovation."

Section 4 amends s. 163.5035, F.S., to delete the term "safe" in the title of this section.

Section 5 amends 163.504, F.S., to delete provisions relating to the Safe Neighborhoods Program and safe neighborhood improvement plans.

Section 6 amends s. 163.5055, F.S., to provide that neighborhood improvement districts shall be required to notify (rather than register with) the Department of Community Affairs and to delete obsolete provisions.

Section 7 amends s. 163.506, F.S., to authorize local government neighborhood improvement districts to borrow money, contract loans, and issue bonds, certificates, warrants, notices or other evidence of indebtedness to finance the undertaking of any capital or other projects for purposes permitted under the Florida Constitution and this part. This section also authorizes the district to pledge the funds, credit, property, and taxing power of the improvement district for payment of such debts and bonds. Bonds issued under this part shall be authorized by a resolution of the governing board of the district, and if so required by the Florida Constitution, by affirmative vote of the electors of the district. The bill provides criteria and governing board authority regarding the issuance, sale and distribution of bonds and allows for the establishment and administration of sinking funds for the payment, purchase, or redemption of any outstanding bond indebtedness of the district.

The bill also allows the governing body of the district to levy ad valorem taxes upon real and tangible personal property within the district as it deems necessary to make payment, including principal and interest, upon the general obligation and ad valorem bond indebtedness of the district or into any sinking fund so created.

The bill authorizes a commercial local government NID to make and collect special assessments to pay for capital improvements within the district and for reasonable operating expenses of the district, including those in the district budget. Such special assessments may not exceed $1,500 for each individual parcel of land per year.

The bill further allows the district to charge, collect, and enforce fees and other user charges.

This section deletes provisions in statute that allow a majority of the local governing body of a city or county to appoint a board of directors as an alternative to designating the local governing body as the board of directors of the local government NID.

This section specifies differences between residential local government NIDs and commercial local government NIDs.

Section 8 amends s. 163.508, F.S., to delete provisions relating to the Safe Neighborhoods Program and safe neighborhood improvement plans. This section also allows property owners'

association NIDs to request grants from the state and requires the property owners' association in a property owners' association NID to be a not for profit corporation.

Section 9 amends s. 163.511, F.S., to make conforming changes and to revise the method of appointing and removing directors of a special NID.

Section 10 amends s. 163.512, F.S., to make conforming changes and to delete provisions allowing the use of the community redevelopment trust fund to be used to further crime prevention through community policing innovations, environmental design, environmental security, and defensible space techniques.

Section 11 repeals s. 163.513, F.S., which relates to crime prevention through community policing innovations, environmental design, environmental security, and defensible space functions of neighborhood improvement districts.

Section 12 amends s. 163.514, F.S., to amend the powers provided to NIDs to:

- Delete references to the power to contract with experts on crime prevention through community policing innovations, environmental design, environmental security, and defensible space, or other experts.
- Allow NIDs to contract with county or municipal government for legal advice.
- Allow NIDs to plan, design, construct, operate, provide and maintain street lighting, parks, streets, drainage, utilities, swales, parking facilities, transit, landscaping, and open areas.
- Allow special NIDs, community redevelopment NIDs, and property owners' association NIDs, to make and collect special assessments, subject to referendum approval, for improvements and reasonable operating expenses.

Section 13 amends s. 163.5151, F.S., to state that each "local government" and special NID levying an ad valorem tax on real or personal property shall establish its budget pursuant to ch. 200, F.S.

Section 14 amends s. 163.516, F.S., so that certain information is no longer required to be included in neighborhood improvement plans.

Section 15 repeals s. 163.517, F.S., relating to the Safe Neighborhoods Program.

Section 16 repeals s. 163.519, F.S., relating to the duties of the Department of Legal Affairs.

Section 17 repeals s. 163.521, F.S., addressing NIDs inside enterprise zones.

Section 18 repeals s. 163.5215, F.S., which states that the provisions of this part shall not be construed to modify, limit, expand, or supersede any existing laws relating to the closing or abandonment of public records, the denial of access to areas for public ingress or egress, or the use of public facilities.

Section 19 repeals s. 163.522, F.S., relating to state redevelopment programs.

Section 20 repeals s. 163.523, F.S., relating to safe neighborhood districts and the cooperation and involvement of community organizations.

Section 21 repeals s. 163.524, F.S., relating to the Neighborhood Preservation and Enhancement Program.

Section 22 repeals s. 163.526, F.S., relating to neighborhood councils and local government designated agencies.

Section 23 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill will allow local government NIDs to collect special assessments, charge user fees and levy ad valorem taxes upon real and personal property within the district by resolution of the district's governing body, and if so required by the Florida Constitution, obtain the affirmative vote of the district electors.

This bill will allow special NIDs, community redevelopment NIDs, and property owners' association NIDs to make and collect special assessments for improvements and reasonable operating expenses subject to the referendum approval.

B. Private Sector Impact:

Individuals residing in NIDs may be subject to special assessments, ad valorem taxes, and user fees as provided in this bill.

C. Government Sector Impact:

This bill will allow local government NIDs to borrow money, issue bonds, collect special assessments, charge user fees, and levy ad valorem taxes upon real and tangible personal property within the district by resolution of the governing body, and if required by the Florida Constitution, obtain the affirmative vote of the district electors..

The bill will allow special NIDs, community redevelopment NIDs, and property owners' association NIDs to make and collect special assessments for improvements and reasonable operating expenses subject to referendum approval.

The bill will also allow NIDs to contract with the county or municipal government for legal advice.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In order to provide a uniform notification process to the Department of Community Affairs' Special District Information Program and to eliminate duplication, the Department of Community Affairs recommends deleting lines 220-223 of the bill and inserting the following:

> Pursuant to Section 189.418(1), F.S., and the Department of Legal Affairs by providing ~~these departments~~ the Department of Legal Affairs with the district's name, location, size, and type, and such other information as the ~~departments~~ Department of Legal Affairs may request ~~require~~.[11]

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.

[11] Florida Department of Community Affairs, *SB 1010 Agency Analysis,* at 5-6 (March 11, 2011) (on file with the Senate Committee on Community Affairs).

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 1502
INTRODUCER:	Military Affairs, Space & Domestic Security Committee and Senator Simmons and others
SUBJECT:	Ad Valorem Tax Exemption/Deployed Servicemembers
DATE:	March 29, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	**Fav/CS**
2.	Gizzi	Yeatman	CA	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This Committee Substitute (CS) codifies an amendment to Article VII, Section 3 of the Florida Constitution, which was approved by voters in the November 2010 general election. This amendment, now located in Article VII, Section 3(g) of the Florida Constitution, provides a partial ad valorem tax exemption on homestead property for Florida military personnel who are deployed outside the United States. In addition, the CS:

- Requires the Florida Department of Military Affairs to annually submit a report to the Legislature of all known and unclassified military operations outside the United States;
- Directs the Legislature to immediately transmit a concurrent resolution which designates a military operation that qualifies a servicemember for the tax exemption;
- Provides procedures for property appraisers to apply or deny the partial ad valorem tax exemption;
- Requires a servicemember applying for the tax exemption to provide proof of eligibility; and
- Authorizes the Department of Revenue to adopt emergency rules to administer the provisions of this act.

This CS substantially amends sections 194.011 and 196.011 of the Florida Statutes.

This CS creates section 196.173 of the Florida Statutes. This CS also creates undesignated sections of law.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

B.) Assessed Value

Section 4 also provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.

The "Save Our Homes" provision in Article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of three percent or the Consumer Price Index (CPI).[2] If there is a change in ownership, the property is assessed at its just value on the following January 1. The value of changes, additions, reductions or improvements to the homestead property is assessed as provided by general law. In 2008, Florida voters approved an additional amendment to article VII, section 4(d), of the Florida Constitution, to provide for the portability of the accrued "Save Our Homes" benefit. This amendment allows homestead property owners that relocate to a new homestead to transfer up to $500,000 of the "Save Our Homes" accrued benefit to the new homestead.

C.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[3]

Property taxes are the largest single tax revenue source for local governments in Florida, with approximately $25.1 billion levied in fiscal year 2010-11.[4] The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[5]

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[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[2] FLA. CONST. art. VII, s. 4(d).
[3] FLA. CONST. art. VII, ss. 3 and 6.
[4] Florida Revenue Estimating Conference, 2011 FLORIDA TAX HANDBOOK, at 185. Available online at: http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2011.pdf (last visited on March 28, 2011).
[5] FLA. CONST. art. VII, s. 1(a).

Property Tax Benefits Available to Veterans

In recognition of their service and sacrifice for our country the State of Florida has granted a number of ad valorem tax exemptions for ex-service members.

A.) Total Ad Valorem Tax Exemption for Ex-Service Members
Section 196.081, F.S., provides that:

> Any real estate that is owned and used as a homestead by a veteran who was honorably discharged with a service-connected total and permanent disability and for whom a letter from the United States Government or United States Department of Veterans or its predecessor has been issued certifying that the veteran is totally and permanently disabled is exempt from taxation, . . . [provided] . . . the veteran is a permanent resident of the state on January 1 of the tax year for which exemption is being claimed or on January 1 of the year the veteran died.

Section 196.091, F.S., further provides that:

> Any real estate used and owned as a homestead by an ex-service member who has been honorably discharged with a service-connected total disability and who has a certificate from the United States Government or United States Department of Veterans Affairs or its predecessor, or its successors, certifying that the ex-service member is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing and required to use a wheelchair for his or her transportation is exempt from taxation.

B.) $5,000 Ad Valorem Tax Exemption for Ex-Service Members
Section 196.24, F.S., provides a $5,000 property tax exemption to any ex-service member who is a bona fide resident of the state and who has a service-connected disability to a degree of 10% or more. This exemption also applies to the un-remarried surviving spouse of a disabled ex-service member who had been married to such ex-service member for at least 5 years on the date of his/her death.

C.) Combat Related Partial Ad Valorem Tax Exemption (Discount) for Ex-Service Members
Article VII, section 6(e) of the Florida Constitution, grants a discount on ad valorem taxes owed on homestead property for veterans who are 65 years or older and who are partially or totally disabled. In order to qualify for the discount, the veteran must submit proof of the veteran's disability percentage to the county property appraiser and must show that the:

- Disability was combat related;
- Veteran was a Florida resident at the time he/she entered the US military; and
- Veteran was honorably discharged.[6]

The ad valorem tax discount percentage shall be equal to the veteran's percentage of disability, as determined by the United States Department of Veterans Affairs.

[6] *See also* s. 196.082, F.S.

In 2010, 1,206 veterans received the Disabled Veteran's Homestead Discount which amounted to a total discount of $28,749,630. During that time, the average discount paid was $23,839.[7] The U. S. Department of Veterans Affairs (USDVA) indicates that there were 249,565 veterans in Florida receiving compensation for service-related conditions at the end of Fiscal Year 2010.[8]

No special tax relief is currently provided to military personnel deployed on active duty for military operations outside the United States.

Deployed Military Personnel

The number of deployed military personnel is in constant flux. According to data provided by the Florida Department of Military Affairs, approximately 5,082 military personnel who claim Florida as their home of record[9] were deployed overseas on active duty in support of Operation New Dawn, Operation Enduring Freedom, or Operation Noble Eagle as of January 31, 2011.

Branch of Service	**Number of Military Personnel**
Army	211
Navy	1,343
Air Force	1,712
Marine Corps	79
Army Reserve	521
Florida National Guard	656
Marine Corps Reserve	320
Navy Reserve	67
Air Force Reserve	98
Coast Guard	55
Coast Guard Reserve	20
TOTAL:	**5,082**

III. Effect of Proposed Changes:

Section 1 creates s. 196.173, F.S., to codify an amendment to Article VII, Section 3 of the Florida Constitution, which was approved by voters in the November 2010 general election. This

[7] Revenue Estimating Conference, *Disabled Veterans' Property Tax Discount SJR 592 & HJR 439* (March 11, 2011).
[8] Conversation with Florida Department of Veterans' Affairs (Response to information request by Senate Military Affairs, Space, and Domestic Security Committee) (Feb. 1, 2011).
[9] Conversation with the Florida Department of Military Affairs. Claiming Florida as a home of record is not an indicator of the number of service members who actually own homestead property in Florida.

constitutional amendment provides an additional ad valorem tax exemption for homestead property owned by a person who was a member of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard deployed outside of the continental United States, Alaska, or Hawaii in support of military operations designated by the Legislature in a concurrent resolution.

Amount of Exemption
The amount of the exemption is equal to the taxable value of the homestead of the servicemember on January 1 of the year in which the exemption is sought multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year and divided by the number of days in that year.

Exemption Application
A servicemember who seeks to claim the additional tax exemption must file an application for exemption with the property appraiser on or before March 1 of the year following the year of the qualifying deployment. The application must be made on a form prescribed by the Department of Revenue and furnished by the property appraiser. The servicemember must provide:

- Proof that the servicemember participated in a qualifying deployment;
- The dates of the qualifying deployment; and
- Other information necessary to verify eligibility for and the amount of the exemption.

In the event a servicemember is unable to apply for the deployed servicemember exemption for reasons such as deployment, a spouse who also owns the homestead as entireties or jointly with the right of survivorship, or an individual with the servicemember's power of attorney, may apply for the exemption on the servicemember's behalf.

Exemption Approval or Denial
The property appraiser must approve or deny a servicemember's application for the exemption within 30 days after receipt of the application. If a servicemember's application for the exemption is denied, the property appraiser must send a notice of disapproval no later than July 1, citing the reason for disapproval and advising the servicemember of the right to appeal the decision to the value adjustment board along with the procedures for filing such appeal.

Concurrent Resolution
The Secretary of the Senate and the Clerk of the House of Representatives are required to immediately transmit to the Department of Revenue a copy of a concurrent resolution in which the Legislature designates a military operation that may qualify a servicemember for the tax exemption. Upon receipt of the concurrent resolution, the Department of Revenue must notify all property appraisers and tax collectors of the designated military operations.

Annual Report of All Known and Unclassified Military Operations
By January 15 of each year, the Department of Military Affairs must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year. To the extent possible, the report must include:

- The official and common names of the military operations;
- The general location and purpose of each military operation;
- The number of servicemembers deployed to each military operation;
- The number of servicemembers deployed to each military operation who were based in this state at the time of deployment, including the number by county of residence or military base, if known;
- The date each military operation commenced;
- The date each military operation terminated, unless the operation is ongoing; and
- Any other relevant information.

The CS defines the term "servicemember" as used in this section, to mean "a member or former member of any branch of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard.

