The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

BUDGET SUBCOMMITTEE ON FINANCE AND TAX
Senator Bogdanoff, Chair
Senator Altman, Vice Chair

MEETING DATE: Wednesday, April 6, 2011
TIME: 8:00 —9:30 a.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Bogdanoff, Chair; Senator Altman, Vice Chair; Senators Alexander, Gardiner, Margolis, Norman, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 376** Gaetz (Similar H 493)	Tax on Sales, Use, and Other Transactions; Provides definitions related to the tourist development tax. Requires the owner of or the person operating transient accommodations to separately state the amount of the tourist development tax collected and the consideration charged on a receipt, invoice, or other documentation. Exempts certain unrelated persons from the requirement to separately state the amount of the tourist development tax. Provides that the proceeds of the tourist development tax are county funds, etc. CA 02/08/2011 Temporarily Postponed CA 02/21/2011 Fav/2 Amendments BFT 04/06/2011 BC RC	
2	**SB 468** Bullard (Similar H 1343)	Community Redevelopment; Expands the definition of the term "blighted area" to include land previously used as a military facility. CA 03/21/2011 Favorable MS 03/30/2011 Favorable BFT 04/06/2011 BC	
3	**CS/SB 582** Community Affairs / Detert (Similar CS/CS/H 311)	Local Business Taxes; Exempts an individual engaging in or managing a business in an individual capacity as an employee from requirements related to local business taxes. Specifies that an individual licensed and operating as a broker associate or sales associate is an employee. Prohibits a local governing authority from holding an exempt employee liable for the failure of a principal or employer to comply with certain obligations related to a local business tax or requiring an exempt employee to take certain actions related to a local business tax, etc. CA 03/14/2011 Fav/CS RI 03/22/2011 Favorable BFT 04/06/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1210** Norman (Compare H 1003)	Counties and Municipalities; Authorizes the board of county commissioners and the governing body of a municipality to pursue the collection of delinquent fees, service charges, fines, or costs through the use of a private attorney or a collection agent. Provides that the collection fee, including attorney's fees, may be added to the balance owed. Limits the amount of the fee. CA 03/21/2011 Favorable BFT 04/06/2011 BC	
5	**CS/SB 1594** Regulated Industries / Sachs (Similar CS/H 1145)	Pari-mutuel Permitholders; Provides that a greyhound permitholder is not required to conduct a minimum number of live performances. Revises requirements for an application for a license to conduct performances. Provides an extended period to amend certain applications. Removes a requirement for holders of certain converted permits to conduct a full schedule of live racing to qualify for certain tax credits. Revises a condition of licensure for the conduct of slot machine gaming, etc. RI 03/16/2011 Fav/CS BFT 04/06/2011 BC RC	
6	**CS/SB 1816** Banking and Insurance / Fasano (Similar CS/H 1227)	Surplus Lines Insurance; Requires a surplus lines agent to file quarterly on or before a specified time an affidavit stating that all surplus lines insurance transacted during the preceding quarter has been submitted to the Florida Surplus Lines Service Office. Authorizes the Department of Financial Services and the Office of Insurance Regulation to enter into a specified type of agreement with other states pursuant to federal law for the collection and allocation of certain nonadmitted insurance taxes, etc. BI 03/22/2011 Fav/CS BFT 04/06/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 2042** Budget Subcommittee on Finance and Tax	Administration of Property Tax; Repeals provisions relating to the Property Tax Administration Task Force. Revises provisions requiring that certain information be included on the real property assessment roll following a transfer of ownership. Revises provisions requiring that a property appraiser file an appeal of a decision by the value adjustment board within a specified period. Clarifies provisions allowing a taxpayer to file an application for homestead assessment in the year following eligibility, etc. CA 03/28/2011 Favorable BFT 04/06/2011 BC	
8	**SB 2044** Budget Subcommittee on Finance and Tax (Compare CS/H 907, CS/CS/H 7005, CS/CS/S 728, S 1384)	Tax Administration; Repeals provisions relating to liability for taxes following the sale of a business. Clarifies provisions imposing certain penalties for noncompliance with requirements for reporting taxes. Authorizes the Department of Revenue to require that sellers of alcoholic beverages or tobacco products file information reports of sales of those products to retailers in the state. Authorizes the department to release unemployment tax rate information to certain additional agents providing payroll services for employers, etc. CA 03/28/2011 Favorable BFT 04/06/2011 BC	

LEGISLATIVE ACTION

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The Committee on Budget Subcommittee on Finance and Tax (Sachs) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (a) and (f) of subsection (3) of section 125.0104, Florida Statutes, are amended to read:

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

(3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

(a)1. It is declared to be the intent of the Legislature that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment

hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less is exercising a privilege which is subject to taxation under this section, unless such person rents, leases, or lets for consideration any living quarters or accommodations which are exempt according to the provisions of chapter 212.

2.~~a.~~ Tax is ~~shall be~~ due on the consideration paid for occupancy in the county pursuant to a regulated short-term product, as defined in s. 721.05, or occupancy in the county pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right were executed in this state. Such tax shall be collected on the last day of occupancy within the county unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program, as defined in s. 721.05, by the owner of a timeshare interest or such owner’s guest, which guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under this section. A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program is a service charge and not subject to taxation under this section.

3.~~b.~~ Consideration paid for the purchase of a timeshare

license in a timeshare plan, as defined in s. 721.05, is rent subject to taxation under this section.

4. As used in this section, the terms "consideration," "rental," and "rents" mean the amount received by a person operating transient accommodations or the owner of such accommodations for the use of any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with, any hotel, apartment house, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium. The term "person operating transient accommodations" means a person conducting the daily affairs of the physical facilities furnishing transient accommodations who is responsible for providing any of the services commonly associated with operating the facilities furnishing transient accommodations, including providing physical access to such facilities, regardless of whether such commonly associated services are provided by unrelated persons. The terms "consideration," "rental," and "rents" do not include payments received by unrelated persons from the lessee, tenant, or customer for facilitating the booking of reservations for or on behalf of the lessees, tenants, or customers at hotels, apartment houses, roominghouses, timeshare resorts, tourist or trailer camps, mobile home parks, recreational vehicle parks, or condominiums in this state. The term "unrelated persons" means persons who are not related to the person operating transient accommodations or to the owner of such accommodations within the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of 1986, as amended.

(f) The tourist development tax shall be charged by the

person receiving the consideration for the lease or rental, and it shall be collected from the lessee, tenant, or customer at the time of payment of the consideration for such lease or rental. A person operating transient accommodations or the owner of such accommodations shall separately state the tax from the consideration charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons who facilitate the booking of reservations who are unrelated persons with respect to a person who operates transient accommodations with respect to which the reservation is booked are not required to separately state amounts charged on the receipt, invoice, or other documentation except that such persons shall disclose all amounts charged or expected to be charged as taxes on the final receipt, invoice, or other documentation provided to the customer issued by the person facilitating the booking of the reservation. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

Section 2. Section 125.0108, Florida Statutes, is amended to read:

125.0108 Areas of critical state concern; tourist impact tax.—

(1)(a) Subject to the provisions of this section, any county creating a land authority pursuant to s. 380.0663(1) is authorized to levy by ordinance, in the area or areas within said county designated as an area of critical state concern pursuant to chapter 380, a tourist impact tax on the taxable privileges described in paragraph (2)(a) ~~(b)~~; however, if the area or areas of critical state concern are greater than 50

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percent of the land area of the county, the tax may be levied throughout the entire county. Such tax shall not be effective unless and until land development regulations and a local comprehensive plan that meet the requirements of chapter 380 have become effective and such tax is approved by referendum as provided for in subsection (6) ~~(5)~~.

(b) As used in this section, the terms "consideration," "rental," and "rents" mean the amount received by a person operating transient accommodations or the owner of such accommodations for the use of any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with, any hotel, apartment house, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium. The term "person operating transient accommodations" means a person conducting the daily affairs of the physical facilities furnishing transient accommodations who is responsible for providing any of the services commonly associated with operating the facilities furnishing transient accommodations, including providing physical access to such facilities, regardless of whether such commonly associated services are provided by unrelated persons. The terms "consideration," "rental," and "rents" do not include payments received by unrelated persons from the lessee, tenant, or customer for facilitating the booking of reservations for or on behalf of the lessees, tenants, or customers at hotels, apartment houses, roominghouses, timeshare resorts, tourist or trailer camps, mobile home parks, recreational vehicle parks, or condominiums in this state. The term "unrelated persons" means persons who are not related to the person operating transient

accommodations or to the owner of such accommodations within the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of 1986, as amended.

(2)(a) ~~(b)1.~~ It is declared to be the intent of the Legislature that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less, unless such establishment is exempt from the tax imposed by s. 212.03, is exercising a taxable privilege on the proceeds therefrom under this section.

(b)1. ~~2.a.~~ Tax shall be due on the consideration paid for occupancy in the county pursuant to a regulated short-term product, as defined in s. 721.05, or occupancy in the county pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right were executed in this state. Such tax shall be collected on the last day of occupancy within the county unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program, as defined in s. 721.05, by the owner of a timeshare interest or such owner’s guest, which guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under this section. A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific

timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program is a service charge and not subject to taxation under this section.

2.~~b.~~ Consideration paid for the purchase of a timeshare license in a timeshare plan, as defined in s. 721.05, is rent subject to taxation under this section.

(c) The governing board of the county may, by passage of a resolution by four-fifths vote, repeal such tax.

(d) The tourist impact tax shall be levied at the rate of 1 percent of each dollar and major fraction thereof of the total consideration charged for such taxable privilege. When receipt of consideration is by way of property other than money, the tax shall be levied and imposed on the fair market value of such nonmonetary consideration.

(e) The tourist impact tax shall be in addition to any other tax imposed pursuant to chapter 212 and in addition to all other taxes and fees and the consideration for the taxable privilege.

(f) The tourist impact tax shall be charged by the person receiving the consideration for the taxable privilege, and it shall be collected from the lessee, tenant, or customer at the time of payment of the consideration for such taxable privilege. A person operating transient accommodations or the owner of such accommodations shall separately state the tax from the rental charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons who facilitate the booking of reservations who are unrelated persons with respect to a person who operates transient


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accommodations with respect to which the reservation is booked are not required to separately state amounts charged on the receipt, invoice, or other documentation except that such persons shall disclose all amounts charged or expected to be charged as taxes on the final receipt, invoice, or other documentation provided to the customer issued by the person facilitating the booking of the reservation. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

(g) A county that has levied the tourist impact tax authorized by this section in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation may continue to levy the tourist impact tax in accordance with this section for 20 years following removal of the designation. After expiration of the 20-year period, a county may continue to levy the tourist impact tax authorized by this section if the county adopts an ordinance reauthorizing levy of the tax and the continued levy of the tax is approved by referendum as provided for in subsection (6) ~~(5)~~.

(3)~~(2)~~(a) The person receiving the consideration for such taxable privilege and the person doing business within such area or areas of critical state concern or within the entire county, as applicable, shall receive, account for, and remit the tourist impact tax to the Department of Revenue at the time and in the manner provided for persons who collect and remit taxes under chapter 212. The same duties and privileges imposed by chapter 212 upon dealers in tangible property, respecting the collection and remission of tax; the making of returns; the keeping of books, records, and accounts; and compliance with the rules of

the Department of Revenue in the administration of that chapter shall apply to and be binding upon all persons who are subject to the provisions of this section. However, the Department of Revenue may authorize a quarterly return and payment when the tax remitted by the dealer for the preceding quarter did not exceed $25.

(b) The Department of Revenue shall keep records showing the amount of taxes collected, which records shall also include records disclosing the amount of taxes collected for and from each county in which the tax imposed and authorized by this section is applicable. These records shall be open for inspection during the regular office hours of the Department of Revenue, subject to the provisions of s. 213.053.

(c) Collections received by the Department of Revenue from the tax, less costs of administration of this section, shall be paid and returned monthly to the county and the land authority in accordance with the provisions of subsection (4) ~~(3)~~.

(d) The Department of Revenue is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature.

(e) The Department of Revenue is empowered to promulgate such rules and prescribe and publish such forms as may be necessary to effectuate the purposes of this section. The department is authorized to establish audit procedures and to assess for delinquent taxes.

(f) The estimated tax provisions contained in s. 212.11 do not apply to the administration of any tax levied under this section.

(4) ~~(3)~~ All tax revenues received pursuant to this section,

less administrative costs, shall be distributed as follows:

(a) Fifty percent shall be transferred to the land authority to be used to purchase property in the area of critical state concern for which the revenue is generated. An amount not to exceed 5 percent may be used for administration and other costs incident to such purchases.

(b) Fifty percent shall be distributed to the governing body of the county where the revenue was generated. Such proceeds shall be used to offset the loss of ad valorem taxes due to acquisitions provided for by this act.

(5) ~~(4)~~ (a) Any person who is taxable hereunder who fails or refuses to charge and collect from the person paying for the taxable privilege the taxes herein provided, either by himself or herself or through agents or employees, is, in addition to being personally liable for the payment of the tax, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) No person shall advertise or hold out to the public in any manner, directly or indirectly, that he or she will absorb all or any part of the tax; that he or she will relieve the person paying for the taxable privilege of the payment of all or any part of the tax; or that the tax will not be added to the consideration for the taxable privilege or that, when added, the tax or any part thereof will be refunded or refused, either directly or indirectly, by any method whatsoever. Any person who willfully violates any provision of this paragraph is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) The tax authorized to be levied by this section shall

constitute a lien on the property of the business, lessee, customer, or tenant in the same manner as, and shall be collectible as are, liens authorized and imposed in ss. 713.67, 713.68, and 713.69.

(6)~~(5)~~ The tourist impact tax authorized by this section shall take effect only upon express approval by a majority vote of those qualified electors in the area or areas of critical state concern in the county seeking to levy such tax, voting in a referendum to be held by the governing board of such county in conjunction with a general or special election, in accordance with the provisions of law relating to elections currently in force. However, if the area or areas of critical state concern are greater than 50 percent of the land area of the county and the tax is to be imposed throughout the entire county, the tax shall take effect only upon express approval of a majority of the qualified electors of the county voting in such a referendum.

(7)~~(6)~~ The effective date of the levy and imposition of the tourist impact tax authorized under this section shall be the first day of the second month following approval of the ordinance by referendum or the first day of any subsequent month as may be specified in the ordinance. A certified copy of the ordinance shall include the time period and the effective date of the tax levy and shall be furnished by the county to the Department of Revenue within 10 days after passing an ordinance levying such tax and again within 10 days after approval by referendum of such tax. If applicable, the county levying the tax shall provide the Department of Revenue with a list of the businesses in the area of critical state concern where the

tourist impact tax is levied by zip code or other means of identification. Notwithstanding the provisions of s. 213.053, the Department of Revenue shall assist the county in compiling such list of businesses. The tourist impact tax, if not repealed sooner pursuant to paragraph (1)(c), shall be repealed 10 years after the date the area of critical state concern designation is removed.

Section 3. Paragraph (b) of subsection (1) and subsection (2) of section 212.03, Florida Statutes, are amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.—

(1)

(b)1. Tax shall be due on the consideration paid for occupancy in the county pursuant to a regulated short-term product, as defined in s. 721.05, or occupancy in the county pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right was executed in this state. Such tax shall be collected on the last day of occupancy within the county unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program, as defined in s. 721.05, by the owner of a timeshare interest or such owner’s guest, which guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under this section. A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific

timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program is a service charge and not subject to taxation under this section.

2. Consideration paid for the purchase of a timeshare license in a timeshare plan, as defined in s. 721.05, is rent subject to taxation under this section.

3. As used in this section, the terms "rent," "rental," "rentals," and "rental payments" mean the amount received by a person operating transient accommodations or the owner of such accommodations for the use of any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with, any hotel, apartment house, roominghouse, mobile home park, recreational vehicle park, condominium, timeshare resort, or tourist or trailer camp. The term "person operating transient accommodations" means a person conducting the daily affairs of the physical facilities furnishing transient accommodations who is responsible for providing any of the services commonly associated with operating the facilities furnishing transient accommodations, including providing physical access to such facilities, regardless of whether such commonly associated services are provided by unrelated persons. The terms "rent," "rental," "rentals," and "rental payments" do not include payments received by unrelated persons from the lessee, tenant, customer, or licensee for facilitating the booking of reservations for or on behalf of the lessees, tenants, customers, or licensees at hotels, apartment houses, roominghouses, mobile home parks, recreational vehicle parks, condominiums, timeshare resorts, or tourist or trailer camps in

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this state. The term "unrelated persons" means persons who are not related to the person operating transient accommodations or to the owner of such accommodations within the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of 1986, as amended.

(2) The tax provided for in this section ~~herein~~ shall be in addition to the total amount of the rental, shall be charged by any ~~the lessor or~~ person operating transient accommodations or the owner of such accommodations subject to the tax imposed under this chapter ~~receiving the rent~~ in and by such ~~said~~ rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the ~~lessor or~~ person operating the transient accommodations or the owner of such accommodations~~, as defined in this chapter, who receives said rental or payment~~. The ~~owner, lessor, or~~ person operating the transient accommodations or the owner of such accommodations ~~receiving the rent~~ shall remit ~~the tax~~ to the department the tax on the amount of the rent received by the person operating the transient accommodations or the owner of such accommodations at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units,

and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter. A person operating transient accommodations or the owner of such accommodations shall separately state the tax from the rental charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated to the person operating the transient accommodations in which the reservation is booked are not required to separately state amounts charged on the receipt, invoice, or other documentation except that such persons shall disclose all amounts charged or expected to be charged as taxes on the final receipt, invoice, or other documentation provided to the customer issued by the person facilitating the booking of the reservation. Any amounts specifically collected as a tax are state funds and must be remitted as tax.

Section 4. Paragraphs (a) and (b) of subsection (3) of section 212.0305, Florida Statutes, are amended to read:

212.0305 Convention development taxes; intent; administration; authorization; use of proceeds.—

(3) APPLICATION; ADMINISTRATION; PENALTIES.—

(a)1. The convention development tax on transient rentals imposed by the governing body of any county authorized to so levy shall apply to the amount of any payment made by any person to rent, lease, or use for a period of 6 months or less any living quarters or accommodations in a hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, tourist or trailer camp, mobile home park, recreational vehicle park, condominium, or timeshare resort. When receipt of

consideration is by way of property other than money, the tax shall be levied and imposed on the fair market value of such nonmonetary consideration. Any payment made by a person to rent, lease, or use any living quarters or accommodations which are exempt from the tax imposed under s. 212.03 shall likewise be exempt from any tax imposed under this section.

2.~~a.~~ Tax shall be due on the consideration paid for occupancy in the county pursuant to a regulated short-term product, as defined in s. 721.05, or occupancy in the county pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right was executed in this state. Such tax shall be collected on the last day of occupancy within the county unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program, as defined in s. 721.05, by the owner of a timeshare interest or such owner’s guest, which guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under this section. A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program is a service charge and not subject to taxation under this section.

3.~~b.~~ Consideration paid for the purchase of a timeshare license in a timeshare plan, as defined in s. 721.05, is rent

448 subject to taxation under this section.
449 4. As used in this section, the terms "consideration,"
450 "rental," and "rents" mean the amount received by a person
451 operating transient accommodations or the owner of such
452 accommodations for the use of any living quarters or sleeping or
453 housekeeping accommodations in, from, or a part of, or in
454 connection with, any hotel, apartment house, roominghouse,
455 timeshare resort, tourist or trailer camp, mobile home park,
456 recreational vehicle park, or condominium. The term "person
457 operating transient accommodations" means a person conducting
458 the daily affairs of the physical facilities furnishing
459 transient accommodations who is responsible for providing any of
460 the services commonly associated with operating the facilities
461 furnishing transient accommodations, including providing
462 physical access to such facilities, regardless of whether such
463 commonly associated services are provided by unrelated persons.
464 The terms "consideration," "rental," and "rents" do not include
465 payments received by unrelated persons from the lessee, tenant,
466 or customer for facilitating the booking of reservations for or
467 on behalf of the lessees, tenants, or customers at hotels,
468 apartment houses, roominghouses, timeshare resorts, tourist or
469 trailer camps, mobile home parks, recreational vehicle parks, or
470 condominiums in this state. The term "unrelated persons" means
471 persons who are not related to the person operating transient
472 accommodations or to the owner of such accommodations within the
473 meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal
474 Revenue Code of 1986, as amended.
475 (b) The tax shall be charged by the person receiving the
476 consideration for the lease or rental, and the tax shall be

collected from the lessee, tenant, or customer at the time of payment of the consideration for such lease or rental. A person operating transient accommodations or the owner of such accommodations shall separately state the tax from the rental charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated to the person operating the transient accommodations in which the reservation is booked are not required to separately state amounts charged on the receipt, invoice, or other documentation except that such persons shall disclose all amounts charged or expected to be charged as taxes on the final receipt, invoice, or other documentation provided to the customer issued by the person facilitating the booking of the reservation. Any amounts specifically collected as a tax are county funds and must be remitted as tax.

Section 5. Subsection (1) of section 213.30, Florida Statutes, is amended to read:

213.30 Compensation for information relating to a violation of the tax laws.—

(1) The executive director of the department, pursuant to rules adopted by the department, is authorized to compensate:

(a) A county government providing information to the department leading to:

1. The punishment of, or collection of taxes, penalties, or interest from, any person with respect to the tax imposed by s. 212.03. The amount of any payment made under this subparagraph may not exceed 10 percent of any tax, penalties, or interest collected as a result of such information.

2. The identification and registration of a taxpayer who is not in compliance with the registration requirements of s. 212.03. The amount of the payment made to any person who provides information to the department which results in the registration of a noncompliant taxpayer shall be $100. The reward authorized in this subparagraph shall be paid only if the noncompliant taxpayer:

a. Is engaged in a bona fide taxable activity.

b. Is found by the department to have an unpaid tax liability.

(b) Persons providing information to the department leading to:

1.~~(a)~~ The punishment of, or collection of taxes, penalties, or interest from, any person with respect to the taxes enumerated in s. 213.05. The amount of any payment made under this subparagraph ~~paragraph~~ may not exceed 10 percent of any tax, penalties, or interest collected as a result of such information.

2.~~(b)~~ The identification and registration of a taxpayer who is not in compliance with the registration requirements of any tax statute that is listed in s. 213.05. The amount of the payment made to any person who provides information to the department which results in the registration of a noncompliant taxpayer shall be $100. The reward authorized in this subparagraph ~~paragraph~~ shall be paid only if the noncompliant taxpayer:

a.~~1.~~ Conducts business from a permanent, fixed location.~~;~~

b.~~2.~~ Is engaged in a bona fide taxable activity.~~; and~~

c.~~3.~~ Is found by the department to have an unpaid tax

liability.