Section 2 amends s. 194.011, F.S., requiring a person appealing the denial of a deployed servicemember exemption to the value adjustment board to file the appeal on or before the 30th day following the mailing of the denial notice by the property appraiser.

Section 3 amends s. 196.011, F.S., requiring the application form for the deployed servicemember tax exemption meet certain conditions currently provided in s.196.011, F.S., in order to be considered a complete application.

Section 4 authorizes the Department of Revenue to adopt emergency rules in order to administer the provisions of this act. Such emergency rules shall remain in effect for 6 months after the rules are adopted and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

Section 5 establishes June 1, 2011, as the deadline for an eligible servicemember to file a claim for an additional tax exemption for qualifying deployment during the 2010 calendar year. Any applicant who fails to meet the June 1 deadline must subsequently submit an application to the property appraiser on or before the 25th day following the mailing by the property appraiser of the notices required under s.194.011(1), F.S. Upon receipt of the application, the property appraiser may grant the tax exemption if the property appraiser determines the applicant failed to meet the application deadline due to extenuating circumstances.

If the property appraiser determines that extenuating circumstances did not prevent an applicant from meeting the deadline and denies the application, the applicant may file a petition with the value adjustment board requesting that the exemption by granted. Upon filing the petition, the applicant must pay a nonrefundable $15 filing fee. The value adjustment board may grant the exemption for the current year if the board determines that extenuating circumstances existed.

Section 6 directs the Department of Military Affairs to submit the report described in section 1 of the CS addressing military operations for the 2010 calendar year within 15 days after the act becomes a law.

Section 7 provides that this act will take effect upon becoming law, and first applies to ad valorem tax rolls for 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This CS implements Amendment 2 to Article VII, section 3, of the Florida Constitution, that was approved by the voters in the November 2010 general election. For these reasons, the CS does not fall under the mandate provisions in Article VII, section 18(b) of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This CS implements the provisions of Amendment 2 on the 2010 general election ballot, which provides a homestead ad valorem tax credit for deployed military personnel.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

After reviewing this bill, the Revenue Estimating Conference adopted an indeterminate negative fiscal impact since the impact is dependent upon future acts of the Legislature. Assuming 10.5% of active duty personnel and reserves were deployed in designated operations, the Revenue Estimating Conference adopted the following proposed fiscal impact:[10]

School Impact Value					
State Impact: All Funds	FY 2011-12 Cash	FY 2011-12 Annualized	FY 2012-13 Cash	FY 2013-14 Cash	FY 2014-15 Cash
High	3.7 mil		4.4 mil	4.9 mil	5.0 mil
Middle	1.3 mil		1.5 mil	1.7 mil	1.7 mil
Low	0.7 mil		0.8 mil	0.9 mil	0.9 mil

Non-School Impact Value					
State Impact: All Funds	FY 2011-12 Cash	FY 2011-12 Annualized	FY 2012-13 Cash	FY 2013-14 Cash	FY 2014-15 Cash

[10] Revenue Estimating Conference, *Exemption for Deployed Service Members, SB 1502 & HB 1141,* at 180-181 (March 25, 2011) (on file with the Senate Committee on Community Affairs).

High	4.3 mil		5.1 mil	5.7 mil	5.8 mil
Middle	1.5 mil		1.8 mil	2.0 mil	2.0 mil
Low	0.8 mil		0.9 mil	1.0 mil	1.0 mil

B. Private Sector Impact:

Deployed Military personnel that are eligible for the tax exemption provided in this CS will see a reduction in property taxes.

C. Government Sector Impact:

This CS provides additional duties to county property appraisers, who must approve or deny a servicemember's application for the exemption provided in this CS within 30 days after receipt of the application. If the property appraiser denies a servicemember's application, the appraiser must send a notice of disapproval no later than July 1, citing the reasons for disapproval and advising the servicemember of his or her right to appeal the decision.

This CS requires the Department of Military Affairs to submit a report of all known and unclassified military operations outside the continental United States, Alaska, and Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature by January 15 of each year.

This CS grants emergency rule-making authority to the Department of Revenue for the Department to administer the provisions of this act.

See also Tax/Fee Issues.

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 Military Affairs, Space & Domestic Security on March 23, 2011:

- Clarifies that the information the Department of Military Affairs is required to annually provide to the Legislature must be provided "to the extent possible."
- Allows a spouse or an individual with the servicemember's power of attorney to apply for the exemption on behalf of the servicemember in the event the servicemember is unable to timely apply for the exemption for reasons such as deployment.

B. Amendments:

None.

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 1352
INTRODUCER:	Senator Hays
SUBJECT:	Public Works Projects
DATE:	March 30, 2011
REVISED:	

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

I. Summary:

The bill limits government entities' ability to require a contractor, subcontractor, supplier or carrier on a public works project to:

- Pay employees a predetermined amount of wages or wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control or limit staffing;
- Recruit, train, or hire employees from a designated or single source;
- Designate any particular assignment of work for employees;
- Participate in proprietary training programs; or
- Enter into any type of project labor agreement.

The bill prohibits government entities from requiring that a contractor, subcontractor, supplier or carrier on a public works project enter into an agreement with a labor organization.

The bill prohibits government entities from restricting qualified/licensed/certified bidders from doing any of the work described in the bid documents, from submitting bids, being awarded bids, or performing work on a public works contract.

The bill extends the length of time for an entity to submit a notice to protest a bid specification from 72 hours to 7 days.

The bill creates an undesignated section of law.

This bill substantially amends section 120.56 of the Florida Statutes.

II. Present Situation:

State and Federal Constitutional Issues

Florida is a "right to work" state. Article I, section 6 of the Florida Constitution reads:

> The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Employees have a fundamental right to organize for the purposes of collective bargaining, but have no federal constitutional right to mandatory collective bargaining.[1] Under the Florida Constitution, however, courts have held that the right to collectively bargain is a fundamental right which may be abridged only for a compelling state interest, and therefore a statute under review must serve that compelling state interest in the least intrusive means possible.[2]

Certain restrictions may be placed on a union's ability to collect dues or fees. In Florida, nonunion employees cannot be forced to pay union fees and dues as a condition of employment.[3] In states where employees can be required to pay dues, the exaction of fees beyond those necessary to finance collective bargaining activities has been found to violate the unions' judicially created duty of fair representation and nonunion members' First Amendment rights.[4] The Supreme Court has held that a local government's restrictions on union wage deductions would be upheld against an equal protection challenge if it was reasonably related to a legitimate government purpose.[5] In a more recent case, the Supreme Court has upheld a state statute banning public-employee payroll deductions for political activities against a First Amendment challenge.[6] The Court held that the state was under no obligation to aid unions in their political activities, and the state's decision not to do so was not abridgement of unions' free speech rights, since unions remained free to engage in such speech as they saw fit, but without enlisting the state's support.[7]

Federal Labor Law

The Federal National Labor Relations Act (NLRA) of 1935[8] and the Federal Labor Management Relations Act of 1947[9] constitute a comprehensive scheme of regulations guaranteeing to

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[1] *See Sikes v. Boone*, 562 F. Supp. 74 (N.D. Fla. 1983) *aff'd* 723 F.2d 918 (11th Cir. 1983).
[2] *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Dade County School Admins Assn, Local 77, AFSA, AFL-CIO v. School Bd.*, 840 So. 2d 1103 (Fla. 1st DCA 2003).
[3] *Schermerhorn v. Local 1625 of Retail Clerks Intern. Ass'n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962), *judgment aff'd on other grounds*, 375 U.S. 96 (1963); AFSCME Local 3032 v. Delaney, 458 So. 2d 372 (Fla. 1st DCA 1984).
[4] *Commc'ns Workers of Am. v. Beck*, 487 U.S. 735 (1988).
[5] *Charlotte v. Local 660, Int'l Assoc. of Firefighters*, 426 U.S. 283 (1976).
[6] *Ysursa v. Pocatello Education Assoc*, 129 S.Ct. 1093 (2009).
[7] *Id.*
[8] 29 U.S.C. §§ 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce. Other federal labor-relations statutes that can include the Labor-Management Reporting and Disclosure Act[10] and the Railway Labor Act. A number of states have statutes requiring nongovernmental employers to pay prevailing wages to workers on public works projects.[11]

A project labor agreement (PLA) is when the government awards contracts for public construction projects exclusively to unionized firms. PLAs are used on both public and private projects, and their specific provisions are tailored by the signatory parties to meet the needs of a particular project.[12] PLAs typically require that the contractor hire all workers through union halls, that nonunion workers pay dues for the length of the project and that the contractor follow union rules on pensions, work conditions and dispute resolution. In 2009, President Obama signed Executive Order 13502 allowing federal executive agencies to require contractors on large-scale government construction projects to enter into PLAs as a condition of being awarded a contract.

Federal Wage Regulation[13]

Both federal[14] and state laws provide protection to workers who are employed by private and governmental entities. These protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.[15] Examples of federal laws include:

- **The Davis-Bacon and Related Acts**[16] - Applies to federal or District of Columbia construction contracts or federally assisted contracts in excess of $2,000; requires all contractors and subcontractors performing work on covered contracts to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area.
- **The McNamara-O'Hara Service Contract Act**[17] - Applies to federal or District of Columbia contracts in excess of $2,500; requires contractors and subcontractors performing work on these contracts to pay service employees in various classes no less

[9] 29 U.S.C. §§ 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).
[10] 29 U.S.C. §§ 401 to 531.
[11] *See generally*, 7 A.L.R.5th 444.
[12] Fred Kotler, *Project Labor Agreements in New York State: In the Public Interest*, Cornell University (March 2009) available at http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1021&context=reports.
[13] A list of examples of federal laws that protect employees is located at: http://www.dol.gov/compliance/laws/main.htm (Last visited February 23, 2011).
[14] A list of examples of federal laws that protect employees is located at: United States Department of Labor, Employment Laws Assistance, http://www.dol.gov/compliance/laws/main.htm (last visited Mar. 24, 2011).
[15] *See* United States Department of Labor, A Summary of Major DOL Laws, http://www.dol.gov/opa/aboutdol/lawsprog.htm (last visited Mar. 25, 2011).
[16] Pub. L. No. 107-217, 120 Stat. 1213 (codified as amended at 40 U.S.C. §§ 3141-48; the Davis-Bacon Act has also been extended to approximately 60 other acts).
[17] Pub. L. No. 89-286, 79 Stat. 1034 (codified as amended at 41 U.S.C. §§ 351-58).

than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement.

- **The Migrant and Seasonal Agricultural Workers Protection Act**[18] - Covers migrant and seasonal agricultural workers who are not independent contractors; requires, among other things, disclosure of employment terms and timely payment of wages owed.
- **The Contract Work Hours and Safety Standards Act**[19] - Applies to federal service contracts and federal and federally assisted construction contracts over $100,000; requires contractors and subcontractors performing work on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.
- **The Copeland "Anti-Kickback" Act**[20] - Applies to federally funded or assisted contracts for construction or repair of public buildings; prohibits contractors or subcontractors performing work on covered contracts from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract.

The Fair Labor Standards Act (FLSA)[21] establishes a federal minimum wage and requires employers to pay time and half to its employees for overtime hours worked. The FLSA establishes standards for minimum wages,[22] overtime pay,[23] recordkeeping,[24] and child labor.[25] Over 130 million workers are covered under the act, as the FLSA applies to most classes of workers.[26] The Act entails two types of coverage:

- Enterprises engaged in interstate commerce, producing goods for interstate commerce, or handles, sells, or works on goods or materials that have been moved in or produced in interstate commerce and have an annual volume of sales or business of $500,000, as well as hospitals, schools, and public agencies;
- Individuals engaged in interstate commerce, the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production.[27]

The FLSA provides that:

> Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in

[18] Pub. L. No. 97-470, 96 Stat. 2583 (codified as amended at 29 U.S.C. §§1801-72).
[19] Pub. L. No. 87-581, 76 Stat. 357 (codified as amended at 40 U.S.C. §§ 3701-08).
[20] 18 U.S.C. § 874.
[21] 29 U.S.C. Ch. 8.
[22] 29 U.S.C. § 206.
[23] 29 U.S.C. § 207.
[24] 29 U.S.C. § 211.
[25] 29 U.S.C. § 212.
[26] United States Department of Labor, Employment Law Guide – Minimum Wage and Overtime Pay, http://www.dol.gov/compliance/guide/minwage.htm (last visited Mar. 24, 2011).
[27] 29 U.S.C. § 203(r), (s); U.S. DEPT. OF LABOR, WH PUBLICATION 1282, HANDY REFERENCE GUIDE TO THE FAIR LABOR STANDARDS ACT 2-3 (2010); United States Department of Labor, *supra* note 26.

> the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.[28]

Thus, if a covered employee works more than forty hours in a week, then the employer must pay at least time and half for those hours over forty. A failure to pay is a violation of the FLSA.[29] The FLSA also establishes a federal minimum wage in the United States.[30] The federal minimum wage is the lowest hourly wage that can be paid in the United States. A state may set the rate higher than the federal minimum, but not lower.[31]

The FLSA also provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;[32]
- Criminal prosecutions by the United States Department of Justice;[33] or
- Private lawsuits by employees, or workers, which includes individual lawsuits and collective actions.[34]

The FLSA provides that an employer who violates section 206 (minimum wage) or section 207 (maximum hours) is liable to the employee in the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages.[35] The employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.[36]

State Wage Regulation

Under the Florida Constitution, all working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.[37] Article X, s. 24(c) of the Florida Constitution provides that, "Employers shall pay Employees Wages no less than the minimum wage for all hours worked in Florida." The current state minimum wage is $7.25 per hour, which is the federal rate.[38] Federal law requires the payment of the higher of the federal or state minimum wage.[39]

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[28] 29 U.S.C. § 207(a)(1).
[29] There are several classes of exempt employees from the overtime requirement of the FLSA. For examples of exempt employees see http://www.dol.gov/compliance/guide/minwage.htm (last visited Mar. 25, 2011).
[30] 29 U.S.C. § 206.
[31] 29 U.S.C. § 218(a).
[32] 29 U.S.C. § 216(c).
[33] 29 U.S.C. § 216(a).
[34] 29 U.S.C. § 216(b).
[35] 29 U.S.C. § 216(b).
[36] 29 U.S.C. § 216(b).
[37] *See* FLA. CONST. art. X, s. 24 (adopted in 2004); s. 448.110, F.S.
[38] *See* Agency for Workforce Innovation Website for information regarding the current minimum wage in the State of Florida. http://www.floridajobs.org/minimumwage/index.htm (Last visited February 24, 2011).
[39] 29 U.S.C. § 218(a).