Section 6. Sections 1 and 3 of chapter 67-930, Laws of Florida, as amended, are amended to read:

Section 1. All cities and towns, in counties of the state having a population of not less than three hundred thirty thousand (330,000) and not more than three hundred forty thousand (340,000) and in counties having a population of more than nine hundred thousand (900,000), according to the latest official decennial census, whose charter specifically provides now or whose charter is so amended prior to January 1, 1968, for the levy of the exact tax as herein set forth, are hereby given the right, power and authority by ordinance or impose, levy and collect a tax within their corporate limits, to be known as a municipal resort tax, upon the rent of every occupancy of a room or rooms in any hotel, motel, apartment house, rooming house, tourist or trailer camp, as the same are defined in part I, chapter 212, Florida Statutes, and upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises, at any place of business required by law to be licensed by the state hotel and restaurant commission or by the state beverage department; provided, however, this tax shall not apply to those sales the amount of which is less than fifty cents (50¢) nor to sales of food or beverages delivered to a person’s home under a contract providing for deliveries on a regular schedule when the price of each meal is less than $10 ~~ten dollars~~. As used in this section, the term “rent” means the amount received by a person operating transient accommodations or the owner of such accommodations for the use of any living quarters or sleeping or

housekeeping accommodations in, from, or a part of, or in connection with, any hotel, apartment hotel, motel, resort motel, apartment, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium. The term "person operating transient accommodations" means a person conducting the daily affairs of the physical facilities furnishing transient accommodations who is responsible for providing any of the services commonly associated with operating the facilities furnishing transient accommodations, including providing physical access to such facilities, regardless of whether such commonly associated services are provided by unrelated persons. The term "rent" does not include payments received by unrelated persons from the lessee, tenant, or customer for facilitating the booking of reservations for or on behalf of the lessees, tenants, or customers at hotels, apartment hotels, motels, resort motels, apartments, roominghouses, timeshare resorts, tourist or trailer camps, mobile home parks, recreational vehicle parks, or condominiums in this state. The term "unrelated persons" means persons who are not related to the person operating transient accommodations or to the owner of such accommodations, within the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of 1986, as amended.

Section 3. The tax imposed by this act shall be collected from the person paying said rent of said retail sales price and shall be paid by such person for the use of the city or town to the person operating transient accommodations or to the owner of such accommodations collecting ~~and receiving the rent or~~ the retail sales price at the time of the payment thereof. It shall

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be the duty of every person operating transient accommodations or the owner of such accommodations ~~renting a room or rooms~~, as herein provided, and of every person selling at retail food or beverages, or alcoholic beverages for consumption on the premises, as herein provided, in acting as the tax collection medium or agency of the city or town, to collect from the person paying the rent or the retail sales price, for the use of the city or town, the tax imposed and levied pursuant to this act, and to report and pay over to the city or town all such taxes imposed, levied and collected, in accordance with the accounting and other provisions of the enacted ordinance. All cities and towns collecting a resort tax pursuant to the provisions of this act shall have the same duties and privileges as the Department of Revenue under part I of chapter 212, Florida Statutes, and may use any power granted to the Department of Revenue under part I of chapter 212, Florida Statutes, including enforcement and collection procedures and penalties imposed by part I of chapter 212, Florida Statutes, which shall be binding upon all persons and entities that are subject to the provisions of this act with regard to the municipal resort tax. A person operating transient accommodations or the owner of such accommodations shall separately state the tax from the rental charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons who facilitate the booking of reservations who are unrelated persons with respect to a person who operates the transient accommodations with respect to which the reservation is booked are not required to separately state amounts charged on the receipt, invoice, or other documentation except that such persons must disclose all

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amounts charged or expected to be charged as taxes on the final receipt, invoice, or other documentation provided to the customer issued by the person facilitating the booking of the reservation. Any amounts specifically collected as a tax are city or town funds and shall be remitted as tax.

Section 7. This act is clarifying and remedial in nature and does not provide a basis for assessments or refunds of tax for periods before July 1, 2011. This act does not affect any lawsuit existing on July 1, 2011, relating to the taxes imposed by the provisions of law amended by this act.

Section 8. 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 the tax on sales, use, and other transactions; amending s. 125.0104, F.S.; providing definitions relating to the tourist development tax; providing requirements for separate statement of the tax; providing an exception; providing for construction; amending s. 125.0108, F.S.; providing definitions relating to the tourist impact tax; providing requirements for separate statement of the tax; providing an exception; providing for construction; amending s. 212.03, F.S.; providing definitions relating to the transient rentals tax; revising requirements for charging, collecting, and

remitting the tax; providing requirements for separate statement of the tax on rental documents; amending s. 212.0305, F.S.; providing definitions relating to the convention development tax; revising requirements for charging, collecting, and remitting the tax; providing requirements for separate statement of the tax on rental documents; amending s. 213.30, F.S.; authorizing the Department of Revenue to compensate county governments for providing certain information to the department; specifying a payment amount; amending ss. 1 and 3, chapter 67-930, Laws of Florida, as amended; providing definitions relating to a municipal resort tax; providing requirements for separate statement of the tax; providing an exception; providing for construction; 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 Budget Subcommittee on Finance and Tax

BILL:	SB 376
INTRODUCER:	Senator Gaetz
SUBJECT:	Tax on Sales, Use and Other Transactions
DATE:	February 25, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Fav/2 amendments**
2.	Fournier	Diez-Arguelles	BFT	**Pre-meeting**
3.			BC	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

SB 376 provides that the state transient rentals tax, local tourist impact tax, local tourist development taxes, local convention development taxes, and municipal resort tax are imposed on the amount received by a person operating transient rental accommodations – not on the payments received by unrelated persons facilitating the booking of reservations of such accommodations. The bill requires the owner or person operating transient rental accommodations to separately state the tax from the rental charged on receipts, invoices, or other documents for transient accommodations.

The bill also allows compensation for county governments that provide information to the Department of Revenue (DOR) that leads to the collection of taxes, or registration of a noncompliant taxpayer.

This bill substantially amends the following sections of the Florida Statutes: 125.0104, 125.0108, 212.03, 212.0305, and 213.30.

This bill substantially amends ss. 1 and 3, of chapter 67-930, of the Laws of Florida, as amended.

This bill may require a two-thirds vote of the membership of each house of the Legislature for passage.

II. Present Situation:

Taxation of Transient Rentals

Transient rentals are rentals or leases of accommodations for a period of 6 months or less. The term "accommodation" includes stays in hotels, apartment houses, roominghouses, tourist or trailer camps, mobile home parks, recreational vehicle parks, or real property.[1]

Under current law, transient rentals are potentially subject to the following taxes:

1. Local Option Tourist Development Taxes: Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(c), F.S., provides that the local option tourist development tax is levied on the "total consideration charged for such lease or rental."
    - The tourist development tax may be levied at the rate of 1 or 2 percent.[2] Currently, 60 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.[3] Revenue from this tax may be bonded to finance certain facilities and projects.
    - An additional tourist development tax of 1 percent may be levied.[4] Currently 43 counties levy this tax and only 56 counties are currently eligible to levy this tax.[5] Revenue from this tax may be bonded to finance certain facilities and projects.
    - A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.[6] Currently 35 counties levy this additional tax and all 67 counties are eligible to levy this tax.[7] Revenue from this tax may be bonded to finance a professional sports facility or convention center.
    - A high tourism impact county may levy an additional 1 percent on transient rental transactions.[8] Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax.[9] Revenue from this tax may be bonded to finance certain facilities and projects.
    - An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.[10] Out of 35 counties that levy a professional sports facility

[1] These accommodations are defined in s. 212.02(10), F.S. *See also* Rule 12A-1.061(2)(f), F.A.C.
[2] Section 125.0104(3)(c), F.S.
[3] Office of Economic and Demographic Research, 2011 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties, available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/2011LOTTrates.pdf (last visited on Jan. 13, 2011).
[4] Section 125.0104(3)(d), F.S.
[5] *See* fn. 3, supra.
[6] Section 125.0104(3)(l), F.S.
[7] *See* fn. 3, supra.
[8] Section 125.0104(3)(m), F.S.
[9] *See* fn. 3, supra.
[10] Section 125.0104(3)(n), F.S.

tax, 20 levy an additional professional sports franchise facility tax.[11] Revenue from this tax may be bonded to finance a professional sports facility.

2. Local Option Tourist Impact Tax: The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total consideration charged. Only Monroe County is eligible and does levy this tax in areas designated as areas of critical state concern.[12]

3. Local Convention Development Tax: The convention development tax under s. 212.0305, F.S., is charged on the total consideration charged for the transient rental. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII, of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3 percent (Volusia County).[13] No county authorized to levy this tax may levy more than 2 percent of the tourist development tax, excluding the professional sports franchise facility tax.[14]Convention development taxes levied by Miami-Dade County or Duval County may be bonded to finance construction of certain facilities.

4. Municipal Resort Tax: As authorized by ch. 67-930, Laws of Florida, and amended by ch. 93-286 and 94-344, Laws of Florida, certain municipalities may levy and collect a municipal resort tax at a rate of up to 4 percent on the sale of food and beverages, including alcoholic beverages sold at a hotel or restaurant, and on transient rental transactions.[15] The tourist development tax may not be levied in any municipality imposing the municipal resort tax. Currently only three municipalities in Miami-Dade County are eligible to impose the tax (Bal Harbour, Miami Beach, and Surfside).

5. State Transient Rentals Tax: The transient rentals tax under s. 212.03, F.S., is levied in the amount of 6 percent of the total rental charged for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.

6. Local Option Discretionary Sales Surtaxes: The local option discretionary sales surtaxes under ss. 212.054 and 212.055, F.S., are levied on transactions subject to tax under sh. 212, F.S. therefore, those taxes apply to transient rentals.

In general, the local taxes are adopted by ordinance and some must be approved by a voter referendum in the county or area where the tax is to be levied. Local taxes on transient rentals are required to be remitted to DOR by the person receiving the consideration, unless a county has

[11] *See* fn. 3, supra.
[12] Id.
[13] Id.
[14] Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.
[15] Chapter 67-930, L.O.F., as amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.

adopted an ordinance providing for local collection and self-administration of the tax.[16] The use of the proceeds from each tax may only be used as set forth in the authorizing statute.

Certain rentals or leases are exempt from transient rental taxes. These include rentals to active-duty military personnel, full-time students residing in transient-rental facilities, bona fide written leases for continuous residence longer than 6 months, and accommodations in migrant labor camps.[17]

Every person desiring to engage in or conduct business in Florida as a dealer, or to lease, rent, let, or grant licenses to use accommodations that are subject to tax under s. 212.03, F.S., must file an application to collect and/or report taxes with DOR prior to engaging in such business. A separate application is required for each county where property is located. After the application is approved by DOR, the applicant receives a Certificate of Registration for each place of business.[18] An agent, representative, or management company that collects and receives rent as the accommodation owner's representative is required to register as a dealer and collect and remit the applicable tax due on such rentals to the proper taxing authority.[19]

In addition to the Certificate of Registration, each newly registered dealer also receives a Resale Certificate for Sales Tax from DOR. The resale certificate is renewed annually for dealers that have an active sales tax account, and expires on December 31 each year.[20] An annual resale certificate allows registered dealers to make tax-exempt purchases or rentals of property or services for resale. Examples include the re-rental of transient rental property and the resale of tangible personal property. An annual resale certificate may not be used to make tax-exempt purchases or rentals of property or services that:

- Will be used rather than resold or rented.
- Will be used before selling or renting the goods.
- Will be used by the business or for personal purposes.[21]

Online Rental Accommodation Intermediaries[22]

There are a number of internet websites that specialize in offering reservations for transient rental accommodations. These websites may be operated by independent third party intermediaries who act either as an "agent" or "merchant" for the transient rental facility[23] or may be operated by the owner or franchisor of a particular brand of facility.

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[16] This is also known as "self-administering."
[17] Section 212.03(7), F.S. *See also* ss. 125.0104(3)(a), 125.0108(1)(b), 212.0305(3)(a), F.S.
[18] Section 212.18(3)(a), F.S.
[19] Rule 12A-1.061(7), F.A.C.
[20] Section 212.18(3)(c), F.S.
[21] Florida Department of Revenue, Annual Resale Certificate for Sales Tax (Guidelines), available online at http://dor.myflorida.com/dor/taxes/resale.html (last visited Jan. 13, 2011).
[22] The information for this section was obtained from the following interim reports: Comm. on Government Efficiency Appropriations, The Florida Senate, *Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and to Hotel Reward Points Programs* (Interim Project 2005-131) (Nov. 2004); and Comm. on Finance and Tax, The Florida Senate, *Application of the State Sales Tax and the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet* (Issue Brief 2009-320) (Oct. 2008).
[23] Travel agents have been granted computerized access to search hotel room inventories and book discounted hotel rooms in the name of, and for the account of, other people (i.e., as intermediaries) since the 1970s.

A. Agent Business Model

The agent business model is the general practice used by most traditional travel agencies and in limited cases by internet intermediaries. When an internet intermediary acts as an "agent", the intermediary is solely acting as a middle-man between the customer and the accommodation owner to reserve a room. In this scenario, the customer reserves a room on the intermediary's website with a credit card to hold the room, but pays the hotel directly during check-out, at which point taxes are charged on the entire amount of the bill. At the time of the online reservation, the customer is typically advised of the taxes that will be collected upon check-out as a separate line item in the total cost listed on the website. After the transaction, the agent receives a commission from the hotel owner, based on the retail rate charged to the customer by the hotel. Under the agency business model, the full retail room rate is subject to tax without any reduction for the commission paid to the agent. An agent does not purchase room inventory for its own account at the hotel in advance of the customer's transaction.

B. Merchant Business Model

An internet intermediary acting as a "merchant" enters into a contract with a hotel owner to offer rooms to the public. In some cases, the merchant will package the room with other travel services, such as airfare or car rental. Under the merchant method, the accommodation owner agrees to make a certain type of its rooms (e.g., standard rooms and/or upgraded rooms) available to the intermediary at a wholesale rate[24] for reservation on its website either alone or as part of a travel package. This wholesale rate is not disclosed to the public.[25] In return, the merchant agrees to pay the hotel the wholesale rate plus an additional amount to cover the projected state or local taxes that will apply to the discounted rate it pays to the hotel. The merchant's website advertises its retail price for the room or the travel package with disclosures for separate charges labeled as "taxes and service fees". Since the merchant's "taxes and service fees" charges are lumped together, consumers do not know how much they are paying in taxes and how much they are paying in fees retained by the merchant.[26] Once a customer decides to rent an accommodation through the merchant's internet intermediary service, the merchant initiates a charge to the customer's credit card for the full retail rate established by the merchant plus the amount the merchant sets as "taxes and service fees". In return the customer receives confirmation of the pre-paid reservation from the merchant. In some cases, a unique credit card number is supplied by the merchant to the accommodation owner for the wholesale room rate and applicable taxes due on the wholesale amount. In other cases, after the customer's stay, the accommodation owner sends the merchant an invoice for the room and the merchant pays the owner the wholesale room rate and applicable taxes due on the wholesale amount. If no invoice is sent, the merchant may keep all of the money it collected from the customer.[27] If the customer cancels the reservation, the merchant keeps any monies forfeited by the customer per the merchant's cancellation policy.[28]

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[24] The merchant generally does not pre-purchase a block of rooms from the hotel. It has the contractual right to sell the rooms on its site at a rate that typically includes a minimum mark-up so it does not undercut the hotel's own website.

[25] The negotiated rate is also referred to as the "discounted" or "negotiated" rate/price.

[26] The rationale given by internet intermediaries for not breaking out taxes and fees is to prohibit other on-line merchants from knowing what type of deals they received from the accommodation owners; which could be obtained simply by subtracting the amount withheld for taxes. The standard facilitation fee on such internet room rates is 25 percent.

[27] For a detailed description of the merchant model, see, *Columbus, Georgia v. Expedia*, (Civil Action No. SU-06-CV-1974-7) (Superior Court, Muscogee County, Ga., Sept. 22, 2008).

[28] For a detailed description of the merchant model, see, *Columbus, Georgia v. Expedia*, (Civil Action No. SU-06-CV-1974-7) (Superior Court, Muscogee County, Ga., Sept. 22, 2008).

C. Franchise Business Model

A hotel may utilize multiple business models to sell its rooms via the internet, including intermediaries acting under both the agency and merchant models described above. A hotel that is operated as a franchise also has available to it the online systems operated by its franchisor. A franchise is essentially a marketing agreement between an owner, in this case, of a transient lodging facility, and the owner of a particular brand or trademark. The owner of the facility (the franchisee) pays the owner of the trademark (the franchisor) for the use of the trademark and related systems and services, and agrees to abide by the applicable brand standards set by the franchisor for appearance, services, facilities, amenities, etc. The franchisor agrees to provide certain support for the franchisee, including a reservation system. Customers can go to the franchisor's website or call centers to make reservations at franchisee facilities in a particular location but do not generally pay for the lodging until the time of stay at the hotel, at which time the full amount for the room is collected from the customer together with applicable taxes. The franchisee pays a per-transaction fee and in some cases additional system charges to the franchisor for its use of the reservation system. In this scenario, the service fees charged by franchisors to facilitate online reservations are not included in the overall franchise fee.[29]

Transient Rentals Taxes and Online Rental Accommodations

The proper amount against which current law levies state and local transient rentals taxes, specifically whether they are only levied against the "wholesale" price (the negotiated/discounted rate paid by the intermediary to the hotel owner) or the full "retail" price (the total rate charged to the customer by the intermediary), has been subject to dispute in Florida since at least 2004. During the 2004 Legislative Session, an informal workgroup representing the Florida Hotel and Motel Association, one Internet intermediary company, a major Florida theme park, the Florida Association of Counties, and legislative staff discussed this issue. In addition, the Department of Revenue participated as a source of information and support staff. As a result of these discussions, proposed legislation to ameliorate the problem was developed. The proposed legislation attempted to clarify the appropriate tax treatment of transactions in which an Internet intermediary of hotel rooms pays a hotel a discounted rate for a room that the intermediary then sells to a customer at a higher price. The proposed legislation was not considered during the 2004 Legislative Session,[30] and no legislation was enacted on the issue in subsequent legislative sessions, although bills dealing with the issue have been filed in 2008,[31] 2009,[32] and 2010.[33]

A. Internet Intermediaries' Interpretation of Current Law

Internet intermediaries assert that the tourist development tax is based upon the amount paid to the accommodation owner/operator for the right to use the transient accommodation (wholesale

[29] This description of the franchise business model is based on information provided on March 8, 2011 by Kerry J. Houghton, Senior Vice President – Law', Starwood Hotels & Resorts Worldwide, Inc.
[30] Comm. on Government Efficiency Appropriations, The Florida Senate, *Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and to Hotel Reward Points Programs* (Interim Project 2005-131) (Nov. 2004)
[31] HB 7147, SB 2788
[32] HB 579, SB 1790
[33] HS 335, 1241, SB 156, 2436

rate); and not by the full retail rate. The intermediaries state that the facilitation fee, which is generally the difference between the retail rate and the wholesale rate, is not subject to the tourist development tax because it is not an amount that is paid to the hotel owner.[34] They further argue that the 'taxable incident' is not the isolated receipt of the rental payment, but the exercise of the privilege – the assemblage of activities consistent with ownership. Under this line of reasoning, the fees that are received for facilitating booking, processing reservation applications, or providing similar services, are not subject to tax when the receiving company lacks an ownership interest in the accommodation. This argument extends to the tax treatment provided for other customer charges, variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees."

B. Local Governments' Interpretation of Current Law

Local governments maintain that the tourist development tax should be levied against the full retail rate that is charged by the internet intermediaries to the customer, not just the wholesale price that is paid to the hotel owner. Local governments contend that intermediaries acting as merchants are considered sales tax dealers. They argue that the internet intermediary acts in place of the accommodation owner in renting, leasing, or letting the real property, tangible personal property, and services as part of the accommodation. Local governments assert that dividing the sale of an accommodation reservation into discrete transactions ignores the sale's singular nature. They are concerned that allowing intermediaries to separate the customary accommodation services from the taxable transaction will erode the tax base.

C. When Taxes Should Be Remitted

There is also dispute as to when the transient rentals tax is due. Internet intermediaries assert that the transient rentals tax should be remitted by the hotel or facility, as owner of the accommodation, and shall therefore be due once the wholesale/negotiated room charge is forwarded to the owner after the consumer's hotel stay. On the other hand, local governments maintain that the transient rentals tax is due at the time the money is paid by the consumer to the intermediary, not when the accommodation owner is later paid the wholesale/negotiated rate.

Litigation in Florida[35]

A. Orange County v. Expedia, Inc. et al

Orange County is one of the counties in Florida that self-administers their local tourist development tax.[36] In 2008, Orange County brought a lawsuit against internet intermediaries Expedia and Orbitz to determine whether the local tourist development tax is due "on the difference between the wholesale price and the retail price they receive for the rooms when they re-sell them."[37] The trial court dismissed the case, ruling that the county must first exhaust administrative remedies, by completing audits to estimate taxes due. Thereafter, the appellate court reversed the trial court's ruling and remanded the case for further proceedings stating that

[34] A facilitation fee generally involves money received by the intermediary to facilitate booking, process reservation applications, or provide similar services.

[35] Lawsuits in other states "are based on the specific language of each jurisdiction's taxing scheme and on the variety of causes of action pled…." *Orange County v. Expedia, Inc. et al.*, 985 So.2d 622, 630 (5th DCA, 2008), rehearing denied, *Expedia, Inc. v. Orange County*, 999 So.2d 644 (Fla. 2008) (unpublished disposition).

[36] Self-administering means that the county has adopted an ordinance providing for local collection and administration of the tax.

[37] *Orange County*, at 2.

the county is entitled to know whether it can lawfully assess the tourist development tax before attempting to audit the companies.

On January 20, 2011, the Ninth Judicial Circuit Court denied a motion for summary judgment filed by Orange County,[38] and held that the "facts on summary judgment . . . do not unequivocally demonstrate that the entirety of the transactions here are within the intendment of the TDT" (tourist development tax).[39] The Ninth Circuit further ordered that no additional motions be filed until the parties conduct a status conference hearing to discuss future contemplated filings and other necessary activities necessary to the case.

B. Additional Florida Cases

There are currently several cases pending in Florida between counties and various internet intermediaries addressing the levy of transient rentals taxes on online hotel accommodations provided through internet intermediary services.[40] The following are a few cases that are pending in the 2nd Judicial Circuit in Leon County:

- *Orbitz LLC vs. Broward County* (Case No. 37 2009 CA 000126) is a consolidated case led by Orbitz LLC that involves various internet intermediaries who are suing Broward County Florida for the assessment of Broward's tourist development tax.[41]

- *Orbitz LLC vs. Miami-Dade County* (Case No. 2009 CA 005006) is part of another set of cases involving a dispute between various internet intermediaries and Miami-Dade County for the assessment of both the tourist development tax and the convention development tax.[42]

- *Leon County vs. Expedia Inc.* (Case No. 37 2009 CA 004319) & (Case No. 37 2009 CA 004882): In this case, a number of counties and tax collectors filed an action for declaratory and equitable relief for a mandatory injunction against various internet intermediaries for the payment of transient rentals tax and any local option sales taxes levied on the total rental charged for hotel accommodations. A notice for trial was filed on May 26, 2010.[43]

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[38] A "motion for summary judgment" is "a [p]rocedural device available for prompt and expeditious disposition of controversy without trial when there is no dispute as to either a material fact or inferences to be drawn from undisputed facts, or if only question of law is involved. BLACK'S LAW DICTIONARY 1435 (6th ed. 1990). The moving party must prove that there is "no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." *Volusia County v. Aberdeen at Ormond Beach, L.P.*, (Fla. 2000). In deciding a motion for summary judgment, "the trial judge must draw every possible inference against the moving party and in favor of the party opposing the motion." *Orange County v. Expedia* (Case No. 48-2006-CA-2104-O) (Fla. 9th Cir. Ct. 2011) (citing Padovano, West Florida Civil Practice, Sec. 13-2).