Local Bids and Contracts for Public Construction Works

Section 255.20, F.S., describes the process for bids and contracts for public construction works undertaken by counties, municipalities, special districts and other political subdivisions of the state to award contracts for construction projects. Typically, any construction project with a cost in excess of $300,000, and any electrical project costing more than $75,000, must be competitively awarded. However, s. 255.20, F.S., lists 11 types of projects where a competitive award is not required, such as emergency repair of facilities damaged by hurricanes, riots, or other "sudden unexpected turn of events."

Preference to State Residents

Section 255.099, F.S., requires that all contracts for construction funded by the state contain a provision requiring the contractor to give preference to the employment of Florida residents in the performance of the work on the project if the residents have substantially equal qualifications to those of non-residents. Local construction contracts funded with local funds have the option to require such provisions. Contractors required to hire Floridians must contact the Agency for Workforce Innovation to post the jobs on the state's job bank system (www.employflorida.com). However, for work involving federal aid funds, the contract provision may not be enforceable to the extent it conflicts with federal law.

Government Contract Solicitations - Protests

Section 255.20, F.S., and numerous other provisions in the Florida Statutes govern government contract solicitations.[40] If an entity wishes to protest the specifications contained in a bid solicitation or if an entity wishes to protest a bid decision by an agency, the entity must provide notice to the agency within 72 hours after the posting of the solicitation or decision.[41] The entity then has 10 days after the date of the notice of protest to file a formal written protest.[42]

III. Effect of Proposed Changes:

Section 1 of the bill creates the following definitions:

- Political subdivision means essentially any government entity authorized to expend public funds for "construction, maintenance, repair, or improvement of public works" (hereinafter simply referred to as "construction of public works").
- Project labor agreement means an arrangement mentioned, detailed, or outlined within the project plans, specifications, or any bidding documents of a public works project that:
    - Imposes requirements, controls, or limitations on staffing, sources of employee referrals, assignments of work, sources of insurance or benefits, including health, life, and disability insurance and retirement pensions, training programs or standards, or wages; or
    - Requires a contractor to enter into any sort of agreement as a condition of submitting a bid that directly or indirectly limits or requires the contractor to

[40] *See* 28-110.001, F.A.C. (listing those chapters governed by the bid protest regulations).
[41] Section 120.57(3)(b), F.S.; s. 28-110.003, F.A.C.
[42] Section 120.57(3)(b), F.S.; s. 28-110.004, F.A.C.

recruit, train, or hire employees from a particular source to perform work on public works or a public works project.

- Public works or public works project means a building, road, street, sewer, storm drain, water system, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned, in whole or in part by any political subdivision, and that is to be paid for in whole or in part with state funds.

Except as required by federal or state law, the state or any political subdivision that contracts for the construction of public works shall not require that a contractor, subcontractor, material supplier, or carrier (hereinafter referred to simply as "contractor") engaged in the construction of public works:

- Pay employees a predetermined amount of wages or wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control or limit staffing;
- Recruit, train, or hire employees from a designated or single source;
- Designate any particular assignment of work for employees;
- Participate in proprietary training programs; or
- Enter into any type of project labor agreement.

These restrictions do not apply if the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds is required under federal law.

The state or any political subdivision cannot require that a contractor engaged in the construction of public works execute or otherwise become a party to any agreement with employees, their representatives, or any labor organization[43] including any areawide, regional, or state building or construction trade or crafts council, organization, association, or similar body, as a condition of bidding, negotiating, being awarded any bid or contract, or performing work on a public works project.

The bill states that the state or any political subdivision that contracts for the construction of public works project shall not prohibit a contractor engaged in the construction of public works, who is qualified, licensed, or certified to do any of the work described in the bid documents, from submitting bids, being awarded any bid or contract, or performing work on a public works project. It is unclear when the state or a political subdivision *would* prohibit someone who was qualified from bidding or being awarded a contract.

[43] Citing 29 U.S.C. s. 152(5) (defining labor organization as any kind of organization, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work) and 42 U.S.C. s. 2000e(d) (defining a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization).

Section 2 amends s. 120.57, F.S., to increase the period for the notice of protest for bid specifications from 72 hours to 7 days.

Section 3 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 6, Article III of the State Constitution requires every law to "embrace but one subject and matter properly connected therewith." The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.[44] The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.[45] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[46] For this bill, a court would examine how reducing the government's ability to restrict the practices of its contractors, subcontractors, suppliers, and carriers for public works projects is related to the procedures applicable to protests to contract solicitation or award. A court would also examine how well each of these topics fell under the title "An act relating to public works projects."

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

[44] *Santos v. State*, 380 So.2d 1284 (Fla. 1980).
[45] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).
[46] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

The bill states that the state or any political subdivision that contracts for the construction of public works project shall not prohibit a contractor engaged in the construction of public works, who is qualified, licensed, or certified to do any of the work described in the bid documents, from submitting bids, being awarded any bid or contract, or performing work on a public works project. It is unclear when the state or a political subdivision *would* prohibit someone who was qualified from bidding or being awarded a contract.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

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 1570
INTRODUCER:	Transportation Committee and Senator Evers
SUBJECT:	Billboard Regulation
DATE:	March 28, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Senate Bill 1570 relates to the regulation of billboards and other forms of outdoor advertising. Generally, the bill makes changes which affect where signs may be located, their size, and how vegetation may be managed with respect to signs. More specifically, the bill:

- revises the definitions of "commercial or industrial zone" and "unzoned commercial or industrial area" as they apply to the permissible location of outdoor advertising;
- removes the Florida Department of Transportation's (FDOT, department) authority to adopt rules used in determining the designation of "commercial or industrial zone" and "unzoned commercial or industrial area";
- provides for the voluntary submission of a vegetation management plan, mitigation contribution, or a combination when applying for a permit to clear vegetation to improve the visibility of a sign;
- directs FDOT to consider the condition of vegetation when evaluating vegetation management plans and limits application of herbicides to those approved by the Department of Agriculture and Consumer Services;
- reduces from at least two to one, the number of nonconforming signs that a sign owner must remove prior to being issued a permit to erect a new sign;

- establishes new criteria for the designation of view zones for billboards along certain highways;
- increases the size of hardship signs allowed in rural areas from 16 square feet to 32 square feet; and
- creates the tourist-oriented commerce sign pilot program in rural areas of economic concern.

This bill substantially amends the following section of the Florida Statutes: 479.01, 479.02, 479.106, and 479.16.

This bill creates s. 479.263, F.S.:

II. Present Situation:

Control of Outdoor Advertising
Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-Aid Primary, Interstate and National Highway System (NHS) roads. The HBA allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the National Highway System.

- States have the discretion to remove legal nonconforming signs[1] along highways. However, the payment of just (monetary) compensation is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads.

- States and localities may enact stricter laws than stipulated in the HBA.

- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and Federal-Aid Primary highways, but billboards are allowed in segmented areas deemed un-scenic on those routes.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for

[1] A "legal nonconforming sign" is a sign that was legally erected according to the applicable laws or regulations of the time, but which does not meet current laws or regulations.

noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT) incorporating the HBA's required controls, FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices". Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations, and the 1972 agreement which includes definitions of certain relevant terms, such as "commercial and industrial zone" and "unzoned commercial and industrial areas".

Commercial and Industrial Areas
Outdoor advertising signs may legally be located in commercial or industrial areas. In conformance with the 1972 agreement, s. 479.01(4), F.S., also defines "commercial or industrial zone" as a parcel of land designated for commercial or industrial use under both the Future Land Use Map (FLUM) of the local comprehensive plan and the land development regulations adopted pursuant to ch. 163, F.S. This allows FDOT to consider both land development regulations and future land use maps in determining commercial and industrial land use areas.

Unzoned Commercial and Industrial Areas
If a parcel is located in an area designated for multiple uses on the FLUM, and the land development regulations do not clearly designate the parcel for a specific use, the area will be considered an unzoned commercial or industrial area and outdoor advertising signs may be permitted there provided three or more separate commercial or industrial activities take place. However, the following criteria must be met:

- One of the commercial or industrial activities must be located within 800 feet of the sign and on the same side of the highway,
- The commercial or industrial activity must be within 660 feet of the right-of-way, and
- The commercial or industrial activities must be within 1600 feet of each other.

Regardless of whether the criteria above are met, the following activities are specifically excluded from being recognized as commercial or industrial activities and therefore cannot be considered when determining whether a parcel is an unzoned commercial or industrial area:

- Signs;
- Agriculture, forestry, ranching, grazing, and farming;
- Transient or temporary activities;
- Activities not visible from the traveled way;
- Activities taking place more than 660 feet from the right of way;
- Activities in a building principally used as a residence;

- Railroad tracks and sidings; and
- Communication towers.

With the exception of communication towers, the exclusion of these activities is specifically required by the 1972 agreement between the State and USDOT.

Vegetation Management and View Zones for Outdoor Advertising
Section 479.106, F.S., addresses vegetation management and establishes "view zones" for lawfully permitted outdoor advertising signs on the interstates, expressways, federal-aid primary highways, and the State Highway System, excluding privately or other publicly owned property. The intent of the section is to create partnering relationships which will have the effect of improving the appearance of Florida's highways and creating a net increase in the vegetative habitat along the roads.[2]

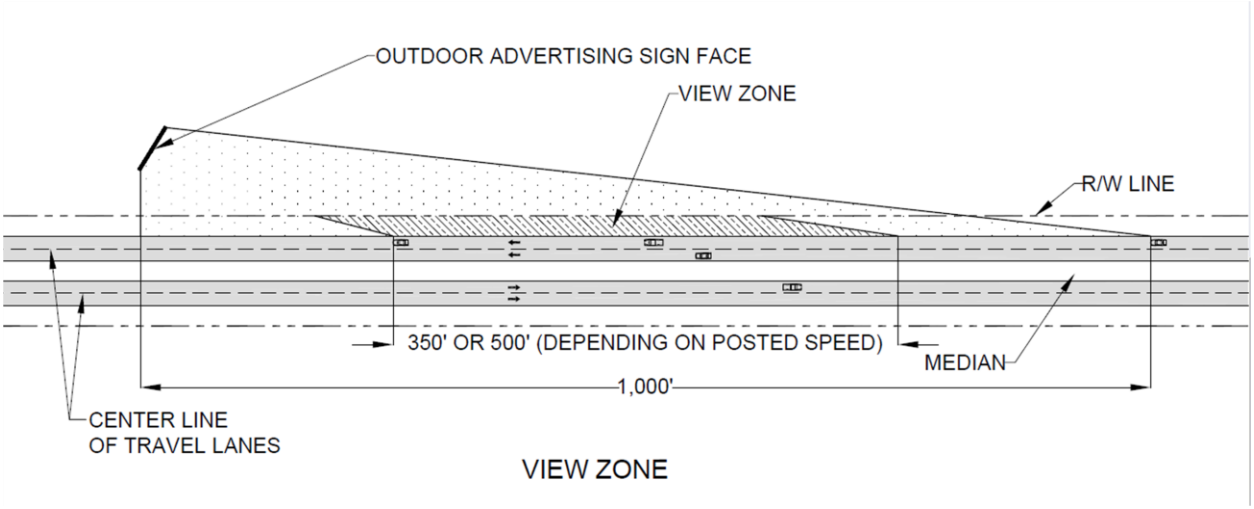
The section requires anyone desiring to remove, cut, or trim trees or vegetation on public right-of-way to improve the visibility or future visibility of a sign or future sign, to obtain written permission from FDOT. To receive a permit to remove vegetation, the applicant must provide a plan for the removal and for the management of any vegetation planted as the result of a mitigation plan. Rule 14-40.030, F.A.C., requires mitigation where:

- Cutting, trimming, or damaging vegetation permanently detracts from the appearance or health of trees, shrubs, or herbaceous plants, or where such activity is not done in accordance with published standard practices. This does not apply to invasive exotic and other noxious plants;
- Trees taller than the surrounding shrubs and herbaceous plants are permanently damaged or destroyed;
- Species of trees or shrubs not likely to grow to interfere with visibility are damaged or destroyed;
- Trees that are likely to interfere with visibility are trimmed improperly, permanently damaged, or removed; or
- Herbaceous plants are permanently damaged.

When the installation of a new sign requires the removal, cutting, or trimming of existing trees or vegetation on public right-of-way, FDOT may only grant a permit for the new sign when the sign owner has removed at least two non-conforming signs of comparable size and surrendered those signs' permits.

The measurements of a view zone are 350 feet, in areas where the posted speed limit is 35 m.p.h. or less, and 500 feet, where the speed limit is over 35 m.p.h. These view zones are to be within the first 1,000 feet as measured along the edge of the pavement in the direction of approaching traffic from a point on the edge of the pavement perpendicular to the sign's edge facing the highway unless interrupted by naturally occurring vegetation. The following illustration taken from agency rule (Rule 14-40.030, F.A.C.) depicts a view zone for signs on one side of a roadway.

[2] Section 479.106(8), F.S.



Section 479.106, F.S., allows FDOT and sign owners to enter into agreements identifying the specific location of an outdoor advertising sign's view zone, and if no agreement is reached, then the view zone shall be measured as described above. For some signs viewed across the median (cross readers), part of the view zone may include the highway median.

Rural Areas of Critical Economic Concern
Rural Areas of Critical Economic Concern (RACEC) are defined in s. 288.0656, F.S., as rural communities, or a region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. The Governor may designate up to three RACECs, which allows the Governor to waive criteria of any economic development incentive. Florida's three designated RACECs include:

- Northwest Rural Area of Critical Economic Concern: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Washington counties, and the City of Freeport in Walton County.

- South Central Rural Area of Critical Economic Concern: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County).

- North Central Rural Area of Critical Economic Concern: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

III. Effect of Proposed Changes:

Section 1 amends. s. 479.01(4), F.S., regarding the definition of "commercial or industrial zone." The revision clarifies the definition, providing for the legal location of outdoor advertising on parcels of land that are designated *predominantly* for commercial or industrial use.

Subsection 479.01(26), F.S., is amended regarding the definition of "unzoned commercial or industrial zone." The revision broadens the application of the term to include an *area* of land,

rather than a *parcel* of land in which multiple commercial or industrial activities take place but for which the land development regulations do not specify.

The subsection is further amended to clarify the criteria by which the determination of whether an area may be considered an "unzoned commercial or industrial zone."

Section 2 amends s. 479.02, F.S., to revise the department's authority to adopt rules. Under the provisions of the bill, FDOT may not adopt rules identifying non-commercial or non-industrial activities for use in determining whether an area is an unzoned commercial or industrial area.

Section 3 amends multiple subsections of s. 479.106, F.S., relating to the management of vegetation affecting visibility of signs.

Subsection 479.106(1), F.S., which establishes that vegetation management may only be conducted with the written permission of the department, is amended by deleting the word "only".