[39] *Orange County v. Expedia* (Case No. 48-2006-CA-2104-O) (Fla. 9th Cir. Ct. 2011) (emphasis added).

[40] *See Anne Gannon v. Hotels.com, L.P.* (Case No. 50 2009 CA 025919 XXXXMB)(Fla. 15th Cir. Ct. 2009). *See also Brevard County v. Priceline.org et al* (Case No. 6-09-cv-1695-GAP-GJK)(M.D. Fla. filed Oct. 2, 2009).

[41] Leon County Clerk of Courts Website, *Orbitz LLC vs. Broward County* (Case No. 37 2009 CA 000126), available at http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real_case.case_id='61797026' (last visited on Jan. 14, 2011).

[42] Leon County Clerk of Courts Website, *Orbitz LLC vs. Miami-Dade County* (Case No. 2009 CA 005006), available at http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real_case.case_id='81922577' (last visited on Jan. 14, 2011).

[43] Leon County Clerk of Courts Website, *Leon County v. Expedia Inc.*, (Case No. 2009 CA 004319), docket available at http://www.clerk.leon.fl.us/index.php?section=2&server=image&page=high_profile/index.asp?year=2009 (last visited on Jan. 14, 2011) (The plaintiffs in this case include: Leon County, Leon County Tax Collector Doris Maloy, Flagler County,

The Florida Attorney General has also filed an action for declaratory judgment against Expedia and Orbitz asking whether the internet companies' failure to remit the appropriate amount of transient rentals taxes on hotel room rentals is in violation of Florida law.[44]

In August 2010, Monroe County entered into a settlement agreement on behalf of 32 counties[45] in a federal class-action suit against certain online travel companies. As a result of the settlement order, the online travel companies were required to pay $6.5 million to the counties, and in return were released from any obligation to pay or remit tourist development taxes on the full retail price for hotel accommodations.[46] The participating counties agreed to dismiss all current claims against the online travel companies with prejudice, and are further precluded from suing Expedia, Travelocity and Orbitz for two years, and Priceline for three years.

Information Relating to Violation of Tax Laws

Section 213.30, F.S., authorizes the executive director of the Department of Revenue to compensate persons who provide information leading to the collection of taxes, penalties, or interest. The compensation may not exceed 10 percent of the amount collected. Compensation is also authorized for information leading to the identification and registration of a taxpayer who is not in compliance with statutory registration requirements.

Section 213.0535, F.S., establishes the Registration Information Sharing and Exchange Program (RISE), which is coordinated by the Department of Revenue and by which participating state agencies and local governments responsible for administering one or more specified taxes share tax administration data. The information that is subject to sharing includes the registrant's, licensee's, or taxpayer's name, mailing address, business location, and federal employer identification number or social security number; any applicable business type code; any applicable county code; and other tax registration information prescribed by the Department of Revenue. The Department of Revenue and local officials responsible for collecting the tourist development tax, the tourist impact tax, a convention development tax, or a municipal resort tax also exchange data relating to tax payment history, audit assessments, and registration cancellations of dealers engaging in transient rentals.

Lee County, Manatee County, Pinellas County, Pinellas County Tax Collector Diane Nelson, Polk County, Polk County Tax Collector Joe Tedder, St. Johns County, Escambia County, Charlotte County, Walton County, Hillsborough County, Hillsborough Tax Collector Doug Belden, Pasco County, Alachua County, Nassau County, Okaloosa County, Seminole County, and Wakulla County).

[44]Leon County Clerk of Courts Website, *Dep't. of Legal Affairs vs. Expedia Inc.* (Case No. 37 2009 CA 004304), available at http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real_case.case_id='84428357' (last visited on Jan. 14, 2011).

[45] The class action suit represented the following counties: Baker, Bradford, Citrus, Clay, Collier, Columbia, Duval, Franklin, Gadsden, Gilchrist, Glades, Hamilton, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lake, Levy, Madison, Martin, Miami-Dade, Monroe, Okeechobee, Putnam, St. Lucie, Santa Rosa, Sarasota, Sumter, Suwannee, and Taylor. The 15 defendants included: Expedia, Inc., Hotels.com, L.P., Hotwire, Inc., Hotels.com, and TravelNow.com, Inc. (the "Expedia parties"); priceline.com incorporated and Travelweb LLC (the "Priceline parties"); Travelocity.com LP and Site59.com (the "Travelocity parties"); and Orbitz, LLC and Trip Network Inc. d/b/a Cheaptickets.com (the "Orbitz parties").

[46] *Monroe County v. Priceline, Inc. et al.* Master Settlement Agreement (Case No. 09-10004-CIV-MOORE/SIMONTON)(S.D. Fla. 2010) (on file with the Senate Committee on Community Affairs).

III. Effect of Proposed Changes:

This bill provides that the state transient rentals tax, local tourist development taxes, local tourist impact taxes, local convention development taxes, and municipal resort taxes are imposed on the amount received by the owner of or the person operating transient rental accommodations – not the payments received by unrelated persons facilitating the booking of reservations of such accommodations.

The following terms are defined in sections 1, 2, 3, 4 and 6 of the bill:

- The terms *"consideration," "rental,"* and *"rents"* means "the amount received by the owner of or the person operating a transient accommodation for the use of any living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with, a hotel, apartment house, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium." Section 3 of the bill, amending s. 212.03, F.S., also provides this definition for the term "rental payments" and does not define the term "consideration". Section 6 of the bill, amending ch. 67-930, Laws of Florida, only uses this definition for the term "rent".
- The terms *"consideration," "rental" and "rents"* (and *"rental payments"* for section 3 of the bill) do not include payments received by "unrelated persons" from a lessee, tenant, or customer for facilitating the booking of reservations for or on behalf of the lessee, tenant, or customers at a hotel, apartment house, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium in this state."
- A *"person operating transient accommodations"* means "the person who conducts the daily affairs of the physical facilities that furnish transient accommodations and who is responsible for providing any of the services commonly associated with operating those facilities, including providing physical access, regardless of whether the commonly associated services are provided by an unrelated person."
- The term *"unrelated person"* is defined as "a person who is not related to the owner or the person operating transient accommodations within the meaning of s. 267(b) or s. 707(b) of the Internal Revenue Code of 1986, as amended."[47]

[47] "Unrelated persons" do not include the following:

1. **Individuals**
   a. Individuals and any Spouse, Sibling, and Lineal Ascendant or Descendant;
   b. Individuals and any partnership that they own >50% of the capital/profit interest;
   c. Individuals and any corporation they own >50% value of stock;

2. **Partnerships**
   a. Two partnerships if same person owns more than 50% of the capital or profit interest;
   b. A partnership and a corporation if the same person owns more than 50% of the stock in the corporation and more than 50% of the capital or profits interest in the partnership;

3. **Corporations**
   a. Corporations when one owns the other or when they are connected through common ownership;
   b. A corporation and a partnership if the same person owns more than 50% of the stock in the corporation and more than 50% of the capital or profits interest in the partnership;
   c. Two S corporations if the same person owns more than 50% of the outstanding stock in each;
   d. An S and a C corp. if the same person owns more than 50% of the outstanding stock.

4. **501 Entities**

Section 1 amends s. 125.0104(3), F.S. (Local Option Tourist Development Taxes), to define the terms "consideration," "rental," and "rents", and the terms "person operating transient accommodations" and "unrelated persons" as provided above. This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.**Section 2** amends s. 125.0108, F.S. (Local Tourist Impact Tax), to define the terms "consideration," "rental," and "rents", and the terms "person operating transient accommodations" and "unrelated persons" as provided above. This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

Section 3 amends s. 212.03(1)(b), F.S. (State Transient Rentals Tax), to define the terms "rent", "rental," "rentals," and "rental payments", and the terms "person operating transient accommodations" and "unrelated persons" as provided above. The section also amends s. 212.03(2), F.S., to provide that the state transient rentals tax is charged by the owner of, or the person operating transient accommodations subject to the tax imposed under the chapter. The tax is due on the amount of rent received at the time the person operating transient accommodations receives the rental payment.

The owner of or the person operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations the tax from the rental charged on the receipt. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

Section 4 amends s. 212.0305(3)(a), F.S. (Local Convention Development Tax), to define "consideration," "rental," and "rents", and the terms "person operating transient accommodations" and "unrelated persons" as provided above. This section also provides that the person who owns or is operating transient accommodations must separately state the amount of

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a. A 501 entity and any person that directly or indirectly controls the organization by himself or herself or through a member of their family (family meaning someone in number 1(a) above);

5. Trusts

a. Grantor and fiduciary of the same trust;
b. Fiduciaries of two different trusts if the grantor is the same;
c. Fiduciaries and beneficiaries of the same trust;
d. Fiduciary and beneficiary of different trusts if grantor is the same;
e. Fiduciary of a trust and a corporation more than 50% of which is owned directly or indirectly by or for the trust or by or for the grantor of the trust;

6. **Estates** -- An executor and beneficiary of an estate.

the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

Section 5 amends s. 213.30(1), F.S., to provide authority for the Department of Revenue (DOR) to compensate a county government that provides information to the department that leads to:

- The punishment of, or the collection of taxes, penalties, or interest from, any person related to the state transient rentals tax in s. 212.03, F.S. The amount of payment to a county may not exceed 10 percent of any tax, penalties, or interest collected as a result of the information.
- The identification and registration of a taxpayer not already in compliance with the state transient rentals tax registration requirements. The amount of payment made to any person providing information that results in the registration of the noncompliant taxpayer shall be $100. The reward shall be paid only if the noncompliant taxpayer is:
    - Engaged in a bona fide taxable activity; and
    - Found by DOR to have an unpaid tax liability.

Currently, s. 212.30, F.S., permits the Executive Director of DOR to compensate persons who provide information to the department that leads to the punishment or collection of taxes from any person or to the identification and registration of a noncompliant taxpayer.[48] This program is known as the DOR Rewards Program. The statute provides the conditions under which compensation may be paid. Employees of DOR or any other state or federal agency may not be compensated. Although this statute does not specifically deny compensation to county governments, their participation in the RISE Program under s. 213.0535, F.S., would appear to require county governments to provide information about tax law violations under that program, in which rewards are not authorized.

Section 6 amends ss. 1 and 3 of chapter 67-930, Laws of Florida, as amended by chapters 93-286 and 94-344, Laws of Florida, (Municipal Resort Tax), to define the terms "rent", "person operating transient accommodations" and "unrelated persons" as provided above. This section also provides that the municipal resort tax shall be collected by the owner or the person operating transient accommodations at the time of payment of the rent or the retail sales price.

The bill states that it shall be the duty of every *owner or person operating the transient accommodations*, to collect from the person paying the rent or the retail sales price, for the use of the city or town, the tax imposed and levied pursuant to this section, and to report and pay over to the city or town all such taxes imposed, levied and collected, in accordance with the accounting and other provisions of the enacted ordinance.

This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are

[48] Between 2007 and 2010, DOR received 3,898 rewards cases and collected $18.6M as a result of the rewards program. Of these cases, 728 rewards have been paid out, with the total amount paid equaling approximately $1.1M. This information was obtained via email from Lynne Moeller, Florida Department of Revenue (Feb. 4, 2011) (on file with the Senate Committee on Community Affairs).

not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

This section provides an exception to eligible cities' and towns' (Miami Beach, Bal Harbour, and Surfside) authority to impose a municipal resort tax on the retail sale price of alcoholic beverages for beer and malt beverages. (An amendment traveling with the bill removes this provision.)

Section 7 states that this act is clarifying and remedial in nature and does not provide a basis for assessments or refunds of tax for periods before July 1, 2011. The bill also states that this act does not affect any lawsuit existing on July 1, 2011, related to the taxes imposed by the provisions of law amended by this act.

Section 8 provides that this act shall take effect on July 1, 2011.

Other Potential Implications:

The new definitions of "consideration," "rental," and "rents" provided in sections 1, 2, 3, 4, and 6 create doubt about the taxable status of payments made by "unrelated persons" who facilitate the booking of a reservation for or on behalf of the lessee, tenant, or customer at the transient lodging facility. This is because "consideration," "rental," and "rents" are defined as:

> The amount received by the owner of or the person operating transient accommodations **for the use of** any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with, a hotel…(*emphasis added*)

However, current law refers to "consideration paid for occupancy" (s. 125.0104(3)(a)2.a., F.S.) and provides that:

> The tourist development tax shall be charged by the person receiving the consideration for the lease or rental, and it shall be collected from the **lessee, tenant, or customer** at the time of payment for consideration for such lease or rental. *(emphasis added)* (s. 125.9195(3)(f), F.S.)

Payments made by unrelated persons may not meet the definition of "consideration" since the unrelated persons do not use the facilities.

Similarly, these definitions cast doubt on the ability of the person operating a transient facility to collect tax on the amount of consideration or rent paid, since the transient rental facility may not receive consideration or rent as defined in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b), of the Florida Constitution, provides that "except upon a approval by two-thirds of members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February1, 1989".[49] Since this bill would reduce a county or municipality's authority to raise revenue in the aggregate, it may require a two-thirds vote of the membership of each house of the Legislature for passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill would prevent local governments from levying certain taxes on payments received by unrelated persons facilitating the booking of accommodation reservations.

On February 25, 2011, the REC determined that this bill would affect state or local revenue in 3 ways:

- It has a negative but indeterminate cash impact for FY 2011-12 and a recurring impact of ($28.7) million on the tourist development tax because it does not tax the markup retained by persons facilitating transient rental bookings.
- It has a negative but indeterminate impact on state and local revenue because it will allow persons who currently collect and remit sales and tourist development taxes to change their business practices in order to take advantage of the tax preference provided by the bill.
- The section of the bill that provides a cash reward to counties has a negative but indeterminate impact on state revenue and positive indeterminate impact on local revenue

B. Private Sector Impact:

This bill provides that transient rentals taxes are levied upon the amount of payment received by the owner or person operating the transient rental facility. It provides a tax preference for unrelated persons facilitating the booking of accommodation reservations

[49] FLA. CONST. art. VII, s. 18(b).

under the merchant model, as compared to bookings by related persons or agents, since less than the full amount paid by the final customer is subject to tax.

This bill also requires the owner or person operating the transient accommodation to separately state the amount of tax collected and the consideration charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes.

C. Government Sector Impact:

The Department of Revenue (DOR) has indicated that this bill will cost the Department $19,070 in non-recurring expenses for the 2010-2011 FY as a result of printing and mailing Tax Information Publications (TIPs) to transient rental sales and use tax dealers and counties.[50]

This bill provides an exception to eligible cities' and towns' (Miami Beach, Bal Harbour, and Surfside) authority to impose a municipal resort tax on the retail sale price of alcoholic beverages, removing the tax on beer and malt beverages. (An amendment traveling with the bill removes this provision.)

Counties that provide information to DOR, that leads to the punishment of, or the collection of taxes, penalties or interest related to state transient rentals tax, or to the identification and registration of a taxpayer who is not in compliance with state transient rentals tax registration requirements, may be entitled to compensation by DOR in an amount not to exceed 10 percent of the taxes, penalties, or interest collected as a result of such information.

See Tax/Fee Issues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The following table shows the current transient rentals tax rates in all 67 Florida Counties: [51]

[50] Department of Revenue, *Senate Bill 376 Fiscal Analysis* (Jan. 24, 2011) (on file with the Senate Committee on Community Affairs).

[51] Chart provided by the Office of Economic and Demographic Research, 2011 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties, available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/2011LOTTrates.pdf (last visited on Jan. 13, 2011) (**Note:** County names that are followed by an asterisk represent those counties that self-administer these taxes and boxed areas indicate those counties that are eligible to impose the particular tax prescribed in the table. As noted in the Present Situation section of this analysis, three municipalities in Miami-Dade County (Bal Harbour, Miami Beach, and Surfside) are eligible to impose the Municipal Resort Tax).

County	Maximum Potential Tax Rate	Current Tax Rate	Unutilized Tax Rate
Alachua *	5	5	0
Baker *	5	2	3
Bay *	5	5	0
Bradford	5	4	1
Brevard *	5	5	0
Broward *	6	5	1
Calhoun	4	0	4
Charlotte *	5	5	0
Citrus	5	3	2
Clay *	5	3	2
Collier *	5	4	1
Columbia	5	3	2
DeSoto	4	0	4
Dixie	4	0	4
Duval *	6	6	0
Escambia *	5	4	1
Flagler	5	4	1
Franklin	5	2	3
Gadsden	5	2	3
Gilchrist	5	2	3
Glades	4	2	2
Gulf *	5	4	1
Hamilton	5	3	2
Hardee	4	0	4
Hendry	5	3	2
Hernando *	5	3	2
Highlands	5	2	3
Hillsborough *	5	5	0
Holmes	5	2	3
Indian River *	5	4	1
Jackson	5	4	1
Jefferson	5	2	3
Lafayette	4	0	4
Lake *	5	4	1
Lee *	5	5	0
Leon *	5	5	0
Levy	5	2	3
Liberty	4	0	4

County	Maximum Potential Tax Rate	Current Tax Rate	Unutilized Tax Rate
Madison	5	3	2
Manatee *	5	5	0
Marion *	5	2	3
Martin *	5	4	1
Miami-Dade *	6	6	0
Monroe *	7	5	2
Nassau *	5	4	1
Okaloosa *	5	5	0
Okeechobee	5	3	2
Orange *	6	6	0
Osceola *	6	6	0
Palm Beach *	5	5	0
Pasco	5	2	3
Pinellas *	5	5	0
Polk *	5	5	0
Putnam *	5	4	1
St. Johns *	5	4	1
St. Lucie *	5	5	0
Santa Rosa *	5	4	1
Sarasota *	5	4.5	0.5
Seminole *	5	5	0
Sumter	5	2	3
Suwannee *	5	2	3
Taylor *	5	3	2
Union	4	0	4
Volusia *	6	6	0
Wakulla	5	2	3
Walton *	6	4.5	1.5
Washington	5	3	2
# Eligible to Levy:		67	
# Levying:		60	

* Counties self-administer tourist development taxes

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 964784 by Community Affairs Committee on February 21, 2011:
Clarifying amendment that changes the term "offer" to "furnish" in order to make the definition for "persons operating transient accommodations" consistent with the remainder of the bill.

Barcode 741410 by Community Affairs Committee on February 21, 2011:
Technical amendment that deletes language pertaining to tax on malt beverages that was added to the bill in error.

741410

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/21/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 596
and insert:
beverages sold at retail for

964784

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/21/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 398
and insert:
of the physical facilities that furnish transient accommodations

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 Budget Subcommittee on Finance and Tax

BILL:	SB 468
INTRODUCER:	Senator Bullard
SUBJECT:	Community Redevelopment
DATE:	April 1, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wood	Yeatman	CA	**Favorable**
2.	Fleming	Carter	MS	**Favorable**
3.	Cote	Diez-Arguelles	BFT	**Pre-meeting**
4.			BC	
5.				
6.				

I. Summary:

This bill expands the definition of "blighted area" for purposes of the Community Redevelopment Act to include land previously used as a military facility which is undeveloped and which the Federal government has declared surplus within the preceding 20 years.

This bill substantially amends s. 163.340(8) of the Florida Statutes.

II. Present Situation:

Community Redevelopment Act

Part III of chapter 163, F.S., the Community Redevelopment Act of 1969, authorizes a county or municipality to create community redevelopment areas (CRAs) as a means of redeveloping slums or blighted areas. CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing (TIF). TIF uses the incremental increase in ad valorem tax revenue within a designated redevelopment area to finance redevelopment projects within that area.

As property tax values in the redevelopment area rise above an established base, tax increment revenues are calculated by applying the current millage rate to that increase in value and depositing that amount into a trust fund. This occurs annually as the taxing authority must annually appropriate an amount representing the calculated increment revenues to the redevelopment trust fund. These revenues are used to back bonds issued to finance redevelopment projects. School district revenues are not subject to the tax increment mechanism.

Section 163.355, F.S., prohibits a county or municipality from exercising the powers conferred by the Act until after the governing body has adopted a resolution finding that:

> (1) One or more slum or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, exist in such county or municipality; and
>
> (2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas, including, if appropriate, the development of housing which residents of low or moderate income, including the elderly, can afford, is necessary in the interest of the public health, safety, morale, or welfare of the residents of such county or municipality.

Community Redevelopment Plans and Initiation

Section 163.360(1), F.S., provides:

> Community redevelopment in a community redevelopment area shall not be planned or initiated unless the governing body has, by resolution, determined such area to be a slum area, a blighted area, or an area in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, or a combination thereof, and designated such area as appropriate for community redevelopment.

Section 163.340(8), F.S., defines "blighted area" as follows:

> An area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:
>
> (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
> (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;
> (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
> (d) Unsanitary or unsafe conditions;
> (e) Deterioration of site or other improvements;
> (f) Inadequate and outdated building density patterns;
> (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
> (h) Tax or special assessment delinquency exceeding the fair value of the land;
> (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
> (j) Incidence of crime in the area higher than in the remainder of the county or municipality;

(k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
(l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
(m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
(n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.

However, the term "blighted area" also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2)(a) agree, either by interlocal agreement or agreements with the agency or by resolution, that the area is blighted.

Disposal of Military Real Property

The U. S. Department of Defense (DOD) provides for the disposal of real property "for which there is no foreseeable military requirement, either in peacetime or for mobilization."[1] Disposal of such property is subject to a number of statutory and department regulations which consider factors such as the:

- Presence of any hazardous material contamination;
- Valuation of property assets;
- McKinney-Vento Homeless Assistance Act;
- National Historic Preservation Act;
- Real property mineral rights; and
- Presence of floodplains and wetlands.[2]

Once the DOD has classified land as excess to their needs, the land is transferred to the Office of Real Property Disposal within the federal General Services Administration (GSA). With general federal surplus lands, GSA has a clear process wherein they first offer the land to other federal agencies. If no other federal agency identifies a need, the land is then labeled "surplus" (rather than "excess") and available for transfer to state and local governments and certain nonprofit agencies. Uses which benefit the homeless must be given priority, and then the land may be transferred at a discount of up to 100% if it is used for other specific types of public uses which include education, correctional, emergency management, airports, self-help housing, parks & recreation, law enforcement, wildlife conservation, public health, historic monuments, port facilities, and highways. If the public use is not among those public benefits, the GSA may negotiate a sale at appraised fair market value to a state or local government for another public purpose.[3]

[1] Department of Defense Instruction 4165.72.
[2] Id.
[3] General Services Administration Public Buildings Service, *Acquiring Federal Real Estate for Public Uses* (Sep. 2007), https://extportal.pbs.gsa.gov/RedinetDocs/cm/rcdocs/Acquiring%20Federal%20Real%20Estate%20for%20Public%20Uses1222988606483.pdf (last visited Mar. 08, 2011).