Subsection 479.106 (2), F.S., is amended to delete an existing provision mandating the submission of a management plan when applying for a vegetation management permit. The bill replaces the mandate with an allowance for:

- submission of a vegetation management plan consisting of a depiction of the vegetation to be removed, cut, or trimmed and a description of the existing conditions and the work to be performed;
- a mitigation contribution to the tree planting program administered by the Department of Agriculture and Consumer Services Division of Forestry under s. 589.277, F.S.;
- a combination of a vegetation management plan and mitigation contribution.

The decision to submit a management plan, mitigation contribution, or combination of both is to be made by the applicant.

Subsection 479.106(3), F.S., is amended to require FDOT to take into consideration the existing condition of the vegetation being affected by the plan when evaluating a vegetation management plan. The current requirement for a plan to include plantings to screen a sign's structural support, where applicable, is made permissive.

The bill provides that only herbicides approved by the Department of Agriculture and Consumer Services may be used in the management of vegetation.

Permit applications for vegetation management or mitigation must be acted on by FDOT within 30 days. An approved permit is valid for five years and may be renewed for an additional five years upon payment of the application fee.

Subsection 479.106(5), F.S., is amended to reduce from at least two to one, the nonconforming signs that must be removed prior to the department issuing a permit for a new sign that requires vegetation to be cleared.

A new *s. 479.106(6), F.S.*, is created to revise view zone requirements. Under the bill's provisions, the current dimensions for view zones are established as minimum dimensions. The current exception for view zone disruption, *i.e.*, allowable natural vegetation, is reduced to allow only vegetation that:

- has established historical significance,
- is protected by state law, or
- has a circumference of 70% or more of the circumference of the Florida Champion of that species when both are measured at 4 and ½ feet above grade.

Renumbered *subsection 479.106(7), F.S.,* is amended, allowing the specific location of a sign's view zone may be designated by the sign owner and the department must notify the owner within 90 days of any planting or beautification project that may affect a view zone. No less than 60 days are to be afforded to such affected sign owners to designate the view zone. Vegetation management plans and permits are not required due to implementation of beautification projects.

Section 4 of the bill amends s. 479.16, F.S., which establishes the conditions and criteria under which a sign does not require a permit. The revisions double the maximum size of signs for residential, farm operation, and certain small business signs which do not currently require permitting. Also, signs installed under the tourist-oriented commerce sign pilot program are included in the types of signs which do not require permitting.

Section 5 creates s. 479.263, F.S., to establish the tourist-oriented commerce signs pilot program in rural areas of critical economic concern as defined by ss. 288.0656(2)(d) and (e), F.S.[3] Signs created under the section do not require permits provided the sign advertises a small business as defined in s. 288.703, F.S.,[4] and:

- is not more than 32 square feet in size or 4 feet in height.
- is located in a rural area but not along a limited-access highway.
- is located within 2 miles of the business location and not less than 500 feet from another sign advertising the same business.
- contains only the name of the business or the merchandise or services sold or furnished at the business.

[3] "Rural area of critical economic concern" means a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.
"Rural community" means:
1. A county with a population of 75,000 or fewer.
2. A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer.
3. A municipality within a county described in subparagraph 1. or subparagraph 2.
4. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in paragraph (c) and verified by the Office of Tourism, Trade, and Economic Development.

[4] "Small business" means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

Businesses placing such signs must not be located closer than 4 miles from another business placing such signs. Also, the business may not participate in both the tourist-oriented commerce signs pilot program created in this section and the logo sign program created in s. 479.261, F.S.

Section 6 establishes an effective date of July 1, 2011.

Other Potential Implications:
According to discussions with FDOT staff, the current provisions allowing signs up to 16 square feet to be placed in rural areas (s. 479.16, F.S.) were provisionally approved by USDOT with the caveat that such activity, which would otherwise be prohibited by the HBA, would be found acceptable due to the hardship imposed by the overarching prohibition. FDOT staff reported that the USDOT's provisional approval was conditioned on the limited geographic nature of the program and its maximum size allowance for signs so placed. Accordingly, concerns have been raised that the doubling of the maximum size allowance in Section 4, as well as the introduction of additional unpermitted signs of that size in Section 5, could result in FHWA determining that the State has failed to maintain adequate controls on outdoor advertising as required by the HBA.

The tourist-oriented commerce sign pilot program created by Section 5 of the bill introduces a number of potential concerns:

1. Although the program is identified as a pilot program, the bill does not provide a date certain on which the pilot program terminates. Further, the bill does not provide for the collection, collation, or analysis of any data, nor for the reporting of the pilot program's results.
2. Unlike the similar tourist-oriented directional sign program described in s. 479.262, F.S., the bill authorizes the placement of signs without deference to local governmental sign ordinances and controls.
3. The bill precludes businesses from placing signs under this program when also participating in the logo sign program. However, there is no preclusion for businesses placing signs under this program and the similar tourist-oriented directional sign program. The effect could theoretically result in an unanticipated proliferation of signs.
4. The bill excludes any business from participating in the program if it is located within 4 miles of another business that is participating.

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:

Owners of certain parcels of land affected by the definitional revisions may benefit from the expansion of allowed land uses to include the installation of outdoor advertising.

Owners of nonconforming signs who desire to erect additional signs will benefit by reducing, by half, the number of nonconforming signs that must be removed in order to receive a permit for new signs.

Certain small businesses in rural areas of critical economic concern may benefit from the allowance for additional signs advertising their products or services.

C. Government Sector Impact:

Should the FHWA determine the allowance of 32 square foot signs or any other provision of the bill results in a loss of effective control of outdoor advertising, section 131(b) of Title 23 USC, requires the withholding of up to 10% of federal highway funds (approximately $145 million). Further, if federal action results in the subsequent repeal of a provision, any signs legally erected under the provision would become legal nonconforming signs. The removal of such signs requires just (monetary) compensation.

VI. Technical Deficiencies:

Line 93: The purpose for removing the word "only" may produce confusion in its application. Absent a provision identifying when vegetation management activity may be performed *without* written permission, the removal could result in legal challenges. Staff recommends retaining the word "only" or clarifying when such activity could be performed without written permission.

Lines 100-101: The intent for supplanting "may" for "shall" in regards to the required vegetation management plan and mitigation is unclear. As currently drafted, this could be interpreted to mean that one, the other, or a combination must now be submitted. It could also be taken to mean that none of the choices are required to be submitted in the application for a permit, but *may* be submitted if the applicant chooses. If the former is the intent, staff recommends maintaining the word "shall" and restructuring paragraphs (a) through (c) to be delineated by semicolons and inserting the word "or" after each.

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 on March 16, 2011:
The committee substitute incorporated provisions that:

- remove the FDOT's authority to adopt rules used in determining the designation of "commercial or industrial zone" and "unzoned commercial or industrial area";
- provide for the voluntary submission of a vegetation management plan, mitigation contribution, or a combination when applying for a permit to clear vegetation to improve the visibility of a sign;
- direct FDOT to consider the condition of vegetation when evaluating vegetation management plans and limits application of herbicides to those approved by the Department of Agriculture and Consumer Services;
- reduce from at least two to one, the number of nonconforming signs that a sign owner must remove prior to being issued a permit to erect a new sign;
- establish new criteria for the designation of view zones for billboards along certain highways;
- increase the size of hardship signs allowed in rural areas from 16 square feet to 32 square feet; and
- create the tourist-oriented commerce sign pilot program in rural areas of economic concern.

B. Amendments:

None.

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 1086
INTRODUCER:	Health Regulation Committee; Criminal Justice Committee; and Senators Hill and Bullard
SUBJECT:	Restraint of Incarcerated Pregnant Women
DATE:	March 30, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	O'Callaghan	Stovall	HR	**Fav/CS**
3.	Wolfgang	Yeatman	CA	**Pre-meeting**
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill creates the "Healthy Pregnancies for Incarcerated Women Act." It generally prohibits the use of restraints during labor, delivery, or postpartum recovery on women who are known to be pregnant and who are incarcerated in a state, local, or privately-operated adult or juvenile facility. However, exceptions are allowed on an individual basis if there is a substantial flight risk or an extraordinary medical or security circumstance that dictates the use of restraints. The bill also sets standards for restraint of pregnant prisoners during the third trimester of pregnancy. A woman who is restrained in violation of the bill's provisions can file a grievance within one year in addition to pursuing any other remedies that are available under state or federal law for harm caused by the restraint.

The bill includes several administrative requirements: (1) any exception must be documented in writing and kept available for public inspection for a period of 5 years; (2) an annual report must be made to the governor's office of every instance in which restraints were used pursuant to the exception or in violation of the provisions of the bill; (3) the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) must adopt rules to administer the new law, and (4)

each correctional institution must inform female prisoners of the rules and post the policies in the institution where they will be seen by female prisoners.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Background

The issue of whether or not pregnant female inmates should be exempted from normal policies regarding use of restraints has been widely debated during the last few years.

In October 2010, the National Women's Law Center[1] published a state-by-state report card on the conditions of confinement for pregnant and parenting women and the effect on their children. The report found that, overall, the grades for prenatal care, shackling, and family-based treatment as an alternative to incarceration were poor with twenty-one states receiving either a D or F (failing grades) and twenty-two states receiving a grade of C.[2] Seven states received a B and only one state, Pennsylvania, received an A-. For prenatal care, thirty-eight states received failing grades (D or F grade) for failure to institute adequate policies requiring incarcerated pregnant women to receive adequate prenatal care, despite the fact that many women in prison have higher-risk pregnancies.[3] Furthermore, thirty-six states received failing grades for their failure to comprehensively limit the use of restraints[4] on pregnant women during transportation, labor and delivery, and postpartum recuperation.[5]

A number of states have considered legislation prohibiting or limiting the use of restraints for pregnant inmates, and in 2008 the Federal Bureau of Prisons revised its policy to limit the use of restraints. The Board of Directors of the National Commission on Correctional Health Care recently adopted a position paper on restraint of pregnant inmates. The introduction states:

> Restraint is potentially harmful to the expectant mother and fetus, especially in the third trimester as well as during labor and delivery. Restraint of pregnant inmates during labor and delivery should not be used. The application of restraints during all other pre-and postpartum periods should be restricted as much as possible and, when used, done so with consultation from medical staff. For the

[1] The National Women's Law Center is a nonprofit corporation that was established in 1972. The Center works to protect and advance the progress of women in their families in core aspects of their lives, with an emphasis on the needs of low-income women. National Women's Law Center, *Annual Report 2007-2008*, available at: http://dev2.nwlc.org/sites/default/files/pdfs/NWLCAnnualReport07-08w.pdf, last visited on March 17, 2011.
[2] Florida received a composite grade of C.
[3] Florida received a grade of C for prenatal care.
[4] Florida received a grade of F for its shackling policies.
[5] National Women's Law Center, The Rebecca Project for Human Rights, *Mothers Behind Bars: A State-by-State Report Card and Analysis of Federal Policies on Conditions of Confinement for Pregnant and Parenting Women and the Effect on Their Children*, October 2010, available at: The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution, last viewed on March 17, 2011.

most successful outcome of a pregnancy, cooperation among custody staff, medical staff, and the patient is required.[6]

Department of Corrections Policy

The DOC is responsible for the health care of inmates in its custody[7] and treats more than 80 pregnant inmates per year.[8] Florida law under s. 944.24, F.S., requires the DOC to provide each pregnant inmate with prenatal care and medical treatment through the duration of her pregnancy.[9] Inmates receive prenatal counseling, vitamins, and exams. They also receive an extra nutritional meal each day.[10] A pregnant inmate must be transferred to a hospital outside the prison grounds if a condition develops which is beyond the scope and capabilities of the prison's medical facilities. Any woman inmate who gives birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for the purpose of childbirth, and the charge for hospital and medical care must be charged against the funds allocated to the institution. The department must provide for the care of an inmate's newborn and must pay for the child's care until the child is suitably placed outside the prison system.[11]

The DOC has an established procedure regarding the use of restraints. Key components include:

- After it is learned that an inmate is pregnant (and during her postpartum period), her hands are not restrained behind her back and leg irons are not used. The use of waist chains or black boxes is also prohibited when there is any danger that they will cause harm to the inmate or fetus. The inmate's hands can be handcuffed in front of her body during transport and at the medical facility if required by security conditions due to her custody level and behavior. The shift supervisor's approval is required to remove handcuffs for medical reasons, except that approval is not required in an emergency situation.
- Unarmed escort officers are required to maintain close supervision of a pregnant inmate and to provide a "custodial touch" when necessary to prevent falls.
- An inmate in labor is not restrained, but after delivery she may be restrained to the bed with normal procedures (tethered to the bed by one ankle) for the remainder of her hospital stay. A correctional officer is stationed in the room with the inmate to be sure that she has access to the bathroom or for other needs that require movement.[12]

The DOC reports that its procedures for the use of restraints on pregnant inmates are consistent with national guidelines. It also reports that there were no formal medical grievances submitted regarding the application of restraints during pregnancy from January 1, 2009, to the present.[13]

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[6] Position Paper on Restraint of Pregnant Inmates, adopted by the National Commission on Correctional Health Care Board of Directors (October 10, 2010), http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html , last viewed March 16, 2011.
[7] Section 945.6034, F.S.
[8] DOC Analysis of Senate Bill 1086 (March 10, 2011), page 4.
[9] *See also* s. 951.175, F.S.
[10] Guidelines for the care and treatment of pregnant inmates are defined in DOC Procedure 506.201 (*Pregnant Inmates and the Placement of Newborn Infants*) and Health Services Bulletin 15.03.39 (*Health Care for Pregnant Inmates*).
[11] Section 944.24, F.S.
[12] DOC Procedure 506.201, section 12, and DOC Analysis, page 2.
[13] DOC Analysis, *supra* fn. 3, pages 2 and 4.

Department of Juvenile Justice Policy

The DJJ policy is that pregnant youth must be handcuffed in the front when they are transported outside the secure area. Leg restraints, waist chains, and restraint belts cannot be used on pregnant youth.[14] There is no formal rule addressing the use of restraints during labor and delivery. However, the practice is for restraints to be removed during labor and delivery and whenever requested by the treating health care professional.[15]

III. Effect of Proposed Changes:

The bill generally prohibits corrections officials from using restraints on a prisoner who is known to be pregnant during labor, delivery, or postpartum recovery. It also regulates the use of restraints during the third trimester. The following are summarized definitions of terms used in the bill:

- "Corrections official" refers to the person who is responsible for oversight of a correctional facility, or his or her designee.
- "Restraints" include any physical restraint or mechanical device used to control the movement of the body or limbs. Examples include flex cuffs, soft restraints, hard metal handcuffs, black boxes, chubb cuffs, leg irons, belly chains, security chairs, and convex shields.
- "Prisoner" includes any person who is incarcerated or detained in a correctional institution at any time in relation to a criminal offense, including both pre-trial and post-trial actions. It also includes any woman who is detained in a correctional institution under federal immigration laws.
- "Correctional institutions" include any facilities under the authority of the DOC or the DJJ as well as county and municipal detention facilities. It also includes detention facilities operated by private entities.
- "Labor" is the time before birth when contractions bring about effacement and progressive cervical dilation.
- "Postpartum recovery" is the time immediately following delivery, including recovery time in the hospital or infirmary. The duration of postpartum recovery is determined by the physician.

Restraints can only be used during labor, delivery or post-partum recovery if the corrections official makes an individualized determination that extraordinary circumstances exist requiring their use. This is permissible in two situations: (1) when the prisoner presents a substantial flight risk; or (2) when there is an extraordinary medical or security circumstance that dictates the use of restraints for the safety and security of the prisoner, corrections or medical staff, other prisoners, or the public. However, there are situations that override the exceptions: (1) the corrections official accompanying the prisoner must remove all restraints if removal is requested by the treating doctor, nurse, or other health care professional; and (2) use of leg, ankle, or waist restraints are completely prohibited during labor and delivery.

[14] DJJ Basic Curricula (PAR) 63H-1.001-.016(10).
[15] DJJ Analysis of Senate Bill 1086 (2011), pages 1-2.

The corrections official who authorizes the use of restraints due to an extraordinary circumstance must document the reasons for the exception within 10 days of their use. The correctional institution must maintain this documentation on file and available for public inspection for at least 5 years. However, the prisoner's identifying information may not be made public without the prisoner's consent.

The bill also establishes additional requirements regarding restraint of pregnant prisoners during the last trimester of pregnancy. These additional requirements also apply at any time during pregnancy if requested by the treating doctor, nurse, or other health care professional. These requirements are:

- Waist restraints that directly constrict the area of pregnancy cannot be used.
- Any wrist restraints must be applied so that the pregnant prisoner can protect herself in the event of a forward fall (handcuff must be in front).
- Leg and ankle restraints that restrain the legs close together cannot be used when the prisoner is required to walk or stand.

In addition to the specific requirements during the third trimester and during labor, delivery, and post-partum recovery, the bill provides that any restraint of a prisoner who is known to be pregnant must be done in the least restrictive manner necessary. The purpose of this general requirement is to reduce the possibility of adverse clinical consequences.

The secretaries of the DOC and the DJJ and the official responsible for any local correctional facility where a pregnant prisoner was restrained pursuant to an exception, or in violation of the provisions of the bill, during the previous year must submit a written report to the Executive Office of the Governor with an account of every instance in which such restraint was used.

The bill requires the DOC and the DJJ to adopt rules to administer the new law, and each correctional institution must inform female prisoners of the rules when they are admitted to the institution, include the policies and practices in the prison handbook, and post the policies in appropriate places within the institution that are visible to female prisoners.

The bill also specifies that a woman who is harmed may file a grievance pursuant to s. 944.331, F.S., within one year in addition to any other remedies that might be available under state or federal law. Chapter 33-103, F.A.C., governs inmate grievances. The grievance procedure is designed to provide an inmate with a channel for the internal, administrative settlement of a grievance.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The requirement for correctional institutions under the authority of the DOC to keep records of incidents in which extraordinary circumstances dictated the use of restraints includes a prohibition against releasing the name of the prisoner without her consent. It is unclear whether this new law provides protection of this personal identifying information within existing public records exemptions found in s. 945.10, F.S.

It appears that s. 985.04, F.S., which states that records in the custody of the DJJ regarding children are not open to inspection by the public, is consistent with the bill as it prohibits releasing the name of the child prisoner.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It does not appear that the bill would have a significant fiscal impact on the government sector. In its analysis of the bill, the DOC notes that staff will have to maintain files and prepare the annual report to the Governor but does not quantify any costs.

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 Health Regulation on March 22, 2011:

- Clarifies the time within which a corrections official must make written findings justifying the use of restraints.

- Clarifies the definition of "correctional institution."
- Clarifies the type of complaint that may be filed by an incarcerated woman who has been restrained during her third trimester, labor, delivery, or postpartum recovery.

CS by Criminal Justice on March 14, 2011:

- Clarifies that the bill is only intended to apply to restraint of pregnant inmates during specified times in the latter stages of pregnancy.
- Establishes regulations for restraint of pregnant women during the third trimester.
- Modifies annual report requirement to apply only to instances when an exception is made to allow restraint or when the requirements are violated, not to all instances of shackling during pregnancy.
- Clarifies that the bill applies to correctional facilities operated by private companies.

B. Amendments:

None.

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 934
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Storms
SUBJECT:	Surface Water Improvement Manamgent Plans and Programs
DATE:	March 30, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Committee Substitute (CS) directs the Department of Environmental Protection (DEP) to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. It requires water management districts (WMDs) to establish an urban redevelopment conceptual permitting program in consultation with the DEP and specifies that urban redevelopment projects that satisfy the permit qualify for a notice general permit.

This CS substantially amends s. 373.118, Florida Statutes, and creates s. 373.4131, Florida Statutes.

II. Present Situation:

The Community Redevelopment Act of 1969

The Community Redevelopment Act of 1969[1] was developed to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The act provides a funding mechanism by which counties and municipalities may undertake community

[1] See ch. 163, Part III, F.S.

redevelopment.[2] It allows counties or municipalities to retain tax increment revenues from certain community taxing districts to fund redevelopment within a designated Community Redevelopment Area (CRA). To obtain this revenue, a local government must create a community redevelopment agency, designate an area or areas to be a CRA, create a community redevelopment plan, and establish a trust fund to receive the tax increment revenues.[3]

The Growth Policy Act of 1999

The Growth Policy Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of stimulating investment in distressed urban areas and strengthening urban centers.[4] The Act defines "urban infill and redevelopment area" as an area or areas where:

- Public services such as water and wastewater, transportation, schools, and recreation are already available or are scheduled to be provided within five years.
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress.
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government.
- More than 50 percent of the area is within a quarter of a mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation.
- The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or federal government as an urban redevelopment area or similar designation.[5]

Pursuant to s. 163.2517, F.S., local governments that want to designate urban infill and redevelopment areas must develop plans describing redevelopment objectives and strategies, or to amend existing plans. Local governments must also adopt urban infill and redevelopment plans by ordinance and amend their comprehensive plans to delineate urban infill and redevelopment area boundaries.

Urban Stormwater Management

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface and ground waters. Urbanization leads to:

- Compaction of soil,
- Addition of impervious surfaces such as roads and parking lots,
- Alteration of natural landscape features such as natural depressional areas that hold water, floodplains and wetlands,
- Construction of highly efficient drainage systems that alter the ability of the land to assimilate precipitation, and
- Pollutant loading of receiving water bodies from stormwater discharge.[6]

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[2] Section 163.353, F.S.
[3] *See supra* note 1.
[4] *See* ss. 163.2511 through 163.2523, F.S.
[5] Section 163.2514(2), F.S.
[6] Florida Dep't of Environmental Protection, *State Stormwater Treatment Rule Development Background*, available at http://www.dep.state.fl.us/water/wetlands/erp/rules/stormwater/background.htm (last visited 03/12/2011).

Urbanization within a watershed decreases the amount of rainwater that seeps into the soil. Rainwater is critical for recharging aquifers, maintaining water levels in lakes and wetlands, and maintaining spring and stream flows. The increased volume, speed, and pollutant loading in stormwater discharged from developed areas leads to flooding, water quality problems and loss of habitat.[7]

In 1982, to manage urban stormwater and minimize impacts to our natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development. The rule included a performance standard for the minimum level of treatment and design criteria for best management practices (BMPs) that will achieve the performance standard. It also included a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria would meet water quality standards.[8] The performance standard was to reduce postdevelopment stormwater pollutant loading of Total Suspended Solids (TSS)[9] by 80 percent, or by 95 percent for Outstanding Florida Waters (OFWs).[10]

In 1990, the Department of Environmental Protection (DEP) developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).[11] This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of the DEP, the WMDs and local governments. One of the primary goals of the program is to maintain the predevelopment stormwater characteristics of a site. The rule sets a minimum performance standard for stormwater treatment systems to remove 80 percent of the postdevelopment stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards."[12]

The DEP and the WMDs jointly administer the environmental resource permit (ERP) program for activities that alter surface water flows.[13] Alteration or construction of new stormwater management systems in urban redevelopment areas is regulated by the ERP program pursuant to s. 373.413, F.S., and must comply with all other relevant sections of ch. 373, Part IV, F.S.

Airside Stormwater Management

The Federal Aviation Authority (FAA) provides grants to the Florida Department of Transportation (DOT) Aviation Office for airport airside improvements. The grants have 18 month time frames making it difficult to permit and complete a stormwater project within the required time to take advantage of the grant. A solution to the abbreviated time frame would be

[7] *Id.*
[8] *Id.*
[9] Total Suspended Solid (TSS) is listed as a conventional pollutant under s. 304(a)(4) of the federal Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.
[10] Rule 62-302.700, F.A.C., provides that an OFW is a water body designated worthy of special protection because of its natural attributes. This special designation is applied to certain water bodies, and is intended to protect and preserve their existing states.
[11] *See supra* note 6. See also ch. 62-40, F.A.C.
[12] *See supra* note 6.
[13] *See* ch. 373, Part IV, F.S. See also Florida Dep't of Environmental Protection, *Environmental Resource Permitting (ERP) Program*, available at http://www.dep.state.fl.us/water/wetlands/erp/index.htm (last visited 03/12/2011).

for the DEP to create a general environmental resource permit for stormwater systems serving airside activities at Florida's airports.

In 1998, the DOT, the DEP and three WMDs outlined a study to evaluate airport runway, taxiway and apron stormwater quality. In 1977, the FAA set limitations on stormwater designs on airports to limit wildlife strikes in an advisory circular.[14] The FAA found that stormwater management systems known as "wet ponds" attracted birds and posed a threat to airline safety. A joint study by the DEP and the FAA has evaluated chemical loading characteristics of airside runoff and how best management practices can help airports meet federal and state water quality standards.

Another phase of the study will be funded by the FAA once a general permit for these stormwater systems is developed and adopted. This phase will convert the wet pond at Orlando International Airport into a wet detention system that complies with the 1997 advisory circular. The system will be monitored for pollutant loading and remediation, including nutrients. About 30 percent of Florida's airports have soil and water table considerations that prevent the use of wet detention systems.[15]

III. Effect of Proposed Changes:

Section 1 amends s. 373.118, F.S., directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airports. The permit applies statewide and may be administered by any WMD or delegated local government. The CS specifies that no additional rulemaking is required and the rules are not subject to any special rulemaking requirements related to small business. This change will allow the DOT to take advantage of grant money offered by the FAA to address the specific needs of stormwater management systems that serve airports.

Section 2 creates s. 373.4131, F.S., to address conceptual permits for urban redevelopment projects. The CS allows counties and municipalities doing urban redevelopment projects to adopt stormwater adaptive management plans to address stormwater quality and quantity. Those that adopt such plans may obtain a conceptual permit from a WMD or the DEP.

The CS directs the WMDs, in consultation with the DEP, to establish the conceptual permit. The conceptual permit:

- Allows discharges from an urban redevelopment area created under ch. 163, F.S., or an urban infill and redevelopment area designated under s. 163.2517, F.S., to continue up to the maximum rate and volume in that area as of the date a stormwater adaptive management plan was adopted.
- Presumes that stormwater discharges from an urban redevelopment area that result in a net improvement of discharge quality as compared to discharges that existed at the time the

[14] U.S. Dep't of Transportation Federal Aviation Administration, Advisory Circular 150/5200-33, *Hazardous Wildlife Attractants On or Near Airports* (May 1997), available at http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/53bdbf1c5aa1083986256c690074ebab/$FILE/150-5200-33.pdf (last visited 03/21/2011).

[15] *See generally*, Email from Eric H. Livingston, Program Administer, NPDES Stormwater Section, Dep't of Environmental Protection, to analyst (Mar. 21, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

stormwater adaptive management plan was adopted do not cause or contribute to violations of water quality criteria.
- Cannot contain additional or more stringent limitations than those in this section.
- Is issued for 20 years, unless the applicant requests a shorter time frame.

Finally, the CS permits urban redevelopment projects that meet all requirements to qualify for noticed general permits for construction and operation for the duration of the conceptual permit.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact to the private sector cannot be determined but is expected to be negligible.

C. Government Sector Impact:

The DOT may be able to more fully take advantage of the FAA's grants to address stormwater management systems for airside activities. Since the rulemaking has not yet taken place, the impact is indeterminate.

The DEP and WMDs will be required to expend funds to create and implement the permitting program required by this bill. It is expected that the DEP and WMDs can absorb these costs with existing staff and resources. Additionally, local governments may have to expend funds to modify plans for stormwater management plans in urban redevelopment areas. It is also expected that local governments can absorb these costs with existing staff and resources.

VI. Technical Deficiencies:

The bill requires the WMDs to establish a conceptual permitting program for urban redevelopment programs but does not give the WMDs rulemaking authority to do so. Staff from the WMDs have stated that because the permitting program is conceptual it does not require rulemaking to establish. Clarification of this point may be needed at a future committee stop.

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 Environmental Preservation and Conservation on March 17, 2011:

- Amends s. 373.118, F.S., to direct the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports.
- Creates new s. 373.4131, F.S., for conceptual permits for urban redevelopment projects.
- Allows counties and municipalities doing urban redevelopment projects to adopt stormwater adaptive management plans.
- Allows the WMDs or the DEP to issue conceptual permits for those projects.
- Directs the WMDs in consultation with DEP to establish the conceptual permit with the following criteria:
  - Allows stormwater discharges for projects to continue up to the maximum allowed rate prior to redevelopment of the area,
  - Presumes that a net improvement of discharges from projects do not contribute to water quality violations for the receiving water body,
  - Prohibits additional or more stringent standards than those contained in the section, and
  - Allows for 20-years permits, unless a shorter time frame is requested by the applicant.

Directs that projects meeting the criteria in the conceptual permit qualify for a noticed general permit for construction and operation for the duration of the permit.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 44 - 183

and insert:

their supervision and control, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such returns are exempt from the provisions of s. 119.07(1). The deliberate or intentional disclosure of any such records without the written consent of the taxpayer constitutes misfeasance or malfeasance and may be grounds for removal from office.