The Base Realignment and Closure Act (BRAC) of 1990 provides for an exception to this process in which the Department of Defense (DOD) supersedes the normal surplus process. BRAC is a process by which military facilities are recommended for realignment or closure and approved by the President; the BRAC process has been undertaken in 1988, 1991, 1993, 1995, and 2005. Surplus disposal authority is delegated to the DOD when BRAC properties are involved. The Secretary of Defense is authorized to work with Local Redevelopment Authorities (LRAs) in determining what to do with surplus BRAC properties. This includes the possibility of transferring BRAC property to an LRA at reduced or no cost for the purpose of economic development, which is not an acceptable public purpose under the general federal surplus process. The Secretary of Defense is responsible for determining what constitutes an LRA and what cost, if any, will be associated with the transfer.[4]

There are four Florida cities which have been affected by BRAC closures, all resulting from the 1993 BRAC process. Homestead Air Force Base was realigned in 1992; Pensacola's Naval Aviation Depot and Fleet and Industrial Supply Center were closed in 1996; Jacksonville's Cecil Field was closed in 1999; and Orlando's Naval Training Center and Naval Hospital were closed in 1999.[5] A total of 20,973 acres were declared surplus from 1988 to present as a result of the BRAC process, and all of that has been transferred to non-federal agencies with the exception of 182 acres that were a part of Cecil Field in Jacksonville and remain undisposed.[6]

III. Effect of Proposed Changes:

Section 1 of the bill expands the current definition of the term "blighted area" provided for in s. 163.340(8), F.S., to include land previously used as a military facility which is undeveloped and which the Federal Government has declared surplus within the preceding 20 years.

Section 2 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.

[4] Congressional Research Service, *Base Realignment and Closure (BRAC): Transfer and Disposal of Military Property* (Mar. 31, 2009), http://www.fas.org/sgp/crs/natsec/R40476.pdf (last visited Mar. 14, 2011).
[5] United States Department of Defense, *Major Base Closure Summary*, http://www.defense.gov/faq/pis/17.html (last visited Mar. 14, 2011).
[6] Email from David F. Witschi, Associate Director, Secretary of Defense Office of Economic Adjustment (Mar. 16, 2011) (on file with the Senate Committee on Community Affairs).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Community redevelopment agencies will be able to develop a community redevelopment plan utilizing the expanded definition of "blighted area" to include land previously used as a military facility which is undeveloped and which the federal government has declared surplus within the preceding 20 years. As a result, these areas may receive TIF revenues under the Community Redevelopment Act, and property values in the area may increase as a result of any improvements using TIF. Redevelopment of these areas can contribute to increased economic interest in a region and an overall improved economic condition.

Counties and municipalities are required by s. 163.345, F.S., to prioritize private enterprise in the rehabilitation and redevelopment of blighted areas. The increase in ad valorem taxation could be used to finance private development projects within this new category of "blighted area." Overall property values in the surrounding area may also increase as a result, affecting current homeowners' resale values and ad valorem taxation.

C. Government Sector Impact:

A municipality or county would be able to develop a community redevelopment plan utilizing the expanded definition of "blighted area" to include land previously used as a military facility which is undeveloped and which the federal government has declared surplus within the preceding 20 years. This could result in a portion of the ad valorem taxes from those lands being used for TIF. County and municipal governments would then not directly receive the ad valorem tax revenue on the increase in property value within the CRA, but could see an increase in other aspects of the local economy.

VI. Technical Deficiencies:

The bill provides for the definition to include land used as a military facility and undeveloped. Land used as a military facility would typically be considered developed land, which may unintentionally exclude military land which has buildings from consideration under the new definition of blighted area.

VII. Related Issues:

Miami-Dade County has expressed interest in developing the area around Metrozoo as a recreation destination.[7] The family entertainment center, as considered in 2004, was projected to

[7] Oscar Pedro Musibay, *Plans for Entertainment District Near Miami Metrozoo Progress*, South Florida Business Journal, Sep. 21, 2009, *available at* http://www.bizjournals.com/southflorida/stories/2009/09/21/story6.html (last visited Mar. 14, 2011).

bring 9,000 permanent jobs to the area.[8] Coast Guard property adjacent to current Metrozoo property could be part of this development, and tax increment financing through a CRA could help finance such improvements. The Richmond Coast Guard Base, which is currently open, is reportedly considering a deal where the county would help them attain a new location while selling the land to private developers who would then build this new development.[9]

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.

[8] Susan Stabley, *Zoo Entertainment Park Planned*, South Florida Business Journal, Dec. 27, 2004, *available at* http://www.bizjournals.com/southflorida/stories/2004/12/27/story1.html (last visited Mar. 14, 2011).
[9] Conversation with Kevin Asher, Special Project Manager, Miami-Dade Parks and Recreation Department (Mar. 16, 2011).

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Altman) recommended the following:

Senate Amendment

Delete lines 42 - 91

and insert:

(9)(a) "Independent contractor" has the same meaning as provided in s. 440.02(15)(d)1.a. and b.

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 94 - 126

and insert:

205.066 Exemptions; employees.—

(1) An individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. For purposes of this section, an individual licensed and operating as a broker associate or sales associate under chapter 475 is an employee. An individual acting in the capacity

of an independent contractor is not an employee.

(2) An employee may not be held liable by any local governing authority for the failure of a principal or employer to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. An individual exempt under this section may not be required by any local governing authority to apply for an exemption from a local business tax, otherwise prove his or her exempt status, or pay any tax or fee related to a local business tax.

(3) A principal or employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide personal or contact information for individuals exempt under this section in order to obtain a local business tax receipt.

(4) The exemption provided in this section does not apply to a business tax imposed on individual employees by a municipality or county pursuant to a resolution or ordinance adopted before October 13, 2010. Municipalities or counties that, before October 13, 2010, had a classification system that was in compliance with the requirements of chapter 205 and that actually resulted in individual employees paying a business tax, may continue to impose such a tax in that manner.

Section 3. Section 205.194, Florida Statutes, is amended to read:

205.194 Prohibition of local business tax receipt without exhibition of state license or registration.—

(1) Any person applying for or renewing a local business tax receipt ~~for the period beginning October 1, 1985,~~ to practice any profession or engage in or manage any business or

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occupation regulated by the Department of Business and Professional Regulation, the Florida Supreme Court, or any other state regulatory agency,

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

And the title is amended as follows:

Delete lines 20 - 32

and insert:

business tax receipt; providing that the exemption does not apply to a business tax imposed on an individual employee by a municipality or county pursuant to a resolution or ordinance adopted before October 13, 2010; amending s. 205.194, F.S.; deleting obsolete provisions; requiring a person applying for or renewing a local business tax receipt to engage in or manage a business or occupation regulated by the Florida Supreme Court or a state agency to exhibit certain documentation before such receipt may be issued; authorizing online renewals as a means of providing electronic certifications that meet such requirement; deleting a requirement that the Department of Business and Professional Regulation provide certain professional regulation information to local officials who issue business tax receipts; deleting a provision prohibiting a local official who issues business tax receipts from renewing a license under certain circumstances; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Altman) recommended the following:

Senate Amendment

Delete line 147

and insert:

Section 4. This act shall take effect July 1, 2011, except that section 2 of this act shall operate retroactively to October 13, 2010.

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 Budget Subcommittee on Finance and Tax

BILL:	CS/SB 582
INTRODUCER:	Community Affairs Committee and Senator Detert
SUBJECT:	Local Business Taxes
DATE:	March 22, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/CS**
2.	Young	Imhof	RI	**Favorable**
3.	Babin	Diez-Arguelles	BFT	**Pre-meeting**
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) specifies that an individual who engages in or manages a business, profession, or occupation as an employee of another person (i.e., an employee) is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax.

The CS removes statutory language which requires the Department of Business and Professional Regulation, by August 1 of each year, to submit to the local official who issues local business tax receipts a current list of professions the department regulates and information regarding those practitioners that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of a state license, certification, or registration.

For purposes of the application of the provisions relating to local business taxes, the CS specifies that an employee does not include an independent contractor. An employee does include an individual licensed and operating as a broker associate or sales associate under chapter 475, F.S. The CS specifies that "independent contractor" means an entity which satisfies at least 4 of the 6 statutorily listed criteria which are created in the CS. Additionally, the CS further specifies that if at least 4 of the 6 criteria are not met, an individual may still be presumed to be an independent

contractor and not an employee based on consideration of 7 specified work conditions created in the CS.

Current law requires persons that practice in professions regulated by the Department of Business and Professional Regulation to prove active certification when obtaining a local business tax receipt. The bill adds language to expand the types of professions that must prove active certification to include any profession regulated by any state regulatory agency.

The CS explicitly allows certification renewals to be done online.

The CS potentially limits the revenue raising capacity of local governments, and thus, may require a two-thirds vote of the membership of each house.

This CS substantially amends the following sections of the Florida Statutes: 205.022 and 205.194.

This CS creates s. 205.066 of the Florida Statutes.

II. Present Situation:

In 1972, the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments were then authorized to levy occupational license taxes according to the provisions of the "Local Occupational License Act."[1]

In 2006, 368 of the 404 municipalities and 52 of the 67 counties in Florida had some sort of local occupational license tax in place.[2] Although the local occupational license tax was designed to be purely revenue producing in nature, it had unintentionally become a measure of professional and business qualification to engage in a specified activity.[3] Chapter 2006-152, L.O.F., renamed the act as the "Local Business Tax Act" to reflect that the business or individual has merely paid a tax, and that payment of the tax alone does not authenticate the qualifications of a business or individual.[4] The legislation removed the term "occupational license" and added the terms "local business tax" and "local business tax receipt."

Based on financial data contained in Annual Financial Reports submitted by local governments to the Department of Financial Services, 34 counties reported local business tax revenues totaling $31.5 million and 271 municipalities reported local business tax revenues totaling $118.2 million in 2009.[5]

[1] FLORIDA REVENUE ESTIMATING CONFERENCE, 2010 FLORIDA TAX HANDBOOK at 227.
[2] 2006 bill analysis on HB 1269 (chapter 2006-152, L.O.F.) by the House Fiscal Council, dated 4/21/2006, and citing data provided by the Legislative Committee on Intergovernmental Relations.
[3] *Id*.
[4] *Id*.
[5] OFFICE OF ECONOMIC AND DEMOGRAPHIC RESEARCH, *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/pdf/impact0311.pdf. (p. 134)

Currently, "local business tax" means the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.[6] It does not include any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.[7] Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of ch. 205, F.S.[8]

"Business," "profession," and "occupation" do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable and nonprofit educational institutions in this state.[9]

Under current law, a county or municipality may, by appropriate resolution or ordinance, impose a local business tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.[10] The amount of the tax and the occupations and businesses the tax is imposed on are determined at the discretion of the local government within the limitations of ch. 205, F.S. However, a Florida county or municipality may not levy a business tax if any person engaging in or managing a business, profession, or occupation regulated by the Department of Business and Professional Regulation (DBPR) has paid a business tax for the current year to the county or municipality in the state where the company's permanent business location or branch office is maintained.[11]

Section 205.194, F.S., prohibits local governments from imposing a "local business tax" for professions regulated by DBPR without the local government verifying that the person has satisfied DBPR qualification requirements. Applicants are required to submit proof of registration, certification, or licensure issued by DBPR upon initial licensure in the local jurisdiction. By August 1 of each year, DBPR is required to supply local officials with a list of the professions it regulates and persons that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of their state license, certification, or registration.