Section 2. Subsection (4) of section 194.011, Florida

Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(4)(a) At least 15 days before the hearing the petitioner must ~~shall~~ provide to the property appraiser a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses.

(b) At least ~~No later than~~ 7 days before the hearing, if the petitioner has provided the information required under paragraph (a), and if requested in writing by the petitioner, the property appraiser must ~~shall~~ provide to the petitioner a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses. The evidence list must contain the property record card if provided by the clerk. ~~Failure of the property appraiser to timely comply with the requirements of this paragraph shall result in a rescheduling of the hearing.~~

(c) The value adjustment board may not consider evidence or documentation that the petitioner or property appraiser failed to provide within the time specified in this subsection to the other party.

Section 3. Section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.—

(1)(a) A petitioner ~~Petitioners~~ before the board may be represented by an attorney or agent and present testimony and other evidence. The property appraiser or his or her authorized representative ~~representatives~~ may be represented by an attorney

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in defending the property appraiser's assessment or opposing an exemption and may present testimony and other evidence. The property appraiser, each petitioner, and all witnesses shall be required, upon the request of either party, to testify under oath as administered by the chairperson of the board. Hearings shall be conducted in the manner prescribed by rules of the department. The rules must allow a party to cross-examine~~, which rules shall include the right of cross-examination of~~ any witness.

(b) This section does not prohibit ~~Nothing herein shall preclude~~ an aggrieved taxpayer from contesting his or her assessment in circuit court pursuant to ~~the manner provided by~~ s. 194.171, whether or not he or she has initiated an action pursuant to s. 194.011.

(c) Hearings shall be conducted in the manner prescribed by rules of the department. The rules must:

1. Allow a party to cross-examine any witness; ~~The rules shall provide that no evidence shall be considered by~~

2. Prohibit the board from considering evidence except when presented during the time scheduled for the petitioner's hearing or at a time when the petitioner has been given reasonable notice;

3. Require the board to make ~~that~~ a verbatim record of the proceedings ~~shall be made~~, to preserve ~~and proof of any~~ documentary evidence presented, and to make the evidence ~~shall be preserved and made~~ available to the Department of Revenue, if requested; and

4. State that the petitioner may appeal the decision of the board pursuant to s. 194.171 or ~~further judicial proceedings~~

~~shall be as provided in~~ s. 194.036.

~~(d) Notwithstanding the provisions of this subsection, no petitioner may present for consideration, nor may a board or special magistrate accept for consideration, testimony or other evidentiary materials that were requested of the petitioner in writing by the property appraiser of which the petitioner had knowledge and denied to the property appraiser.~~

(d)~~(c)~~ Chapter 120 does not apply to hearings of the value adjustment board.

(e)~~(f)~~ An assessment may not be contested until a return required by s. 193.052 has been filed.

(2) In each case, except when a complaint is withdrawn by the petitioner or is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days of the last day the board is in session under s. 194.032. The decision of the board shall contain findings of fact and conclusions of law and shall include reasons for upholding or overturning the determination of the property appraiser. If ~~When~~ a special magistrate is ~~has been~~ appointed, the recommendations of the special magistrate must ~~shall~~ be considered by the board. The clerk, upon issuance of the decisions, must ~~shall~~, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the department of the decision of the board.

(3) ~~Appearance before an advisory board or agency created by~~ The county may not require a taxpayer to appear before an advisory board or agency created by the county ~~be required~~ as a prerequisite condition to appearing before the value adjustment

board.

(4) A condominium homeowners' association may appear before the board to present testimony and evidence regarding the assessment of condominium units that ~~which~~ the association represents. Such testimony and evidence must ~~shall~~ be considered by the board with respect to hearing petitions filed by individual condominium unit owners, unless the owner requests otherwise.

(5) For the purposes of review of a petition, the board may consider assessments among comparable properties within homogeneous areas or neighborhoods.

(6) For purposes of hearing joint petitions filed pursuant to s. 194.011(3)(e), each included parcel shall be considered by the board as a separate petition. Such separate petitions shall be heard consecutively by the board. If a special magistrate is appointed, such separate petitions must ~~shall all~~ be assigned to the same special magistrate.

Section 4. Subsection (1) of section 194.035, Florida Statutes, is amended to read:

194.035 Special magistrates; property evaluators.—

(1)(a) In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve

as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment board pursuant to this section. The department shall establish a reasonable range for payments per case to special magistrates based on such payments in other counties. Requests for reimbursement of payments outside this range shall be justified by the county. If the total of all requests for reimbursement in any year exceeds the amount available pursuant to this section, payments to all counties shall be prorated accordingly. If a county having a population less than 75,000 does not appoint a special magistrate to hear each petition, the person or persons designated to hear petitions before the value adjustment board or the attorney appointed to advise the value adjustment board shall attend the training provided pursuant to subsection (3), regardless of whether the person would otherwise be required to attend, but shall not be required to pay the tuition fee specified in subsection (3). A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state

certified real estate appraiser with not less than 5 years' experience in real property valuation. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation. A special magistrate need not be a resident of the county in which he or she serves. A special magistrate may not represent a person before the board in any tax year during which he or she has served that board as a special magistrate. Before appointing a special magistrate, a value adjustment board shall verify the special magistrate's qualifications. ~~The value adjustment board shall ensure that the selection of special magistrates is based solely upon the experience and qualifications of the special magistrate and is not influenced by the property appraiser.~~ The special magistrate shall accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, shall include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board.

(b) The department shall create a process by rule for the random selection of special magistrates by a value adjustment board. The process may not allow the property appraiser to have any influence over the selection of a special magistrate. An attempt by a property appraiser to influence the selection of a special magistrate constitutes misfeasance or malfeasance and

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may be grounds for removal from office.

Section 5. Subsection (3) of section 195.027, Florida Statutes, is amended to read:

195.027 Rules and regulations.—

(3)(a) The rules and regulations shall provide procedures whereby the property appraiser, the Department of Revenue, and the Auditor General may ~~shall be able to obtain~~ access, if ~~where~~ necessary, the ~~to~~ financial records of a taxpayer relating to nonhomestead property which records are required to make a determination of the proper assessment as to the particular property in question. Access to a taxpayer's records shall be provided only in those instances in which it is determined that such records are necessary to determine either the classification or the value of the taxable nonhomestead property. Access shall be provided only to those records which pertain to the property physically located in the taxing county as of January 1 of each year and to the income from such property generated in the taxing county for the year in which a proper assessment is made. The failure of a taxpayer to provide the financial records does not preclude the trier of fact in an administrative or judicial proceeding from considering those records to determine the just value of the taxpayer's property. All records produced by the taxpayer under this subsection are ~~shall be~~ deemed to be confidential in the hands of the property appraiser, the department, the tax collector, and the Auditor General and may ~~shall~~ not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such records are exempt from the provisions of

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217 ================ T I T L E A M E N D M E N T ================
218 And the title is amended as follows:
219 Delete lines 4 - 17
220 and insert:
221 valorem taxation; amending s. 193.074, F.S.; providing
222 that the disclosure of a confidential property tax
223 return without the written consent of the taxpayer may
224 be grounds for removal from office; amending s.
225 194.011, F.S.; prohibiting the value adjustment board
226 from considering certain evidence or documentation
227 that was not timely disclosed; amending s. 194.034,
228 F.S.; deleting a provision prohibiting a value
229 adjustment board or special magistrate from
230 considering certain evidence from a petitioner which
231 was not timely provided to the property appraiser;
232 amending s. 194.035, F.S.; requiring the Department of
233 Revenue to create a process by rule for the random
234 selection of special magistrates by a value adjustment
235 board; providing that an attempt to influence the
236 selection of a special magistrate by the property
237 appraiser constitutes misfeasance or malfeasance and
238 may be grounds for removal from office;

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 1766
INTRODUCER:	Senator Storms
SUBJECT:	Assessment of Real Property/Challenge Proceedings
DATE:	March 25, 2011 REVISED:

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

I. Summary:

This bill deletes the current exception to the confidentiality of tax returns and nonhomestead property records for orders from an administrative body having quasi-judicial powers in ad valorem tax matters and amends the current effects of a property appraiser or petitioner's failure to timely comply with requests for evidentiary information prior to value adjustment board (VAB) hearings. The bill also directs the Department of Revenue (Department) to adopt rules that would allow VAB parties to cross-examine any witness and to require the property appraiser, the Department, and the Auditor General to obtain written consent from a taxpayer prior to sharing the taxpayer's financial records with other authorized entities.

The bill further provides that Department rules shall require the property appraiser, the Department, and the Auditor General to return a taxpayer's financial records within 10 days after receipt if requested by the taxpayer. It also provides that certain individuals who deliberately or intentionally disclose tax return information shall engage in acts of misfeasance or malfeasance, that may result in removal from office.

This bill substantially amends the following sections of the Florida Statutes: 193.074, 194.011, 194.034, 195.027.

II. Present Situation:

Property Tax Assessments

Chapters 193-195, Florida Statutes, address property assessment procedures. Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem

tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1] Property appraisers are required to utilize the factors outlined in s. 193.011, F.S., to determine the property's just valuation as of January 1 of each year.

The State Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.[2]

Article VII of the Florida Constitution, also limits the amount by which assessed value may increase in a given year for certain classes of property and permits a number of tax exemptions. These include exemptions for homesteads and charitable, religious, or literary properties as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

The property appraiser's assessment roll must be completed and submitted to the executive director of the Department of Revenue for approval by July 1 of each year unless good cause is shown for extension.[3] As provided by ch. 195, F.S., the Department of Revenue has general supervision of the assessment and valuation of the property. Taxpayers receive a Notice of Proposed Property Taxes (TRIM notice) in August of each year. This notice provides the taxable value of the property and the millage rate[4] necessary to fund each taxing authority's proposed budget based on the certified tax rolls submitted by the property appraiser.

Locally-elected governing boards prepare a tentative budget for operating expenses following certification of the tax rolls by the tax collector. The millage rate is then set based on the amount of revenue which needs to be raised in order to cover those expenses. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls. The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to end of said hearing.[5] The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original certification of value is more than 1% for municipalities, counties, school boards, and water management districts, or more than 3% for other taxing authorities.

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[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[2] Section 196.185, F.S.
[3] Section 193.1142, F.S.
[4] The millage rate is the rate at which the property is taxed and is set by county commissioners based on how much revenue is needed for operating expenses. *See* s. 200.069, F.S. *See also* Florida Department of Revenue website, *Local Government Property Tax Process*, available at http://dor.myflorida.com/dor/property/taxpayers/pdf/ptoinfographic.pdf (last visited on Nov. 3, 2010).
[5] Section 200.065, F.S.

Value Adjustment Board Hearings

Section 194.015, F.S., states that a value adjustment board shall be created for each county composed of two members from the county governing board, one member from the school board and two citizen members. Section 194.035, F.S., requires counties with a population of more than 75,000, and allows counties with a population less than 75,000, to appoint special magistrates to take testimony and provide recommendations to the board.

The value adjustment board is required to meet no earlier than 30 and no later than 60 days after the mailing of assessment notices pursuant to s. 194.011, F.S. The value adjustment board shall meet for the following purposes:

- To hear petitions relating to assessments, pursuant to 194.011(3), F.S.;
- To hear complaints relating to homestead exemptions, pursuant to s. 196.151, F.S.;
- To hear appeals from tax exemptions that have been denied, or disputes pertaining to granted exemptions, filed pursuant to s. 196.011, F.S.; and
- To hear appeals concerning ad valorem tax deferrals and classifications.[6]

Chapter 194, F.S., provides taxpayers with the right to appeal a property appraiser's assessment, the denial of a classification, a tax exemption, or a tax deferral by filing a petition to the value adjustment board. Taxpayers must file assessment appeals within 25 days after the TRIM notice is mailed.[7] Tax exemption or classification appeals must be filed by the taxpayer within 30 days after the property appraiser mails a notice denying an application.[8] Appeals on denied tax deferrals must be filed within 20 days after the tax collector mails the denial.[9] A county value adjustment board may charge a taxpayer a nonrefundable fee up to $15 upon filing a petition.[10]

After filing a petition and at least 25 days prior to the hearing, the taxpayer receives notice of the date, time, and location of the hearing along with the property record card containing relevant information that was used in computing the taxpayer's current assessment.[11] Prior to the hearing the taxpayer will be given the option to exchange evidence with the property appraiser. Section 194.034, F.S., precludes any information that was requested by the property appraiser and knowingly not provided by the taxpayer from being used at the hearing.[12]

At the hearing both the petitioner and the property appraiser may be represented by an attorney or agent and shall present testimony and other evidence.[13] The hearing shall be conducted in the manner prescribed by Department of Revenue rules with the ability of either party to request that all witnesses be sworn in. Following the decision by the VAB, the property appraiser submits a

[6] Section 194.032(1)(a)1.-4., F.S.
[7] Section 194.011(3), F.S.
[8] *Id.*
[9] Florida Department of Revenue website, *Petitions to the Value Adjustment Board* available online at http://dor.myflorida.com/dor/property/vab/pdf/vabguide.pdf (last visited on March 7, 2011).
[10] *See* 194.013, F.S. "However, this fee is $5 per parcel in cases where a petition includes multiple parcels with similar characteristics." *See* Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process,* Report No. 10-64 (Dec. 2010).
[11] Section 194.032(2), F.S.
[12] Section 194.032(1)(d), F.S.
[13] Section 194.032(1)(a), F.S.

revised certified tax roll to each taxing authority. If the taxpayer does not agree with the VAB's final decision, he or she may appeal the decision within 60 days to the circuit court pursuant to the provisions in s. 194.171(2), F.S.

Confidentiality of Tax Returns

Section 193.074, F.S., provides that all returns of property and returns required by former s. 201.022, F.S., that are submitted by the taxpayer are deemed to be confidential in the hands of the:

- Property appraiser,
- Clerk of the circuit court,
- Department of Revenue,
- Tax collector,
- Auditor General,
- Office of Program Policy Analysis and Government Accountability (OPPAGA), and
- Employees and persons acting under the supervision and control of these individuals.

The confidentiality requirements in this section do not apply in instances where there is a court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters. Such returns are also exempt from the public record inspection and copying requirements provided in s. 119.07(1), F.S.[14]

Department of Revenue Rules and Regulations

Section 195.027, F.S., directs the Department of Revenue to develop reasonable rules and regulations for the assessment and collection of taxes which are to be followed by property appraisers, tax collectors, clerks of the circuit court, and value adjustment boards.[15] Subsection (3) of s. 195.027, F.S., requires that such Department rules and regulations provide procedures:

> . . . whereby the property appraiser, the Department of Revenue, and the Auditor General shall be able to obtain access, where necessary, to financial records relating to nonhomestead property which records are required to make a determination of the proper assessment as to the particular property in question.

Access to such records shall only be provided in instances where they are necessary in order to determine the classification or value of the nonhomestead property. The access is further limited to those records that pertain to the property that is physically located in the taxing county as of January 1 of each year and to the income from such property.[16]

All records that are produced by the taxpayer under s. 195.027, F.S., are deemed to be confidential in the hands of the:

- Property appraiser,
- Department,

[14] *See* s. 119.07(1)(a)-(i), F.S.
[15] Section 195.027(1), F.S.
[16] Section 195.027(3), F.S.

- Tax collector, and
- Auditor General.

As such, these parties are prohibited from divulging taxpayer records obtained under this section "to any person, firm or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters."[17]

Such returns are also exempt from the public record inspection and copying requirements provided in s. 119.07(1), F.S.[18]

III. Effect of Proposed Changes:

Section 1 amends s. 193.074, F.S., to delete the current exception to the confidentiality of tax returns for orders from an administrative body having quasi-judicial powers in ad valorem tax matters. This section also states that the deliberate or intentional disclosure of any such tax returns without the written consent of the taxpayer shall constitute misfeasance or malfeasance, and may be grounds for removal from office.

Section 2 amends s. 194.011, F.S., to make clarifying amendments and to delete the current effect of a property appraiser's failure to timely comply with request for evidentiary information and replace it with new language stating that the VAB may not consider evidence or documentation that the *petitioner or property appraiser* failed to provide to the other party within the time specified in this subsection.

Section 3 amends s. 194.034, F.S., to make clarifying amendments and to delete current provisions that prohibit the petitioner, the board, or the special magistrate from introducing information that was requested by the property appraiser of which the petitioner/taxpayer knowingly failed to produce. This section also requires Department of Revenue rules pertaining to VAB hearings to allow parties to cross-examine any witness.

Section 4 amends s. 195.027(3), F.S., to provide that a taxpayer's failure to provide financial records relating to nonhomestead property shall not preclude the trier of fact in a judicial or administrative proceeding from considering those records to determine the just value of the taxpayer's property. This section also deletes the current exception to the confidentiality of such records for orders from an administrative body having quasi-judicial powers in ad valorem tax matters.

This section further states that rules and regulations prescribed by the Department of Revenue shall require the property appraiser, the Department, and the Auditor General to return the taxpayer's financial records within 10 days after receipt if requested by the taxpayer. Department rules must also require the property appraiser, the Department, or the Auditor General to provide advance notice to the taxpayer if the taxpayer's financial records are shared with another entity that is authorized under this subsection to request access to those records. Such notice must include an explanation of the purpose for sharing the records.

[17] *Id.*
[18] *See* s. 119.07(1)(a)-(i), F.S.

Section 5 provides that this act shall take effect upon becoming law and shall apply to all administrative or judicial proceedings to challenge an assessment of real property pending or initiated on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, section 24(c), of the Florida Constitution, provides that the Legislature is the only entity authorized to create exemptions from open government requirements.[19] The Legislature may provide an exemption by a general law that is approved by a two-thirds vote of each house of the Legislature.[20] The exemption must specifically state the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.[21] A bill enacting an exemption[22] may not contain other substantive provisions; although it may contain multiple exemptions that relate to one subject.[23]

It appears that the language in sections 1 and 4 of the bill may create additional restrictions on public access, as such they may constitute an expansion or further limitation of an existing public records exemption in a substantive bill, in violation of Article I, section 24(c), of the Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Private and Government Sector Impact below.

B. Private Sector Impact:

Individuals challenging assessments or denials of exemptions will now be permitted under Department rule to cross-examine any witness.

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[19] FLA. CONST. art. I, s. 24(c).
[20] *Id.*
[21] *Id. See also Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).
[22] Under s. 119.15, F.S., an existing exemption may be treated as a new exemption if it is "substantially amended", so that the exemption is expanded to cover additional records or information, or to include meetings as well as records. *See* s. 119.15(4)(b), F.S.
[23] FLA. CONST. art. I, s. 24(c).

Triers of fact will no longer be precluded from introducing or considering information that a taxpayer failed to provide in an evidentiary request for nonhomestead property during a judicial or administrative proceeding to determine just value of the taxpayer's property.

C. Government Sector Impact:

Orders from administrative bodies with quasi-judicial powers in ad valorem tax matters will no longer be exempt from the confidentiality provisions in ss. 193.074 and 195.027, F.S.

Any individual authorized to obtain returns under s. 193.074, F.S., who deliberately or intentionally discloses any confidential tax records without the written consent of the taxpayer shall be considered to have engaged in an act of misfeasance or malfeasance and may be removed from office.

The Department of Revenue will need to implement new rules pertaining to VAB hearings as directed in this bill. The Department states that the new requirements in sections 1 and 4 of this bill requiring the written consent of the taxpayer prior to any exchanges of evidence "will prevent the Department and other agencies from obtaining the confidential information they need from the property appraiser to perform their statutory duties."[24] The Department further indicated that these changes will impact the Department's compliance determination process and the ability to timely review taxpayer data.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[24] Florida Department of Revenue, *SB 1766 Agency Fiscal Analysis*, at 4 (March 15, 2011) (on file with the Senate Committee on Community Affairs).

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 982
INTRODUCER:	Senator Norman
SUBJECT:	Wage Protection for Employees
DATE:	March 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			JU	
3.			GO	
4.				
5.				
6.				

I. Summary:

The bill preempts to the state any wage theft ordinances or regulations that exceed the designated state and federal laws.

This bill creates an undesignated section of law.

II. Present Situation:

Wage theft is when workers are paid below the minimum wage, not paid for overtime, forced to work off the clock, have their time cards altered, are misclassified as independent contractors, or are simply not paid a wage for work performed. In 2010 Miami-Dade County enacted a series of wage theft ordinances[1] in response to numerous instances of wage theft. A 2010 report by the Research Institute on Social and Economic Policy for the Florida Wage Theft Task Force analyzed documented wage violations in Miami-Dade and Palm Beach Counties. "The report found that from August 2006 to August 2010, there were 3,697 wage violations reported in the two counties, and those violations were worth about $3.6 million in unpaid wages."[2] Between the time of the ordinance's passage in February, 2010, and November, 2010, Miami logged 423 wage complaints and collected nearly $40,000 from employers.[3] The Florida Retail Federation has challenged the Miami-Dade ordinance alleging that it is unconstitutional for procedural reasons and that it is preempted by the Fair Labor Standards Act and Florida's Minimum Wage

[1] Chapter 22, Miami Code if Ordinances.

[2] Nirvi Shah, *In South Florida, Wage Theft at all Levels*, MIAMI HERALD (Nov. 16, 2010) *available at* http://www.miamiherald.com/2010/11/16/1928207/in-south-florida-wage-theft-at.html#.

[3] Cynthia S. Hernandez, RESEARCH INSTITUTE ON SOCIAL AND ECONOMIC POLICY, WAGE THEFT IN FLORIDA: A REAL PROBLEM WITH REAL SOLUTIONS 3 (2010).

Act.[4] The Palm Beach County Commission has considered enacting a similar ordinance, but has postponed a final vote pending the outcome of the Miami-Dade Case.[5]

Federal Wage Regulation[6]

Both federal[7] and state laws provide protection to workers who are employed by private and governmental entities. These protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.[8] Examples of federal laws include:

- **The Davis-Bacon and Related Acts**[9] - Applies to federal or District of Columbia construction contracts or federally assisted contracts in excess of $2,000; requires all contractors and subcontractors performing work on covered contracts to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area.
- **The McNamara-O'Hara Service Contract Act**[10] - Applies to federal or District of Columbia contracts in excess of $2,500; requires contractors and subcontractors performing work on these contracts to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement.
- **The Migrant and Seasonal Agricultural Workers Protection Act**[11] - Covers migrant and seasonal agricultural workers who are not independent contractors; requires, among other things, disclosure of employment terms and timely payment of wages owed.

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[4] *Florida Retail Federation v. Miami-Dade County*, case no. 10-42326CA30 (Fla. 11th Jud. Cir. 2010).
[5] Jennifer Sorentrue, *Palm Beach County Commission Postpones Vote on Wage Theft Law but Directs Staff to Study and Report*, The Palm Beach Post, Feb. 1, 2011, http://www.palmbeachpost.com/news/palm-beach-county-commission-postpones-vote-on-wage-1224613.html.
[6] A list of examples of federal laws that protect employees is located at: http://www.dol.gov/compliance/laws/main.htm (Last visited February 23, 2011). Examples include: *The Davis-Bacon and Related Acts* (requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of $2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area); *The McNamara-O'Hara Service Contract Act* (The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of $2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement); *The Migrant and Seasonal Agricultural Workers Protection Act* (provides employment-related protections to migrant and seasonal agricultural workers); *The Contract Work Hours and Safety Standards Act* (requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek); *The Copeland "Anti-Kickback" Act* (prohibits federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract).
[7] A list of examples of federal laws that protect employees is located at: United States Department of Labor, Employment Laws Assistance, http://www.dol.gov/compliance/laws/main.htm (last visited Mar. 24, 2011).
[8] *See* United States Department of Labor, A Summary of Major DOL Laws, http://www.dol.gov/opa/aboutdol/lawsprog.htm (last visited Mar. 25, 2011).
[9] Pub. L. No. 107-217, 120 Stat. 1213 (codified as amended at 40 U.S.C. §§ 3141-48; the Davis-Bacon Act has also been extended to approximately 60 other acts).
[10] Pub. L. No. 89-286, 79 Stat. 1034 (codified as amended at 41 U.S.C. §§ 351-58).
[11] Pub. L. No. 97-470, 96 Stat. 2583 (codified as amended at 29 U.S.C. §§1801-72).

- **The Contract Work Hours and Safety Standards Act**[12] - Applies to federal service contracts and federal and federally assisted construction contracts over $100,000; requires contractors and subcontractors performing work on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.
- **The Copeland "Anti-Kickback" Act**[13] - Applies to federally funded or assisted contracts for construction or repair of public buildings; prohibits contractors or subcontractors performing work on covered contracts from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract.

The Fair Labor Standards Act (FLSA)[14] makes it illegal for an employee to be paid less than minimum wage or be required to work overtime without time and a half pay.[15] The FLSA applies to most classes of workers.[16] The FLSA also provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;[17]
- Criminal prosecutions by the United States Department of Justice;[18] or
- Private lawsuits by employees, or workers, which includes individual lawsuits and collective actions.[19]

The FLSA provides that an employer who violates section 206 (minimum wage) or section 207 (maximum hours) is liable to the employee in the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages.[20] The employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.[21]

State Wage Regulation

Under the Florida Constitution, all working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.[22] Article X, s. 24(c) of the Florida Constitution provides that, "Employers shall pay Employees Wages no less than the minimum wage for all hours worked in Florida." If an employer does not pay the state minimum wage, the Florida Constitution provides that an employee may:

> bring a civil action in a court of competent jurisdiction against an Employer or person violating this amendment and, upon prevailing, shall recover the full

[12] Pub. L. No. 87-581, 76 Stat. 357 (codified as amended at 40 U.S.C. §§ 3701-08).
[13] 18 U.S.C. § 874.
[14] 29 U.S.C ch. 8.
[15] 29 U.S.C. §207(a)(1).
[16] The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at http://www.dol.gov/compliance/guide/minwage.htm (Last visited February 24, 2011).
[17] 29 U.S.C. §216(c).
[18] 29 U.S.C. §216(a).
[19] 29 U.S.C. §216(b).
[20] 29 U.S.C. §216(b).
[21] 29 U.S.C. §216(b).
[22] *See* FLA. CONST. art. X, s. 24 (adopted in 2004); s. 448.110, F.S.

> amount of any back wages unlawfully withheld plus the same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement in employment and/or injunctive relief. Any Employer or other person found liable for willfully violating this amendment shall also be subject to a fine payable to the state in the amount of $1000.00 for each violation. The state attorney general or other official designated by the state legislature may also bring a civil action to enforce this amendment. Actions to enforce this amendment shall be subject to a statute of limitations of four years or, in the case of willful violations, five years. Such actions may be brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.[23]

The current state minimum wage is $7.25 per hour, which is the federal rate.[24] Federal law requires the payment of the higher of the federal or state minimum wage.[25]

Preemption

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.[26] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication nor by inference.[27] A local government cannot forbid what legislature has expressly licensed, authorized or required, nor may it authorize what legislature has expressly forbidden.[28] Legislature can preempt counties' broad authority to enact ordinances and may do so either expressly or by implication.[29]

III. Effect of Proposed Changes:

Section 1 states that this act may be cited as the "Florida Wage Protection Act."

Section 2 preempts to the state any wage theft ordinances or regulations that exceed the designated state and federal laws. A county, municipality, or political subdivision of the state may not adopt or maintain in effect any law, ordinance, or rule that creates requirements, regulations, or processes for the purpose of addressing wage theft.

The bill contains a Legislative intent section that declares that the theft of wages and the denial of fair compensation for work completed to be against the laws and policies of this state. The bill

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[23] FLA. CONST art. X, s. 24(c).
[24] See Agency for Workforce Innovation Website for information regarding the current minimum wage in the State of Florida. http://www.floridajobs.org/minimumwage/index.htm (Last visited February 24, 2011).
[25] 29 U.S.C. §218(a).
[26] *See, e.g., City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[27] *Id.*
[28] *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[29] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

recognizes state and federal policies that seek to protect employees from predatory and unfair wage practices while also providing appropriate due process to employers.

Section 3 of the bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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 534
INTRODUCER:	Senator Wise
SUBJECT:	Firesafety
DATE:	March 24, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Favorable**
2.	Carrouth	Matthews	ED	**Favorable**
3.	Gizzi	Yeatman	CA	**Pre-meeting**
4.			HE	
5.			BC	
6.				

I. Summary:

This bill:

- Coordinates state fire marshal law with educational facilities law regarding firesafety inspections on educational property;
- Abolishes the classification of the special state firesafety inspector and leaves intact the classification of full firesafety inspector, and provides for a contingent grandfathering in of existing special state firesafety inspectors;
- Provides that uniform firesafety standards and an alternate system be governed by fire officials certified by the State Fire Marshal;
- Reduces the number of mandatory inspections at educational facilities from two to one annually, and provides for the inspection report to be distributed at the local level only;
- Clarifies the firesafety inspection process for charter schools and for public postsecondary institutions;
- Requires all boards to use only certified fire officials and other inspectors in monitoring compliance with the Florida Building Code, the Florida Fire Prevention Code, and the State Requirements for Educational Facilities; and
- Requires public education boards to submit for approval the site plan for new construction to the local entity providing fire-protection services to the facility and outlines the compliance process.

The provisions in the bill represent a collaborative effort among school districts, community colleges, the Department of Education, and the State Fire Marshal to provide consistency, streamline practices, reduce cost, and ensure safety regarding firesafety inspections.

The bill substantially amends the following sections of the Florida Statutes: 633.01, 633.021, 633.081, 1013.12, 1013.371, and 1013.38.

II. Present Situation:

Division of the State Fire Marshal (State Fire Marshal)

State law on fire prevention and control is provided in Chapter 633, F.S. Section 633.01, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.[2]

The Division of the State Fire Marshal (Division) consists of the following four bureaus: fire and arson investigations, fire standards and training, forensic fire and explosives analysis, and fire prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.[3]

Firesafety Inspections of Florida's Educational Facilities

Chapter 1013, F.S., governs the safety requirements for educational facilities. Unless otherwise specified, the term "board" can indicate any public education board, including: a district school board, a community college board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind.[4] Section 1013.37, F.S., requires the State Fire Marshal to develop firesafety criteria for educational facilities in conjunction with the Florida Building Commission and the Department of Education.[5] However, ch. 663, F.S., does not similarly provide for the cooperative development of standards.

Currently, public schools are required to be inspected by two separate authorities annually, some of which are conducted simultaneously.[6] Opponents of this practice argue that this is a

[1] The agency head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS.
[2] Section 633.01(1), F.S.
[3] State Fire Marshal website, available at http://www.myfloridacfo.com/sfm/ (last visited Feb. 22, 2011).
[4] Section 1013.01(3), F.S.
[5] Section 1013.37(1)(c), F.S.
[6] Both the local fire official and the fire inspector for each school board are required to conduct these inspections. *See* Rule 69A-58.004(1), F.A.C.

duplicative effort and the State Fire Marshall states that these inspections have generated conflicting interpretations of code requirements and jurisdictional authority.[7]

Section 633.01, F.S., requires the State Fire Marshal to adopt and administer rules regarding health and safety standards for educational and ancillary facilities.[8] In addition, the State Fire Marshal also assumes the duties of the local fire official for counties that do not employ or appoint an official.

Special Fire Instructors

Section 633.021, F.S., defines a "firesafety inspector" to be:

> An individual officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district….[9]

A "special state firesafety inspector" is defined as:

> An individual officially assigned to the duties of conducting firesafety inspections required by law on behalf of or by an agency of the state having authority for inspections other than the Division of State Fire Marshal.[10]

There are a small number of people that are employed as "Special Firesafety Inspectors" across the state. A recent survey by the Florida State College found a total of 44 Special Firesafety Inspectors employed in the 67 school districts and 28 community colleges.[11] The current training requirement for this type of inspector is only 120 hours, in contrast to the 200 hours of training required for full firesafety inspector status. For several years the Division has pushed to eliminate the "special firesafety inspector" license and require all firesafety inspectors to have a full "firesafety inspector" license.

Charter Schools

Charter schools are public schools that operate under a performance contract or charter with a sponsor.[12] The charter school must comply with its charter to maintain its status.[13] There is disagreement as to which governmental agency is charged with conducting firesafety inspections of charter schools. Section 1002.33(18), F.S., requires charter schools to meet the same annual inspection requirements of the Florida Fire Prevention Code, unless the charter adopts the State

[7] Department of Financial Services, *SB 534 Bill Analysis and Fiscal Impact Statement* (Feb. 14, 2011) (on file with the Banking and Insurance Committee).
[8] Section 633.01(7), F.S.
[9] Section 633.021(11), F.S.
[10] Section 633.021(24), F.S.
[11] Susan Lehr, Vice President of Government Relations, Florida State College, Jacksonville, *Education Facilities Firesafety Legislation: Q and A*. Many of these 44 special firesafety inspectors also hold a higher firesafety inspection license.
[12] *See* s. 1002.33(1), F.S., stating that "all charter schools in Florida are public schools."
[13] *See* subsection (9) of s. 1002.33, F.S., CHARTER SCHOOL REQUIREMENTS.—

Requirements for Education Facilities pursuant to s. 1013.37, F.S.[14] Charter schools located off school district or community college property are subject to the requirements of the local jurisdiction.[15]

Annual Report on Firesafety

Section 1013.12(8), F.S., requires the State Fire Marshal to produce a statewide annual report on school firesafety inspections of schools.[16] In conducting the annual report, the State Fire Marshal is required to interpret all of the reports that were submitted by the 67 school districts, 28 community colleges, and hundreds of local fire departments for each building at each educational site.[17] Opponents of the annual report requirement assert that diverging local reports formats have complicated the ability to organize them into a singular statewide report. As a result, they argue that the comprehensive statewide report is underutilized and provides minimal information to citizens.

III. Effect of Proposed Changes:

Additional Clarification of Duties of the State Fire Marshal

The bill requires the State Fire Marshal to consult with the Department of Education regarding the adoption of rules pertaining to safety and health standards at educational facilities. If a county does not employ or appoint a certified firesafety inspector, the bill provides that the State Fire Marshal shall assume the duties of the county, municipality, or independent special fire control district, and conduct the firesafety inspection of educational property.

Elimination of Special Firesafety Inspector

As of July 1, 2013, the classification of "special state firesafety inspector" is abolished. Special state firesafety inspectors may, however, be grandfathered in as full firesafety inspectors provided that the following conditions are met:

- The inspector has at least five years of experience as of July 1, 2011, and passes the firesafety inspection examination prior to July 1, 2013;
- The inspector does not have five years of experience as a special state firesafety inspector but takes an additional 80 hours of courses and passes the examination; or
- The inspector has at least five years of experience, fails the examination, but takes 80 additional hours of courses, retakes, and passes the examination.

The bill redefines the term "firesafety inspector" as a person who is certified by the State Fire Marshal, pursuant to s. 633.081, F.S.

[14] Section 1002.33(18)(a)-(b), F.S., *See also* Memorandum to Florida Fire Chiefs from Tom Gallagher, State Fire Marshal, *Charter School Inspections* (Nov. 25, 2003).
[15] Email and telephone correspondence with staff members from the Board of Governors (March 15, 2011).
[16] Section 1013.12(8), F.S.
[17] For more information visit MYFLORIDACFO.COM, DEPARTMENT OF FINANCIAL SERVICES, SCHOOL FIRESAFETY, available online at http://www.myfloridacfo.com/sfm/sfmschoolsafety.htm (last visited on February 22, 2011).

Streamlining of Process

The bill requires all administration and enforcement of uniform firesafety standards and the alternate evaluation system to be conducted by certified fire officials. Effective July 1, 2013, all firesafety inspectors are subject to the same certification process.

The bill also reduces the number of mandatory annual inspections from two to one and the report generated remains at the local level.

The bill deletes the requirement for the State Fire Marshal to compile each local report into one document for submission to the Legislature, the Governor, the Commissioner of Education, the State Board of Education, and the Board of Governors.

School District Firesafety Inspections (Including Charter and Postsecondary Schools)

The bill establishes parity for firesafety inspections for district schools, other public secondary schools (charter schools), and postsecondary institutions.

Inspection of Property by District School Boards

Boards[18] are responsible for appointing certified firesafety inspectors to conduct annual inspections of educational and ancillary plant property. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. The applicable board must submit a copy of the report to the county, municipality, or independent special fire control district providing fire protection services within 10 business days after the inspection, unless immediate corrective action is required, due to life-threatening deficiencies. The entity conducting the firesafety inspection is required to certify to the State Fire Marshal that the annual inspection has occurred.

Inspection of Educational Property by Other Public Agencies

Annual firesafety inspections must be conducted of educational and ancillary plant property operated by a school board or community college. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. Immediate corrective action is required by the county, municipality, or independent special fire control district in conjunction with the appointed fire official where life-threatening deficiencies are noted.

Inspection of Charter Schools Not Located on Board-owned or Leased Property, or Otherwise Operated by a School Board

The bill requires a firesafety inspection to be conducted each fiscal year of educational facilities not owned or leased by the board or a community college, in accordance with State Fire Marshal standards. The bill clarifies that the inspection report is to be submitted to the charter school sponsor. The inspector must include a corrective plan of action in the report, with prompt response for life-threatening deficiencies. If corrective action is not taken, the county, municipality, or independent special fire control district must immediately report the deficiency to the State Fire Marshal and the charter school sponsor. The bill also expressly extends the State Fire Marshal's enforcement authority to charter school educational facilities and property.

[18] Section 1013.01(3), F.S., defines the term *Board* to mean "a district school board, a community college board of trustees, a university board of trustees and the Board of Trustees for the School for the Deaf and Blind," unless otherwise specified.

Inspections of Public Postsecondary Education Facilities

The bill requires inspections of community college facilities, including charter schools located on board-owned or board-leased facilities or otherwise operated by community college boards, to comply with the Florida Fire Prevention Code, without exception via local amendment. Both an annual inspection by a certified inspector and a corrective plan of action are required. The community college must provide a copy of the report to the appropriate county, municipality, or independent special fire control district. Firesafety inspections of state universities must comply with the Florida Fire Prevention Code. If a school board, community college board, or charter school does not take corrective action, the bill requires the inspecting authority to immediately report the deficiency to the State Fire Marshal.

Approval of New Construction/Site Plans

Each board must provide for a periodic inspection of proposed educational or ancillary plants to ensure that the construction complies with the Florida Building Code and the Florida Fire Prevention Code, in addition to the State Requirements for Educational Facilities.

The bill requires local boards to submit for approval new facility site plans to the local county, municipality, or independent special fire control district, and outlines the process for compliance and informal appeal. Site plans must also be submitted for new facility additions that exceed 2,500 feet in size. The State Fire Marshal has final administrative authority to resolve disputes pertaining to the requirements or application of the Florida Fire Prevention Code.

This bill provides for an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals that are currently classified as special state firesafety inspectors who do not have five years of experience or fail the firesafety inspection examination will have to

undergo the new training requirements provided in the bill to become certified as a general firesafety inspector.

Individuals that fail the course of study or firesafety inspection examination will not be permitted to perform firesafety inspections on or after July 1, 2013.

C. Government Sector Impact:

Deleting the annual state-level report requirement will save the Division of State Fire Marshal's office funds and resources that were formerly used to generate the report. The bill reduces the number of mandatory annual inspections from two to one, which will also save money and resources.[19]

The Department of Education (DOE) reports that the reduction of inspections from two to one annually would result in an annual cost savings of $55,538 to the 28 colleges collectively. Thirty-six school districts responded to the DOE that savings would be realized in the amount of $246,988. Extrapolating this to all 67 districts reflects a total annual cost savings of $459,672 among the districts.[20]

The fiscal costs incurred for preparation and submission of the site plan for new construction are unknown; however, they are expected to be minimal.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[19] Florida Department of Financial Services, *SB 534 Fiscal Analysis*, at 1 (Feb. 27, 2011) (on file with the Senate Committee on Community Affairs).
[20] Email correspondence from the Florida Department of Education, Office of Governmental Relations, March 15, 2011.
[21] Fiscal Analysis for previous legislation during the 2010 Legislative Session, *See* Florida Department of Education, *Senate Bill 1074 Fiscal Analysis*, at 4-5 (Jan. 7, 2010) (on file with the Senate Committee on Community Affairs).

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 1942
INTRODUCER:	Senator Bennett
SUBJECT:	Local Government Services
DATE:	March 30, 2011 REVISED:

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

I. Summary:

This bill repeals a section of law created in 1999 that provides a process for counties and municipalities to develop and adopt plans to improve the efficiency, accountability and coordination of the delivery of local government services. Local governments may accomplish the same results by entering into interlocal agreements, and do not use the procedure provided in this law.

This bill repeals section 163.07 of the Florida Statutes.

II. Present Situation:

Section 163.07, F.S.

Section 163.07, F.S., was created by ch. 99-378, L.O.F., relating to community revitalization. This legislation outlines an optional process for counties and municipalities to develop and adopt a plan to improve the delivery of local government services. Specifically, it provides for the initiation of an efficiency and accountability process:

- by resolution adopted by a majority vote of the governing body of each of the counties involved;
- by resolutions adopted by a majority vote of the governing bodies of a majority of the municipalities within each county; or
- by a combination of resolutions adopted by a majority vote of the governing bodies of the municipality or combination of municipalities representing a majority of the municipal population of each county.

The resolution is required to create a commission which is responsible for developing the plan, and to specify the composition of the commission, which must include representatives of:

- county and municipal governments;
- any affected special districts; and
- any relevant local government agencies.

The resolution must include a proposed timetable for the development of the plan and specify the local government support and personnel services that will be made available to representatives developing the plan.

When a resolution is adopted, the designated representatives must develop a plan for the delivery of local government services. This plan must:

- designate the areawide and local government services that are the subject of the plan;
- describe the existing organization of these services and the means of financing the services, and create a reorganization of such services and the financing to meet the goals of the section;
- designate the local agency that should be responsible for the delivery of each service;
- designate the services that should be delivered regionally or countywide;
- provide means to reduce the cost of providing local services and enhance the accountability of service providers;
- include a multi-year capital outlay plan for infrastructure;
- describe any expansion of municipal boundaries that would further the goals of the section;
- meet the standards for annexation provided in ch. 171, F.S, for any area proposed to be annexed;
- prohibit any provisions for contraction of municipal boundaries or elimination of any municipality;
- provide specific procedures for modification or termination of the plan; and
- specify the effective date of the plan.

A plan must be approved by a majority vote of the governing body of each county involved and by a majority vote of the governing bodies of a majority of the municipalities in each county, and by a majority vote of the governing bodies of the municipality or municipalities that represent a majority of the municipal population of each county.

After approval by the county and municipal governing bodies, a plan must be submitted for referendum approval in a countywide election in each county involved. A plan does not take effect unless approved by a majority of the electors of each county who vote in the referendum, and also by a majority of the municipal electors of the municipalities that represent a majority of the municipal population of each county.

Interlocal Agreements

Local governments may accomplish the same results by entering into interlocal agreements pursuant to s.163.01, F.S., the "Florida Interlocal Cooperation Act of 1969." The stated purpose of that section is to enable local governmental units to make the most efficient use of their

powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities. Public agencies are thereby authorized to exercise jointly power, privilege or authority which such agencies share in common and which each can exercise separately. This joint exercise of power is made by contract in the form of an interlocal agreement which is filed with the clerk of the circuit court of each county where a party to the agreement is located. The entire process is perceived as straightforward and flexible.

III. Effect of Proposed Changes:

Section 1 repeals s. 163.07, F.S.

Section 2 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.