Pursuant to s. 205.194(3), F.S., the prohibition on local governments imposing local business taxes prior to verifying DBPR qualification requirements does not apply to certified or registered contractors,[12] the qualifying agents for the contracting business organizations,[13] certified or registered electrical and alarm system contractors,[14] or the qualifying agents for the electrical and alarm system business organizations.[15] Moreover, the municipality or county may always collect inspection fees for engaging in contracting or examination fees pursuant to local examination requirements.[16]

[6] Section 205.022(5), F.S.
[7] *Id*.
[8] *Id.*
[9] Section 205.022(1), F.S.
[10] Sections 205.032 and 205.042, F.S.
[11] Section 205.065, F.S.
[12] Sections 489.113 and 489.117, F.S.
[13] Section 489.119, F.S.
[14] Sections 489.511 and 489.513, F.S.
[15] Section 489.521, F.S.
[16] Section 489.131(3)(a), F.S.

Several other sections of ch. 205, F.S., require additional verification from state regulatory agencies, such as the Department of Agriculture and Consumer Services and the Agency for Health Care Administration, before a local government may issue a business tax receipt.

Attorney General Opinion 2010-41

In 2010, the attorney general was asked to provide an opinion on, among other things, the following questions:

- Must a municipality impose a local business tax on professionals licensed by the state if such professionals are employed by another person or entity?

- May a municipality amend its local business tax ordinance … to exempt state-licensed professionals employed by another?

On October 13, 2010, the attorney general issued AGO 2010-41. It provides in pertinent part that:

- A municipality must impose a business tax on all businesses, professions, or occupations within its jurisdiction when adopting a tax pursuant to section 205.042, Florida Statutes, and exempt only those businesses, professions, or occupations exempted or allowed to be exempted under Chapter 205.

- For the purposes of the statute, a "person" means "any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular." Thus, the local business tax law applies to and operates on any person, engaged in any business, profession, or occupation who exercises the taxable privilege within a municipality's jurisdiction and is not excepted or exempted from the license tax by the terms of Ch. 205, F.S., or other applicable general law. A city may apply only the exemptions set forth in Ch. 205, F.S., to exclude individuals or entities from its local business tax.

There is no exemption in ch. 205, F.S., for individuals who are employees of another person.

III. Effect of Proposed Changes:

Section 1 amends s. 205.022, F.S., to create a definition for "independent contractor." An independent contractor is a person who meets **at least four** of the following criteria:

- The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;

- The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;

- The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;

- The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;

- The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or

- The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

If four of these criteria listed are not met, an individual may still be presumed to be an independent contractor based on full consideration of the nature of the individual situation with regard to satisfying **any** of the following conditions:

- The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.

- The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.

- The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform.

- The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.

- The independent contractor may realize a profit or suffer a loss in connection with performing work or services.

- The independent contractor has continuing or recurring business liabilities or obligations.

- The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Section 2 creates s. 205.066, F.S., to exempt employees from having to pay a local business tax in their individual capacity. The bill specifies that independent contractors are not employees. An employee does include an individual licensed and operating as a real estate broker associate or sales associate under chapter 475, F.S. Employees are not to be held liable for failure of a principal or employer to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. Employees cannot be required to apply for an exemption.

A principal or employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide personal or contact information for employees in order to obtain a local business tax receipt.

Section 3 amends s. 204.194, F.S., to delete language stating that the only businesses that must demonstrate active certification by DBPR are businesses applying for a local business tax receipt for the first time. The CS further deletes the requirement that DBPR supply the appropriate local official with a current list of the professions it regulates and information regarding those persons for whom receipts should not be renewed. The CS deletes the requirement that the local official review the list. The CS requires persons applying for or renewing a local business receipt from any state regulatory agency to exhibit an active state certificate, registration, or license. The CS authorizes online renewals for this purpose.

Section 4 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the Florida Constitution provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. This bill limits the imposition of local business taxes by local governments and will have a significant negative impact on local business tax of at least $3.8 million. No exception or exemption from the mandates requirement appears to apply. Thus, this bill may require a two-thirds vote of the membership of each house.

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:

Professionally licensed employees would be exempt from local business taxes.

C. Government Sector Impact:

The Revenue Estimating Conference estimated that local governments would experience at least a reduction of $3.8 million in local business tax receipts. However, the full impact is indeterminate, due mainly to the fact that licensed professionals are handled differently by different local governments.[17]

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 the Community Affairs Committee on March 14, 2011:

- Adds language to require local governments to verify that applicants that are regulated by any regulatory agency have an active license prior to receiving a business tax receipt. Also, this CS explicitly allows certification renewals to be done online.
- Adds a line specifying that an individual licensed and operating as a broker associate or sales associate under chapter 475, F.S., is an employee.

B. Amendments:

None.

[17] *Supra*, at n. 5, p. 132.

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 Budget Subcommittee on Finance and Tax

BILL:	SB 1210
INTRODUCER:	Senator Norman
SUBJECT:	Counties and Municipalities
DATE:	March 22, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Favorable**
2.	Babin	Diez-Arguelles	BFT	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill explicitly authorizes cities and counties to engage in certain debt collections practices. The bill allows these local governments to hire attorneys or collection agencies to collect fees, service charges, fines, or costs to which it is entitled and which remain unpaid for 90 days or more. Fees of up to 40 percent of the amount owed may be charged in addition to the original debt.

This bill creates the following sections of the Florida Statutes: 125.01052 and 166.0498.

II. Present Situation:

Local Government Powers

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.

Section 125.01, F.S., enumerates the powers and duties of all *county governments*, unless preempted on a particular subject by general or special law. Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums, and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Section 166.021, F.S., gives *municipalities* home rule powers with the following exceptions: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitution or law.

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.[4] Special assessments,[5] impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[6] In addition, local governments may issue fines for violation of local ordinances.[7]

Whether local governments can use their home rule powers to employ the services of private attorneys or collection agents for recovering debts owed to the local government is uncertain. One attorney general opinion concluded that a "municipality may enter into an agreement with a collection agency to compromise code enforcement liens and pursue collection through litigation" by using its home rule authority.[8] However, there are numerous statutes that deal with the collection of taxes,[9] assessments,[10] fines, fees, and costs.[11] When a statute specifies the procedures a local government can follow or a cost that a local government can collect, it is less likely that the local government will be found to have the authority to deviate from or expand upon the statutory framework.[12] One attorney general opinion determined that the process delineated in ch. 197, F.S., provides the sole method for enforcing liens for non-ad valorem assessments within a specified jurisdiction based on the premise that "[i]t is a rule that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way."[13]

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[4] The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution, general law, or special law regarding the power at issue. Counties and municipalities cannot levy a tax without express statutory authorization because the constitution prevents them from doing so. *See* FLA. CONST. art. VIII, s. 1. However, local governments may levy special assessments and a variety of fees absent any general law prohibition provided such home rule source meets the relevant legal sufficiency tests.

[5] *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (stating that local governments do have home rule authority to levy special assessments).

[6] For a catalogue of such revenue sources, see the most recent editions of the Legislative Committee on Governmental Relations *Local Government Financial Information Handbook* and the *Florida Tax Handbook* published jointly by the Florida Senate Finance and Taxation Committee, the House of Representatives Committee on Fiscal Policy and Resources, the Office of Economic and Demographic Research, and the Florida Department of Revenue.

[7] *See* County or Municipal Code Enforcement, ch. 162, F.S.

[8] Op. Att'y Gen. Fla. 99-03 (1999).

[9] *See* Tax Collections, Sales, and Liens, ch. 197, F.S.

[10] *See* Supplemental and Alternative Method of Making Local Municipal Improvements, ch. 170, F.S.

[11] *See* County or Municipal Code Enforcement, ch. 162, F.S.

[12] *See* Op. Att'y Gen. Fla. 99-31 (1999) (determining that ch. 197, F.S., provides the sole method for enforcing liens within a specified jurisdiction based on the premise that "[i]t is a rule that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way."); *see also* Op. Att'y Gen. Fla. 2002-41 (2002) (stating that adoption of the uniform method of levy, collection, and enforcement precludes use of alternative methods of enforcement).

[13] Op. Att'y Gen. Fla. 99-31 (1999); Op. Att'y Gen. Fla. 92-11 (1992) (citing Op. Att'y Gen. Fla. 86-32 and 85-90); *City of Miami v. Brinker*, 342 So. 2d 115 (Fla. 3d DCA 1977) (municipality has no inherent power to levy assessments); Ops. Att'y Gen. Fla. 82-9 and 80-87; *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982); *Grapeland*

Attorney's Fees

The general rule in Florida is that attorney's fees are awarded only when permitted by statute or contract.[14] Even when a statute awards a local government the right to "recover all costs incurred," when prosecuting a case to recover fines owed for the violation of a local ordinance, the term "costs" has been interpreted to exclude attorney's fees.[15]

Tax Collectors

The county tax collector is the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.[16] Tax collectors may appoint deputies to act on their behalf to carry out the duties prescribed by law.[17]

Pursuant to ch. 197, F.S., tax collectors have the authority to collect all taxes shown on the tax rolls by the date of delinquency. Taxes are due and payable on November 1 of each year or as soon as the certified tax rolls are received by the tax collector.[18] Taxes become delinquent on April 1 of the year following the year in which they are assessed, or 60 days from the mailing of the original notice, whichever is later.[19] If the delinquency date for ad valorem taxes is later than April 1 of the year following the assessment on which taxes are due, all dates or time periods regarding the collection of, or administrative procedures regarding the collection of, delinquent taxes shall be extended a like number of days. [20] If taxes become delinquent, the tax collector may collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. Costs include the publication of notices and reasonable attorney's fees and court costs in proceedings to recover delinquent taxes.[21]

Section 197.413, F.S., provides that before May 1 of each year following the assessment, the tax collector prepares a roll of all unpaid personal property taxes. Prior to April 30 of the next year, the tax collector is required to prepare warrants against the delinquent taxpayers. The warrants allow for the levy upon, and seizure of, tangible personal property. Within 30 days after preparing the warrants, the tax collector files a petition in the circuit court for the county in which he or she serves. The petition describes the levies and nonpayment of taxes, the issuance of warrants, proof of publication of notices, and the names and addresses of all taxpayers who failed to pay taxes. There is one petition naming multiple delinquent taxpayers. The petition requests an order ratifying and confirming the warrants, and directing the tax collector to levy

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Heights Civic Association v. City of Miami, 267 So. 2d 321 (Fla. 1972); *Advisory Opinion to Governor*, 22 So. 2d 398 (Fla. 1945)); *but see City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (stating that local governments do have home rule authority to levy special assessments).

[14] *See, e.g., Dade County v. Pena*, 664 So. 2d. 959, 960 (Fla. 1995).

[15] Op. Att'y Gen. Fla. 2009-07 (2009).

[16] Section 192.001(4), F.S.; FLA. CONST. art. VIII, s. 1(d).

[17] Section 192.103, F.S.

[18] Section 197.333, F.S.

[19] *Id.*

[20] *Id.*

[21] Section 197.332, F.S.

upon and seize the personal property of all delinquent taxpayers to satisfy payment of unpaid taxes.[22]

Upon filing a petition with the court, the tax collector must request the earliest time for a hearing, and the clerk of court shall notify each delinquent taxpayer listed in the petition that a petition is filed and, if ratified, warrants will be issued and their property will be seized and sold to pay unpaid taxes, plus costs, interest, attorney's fees, and other charges.[23] The tax collector is entitled to a fee of $2 from each delinquent taxpayer at the time delinquent taxes are collected, and an additional $8 for each warrant issued.[24]

The tax collector is authorized to employ counsel to conduct such suits.[25] They may agree upon counsel's compensation, which may come out of the general office expense fund and be included in their budget.[26] These attorney fees may be collected in court actions to recover delinquent taxes.

Collection Practices under Chapter 559 of the Florida Statutes

Parts V and VI of chapter 559, F.S., regulate commercial and consumer collection practices. To the extent that they conflict with the federal bankruptcy code, the bankruptcy code prevails.[27] Collection agencies must register with the Office of Financial Regulation with the following exceptions:

- Any financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate;
- Any licensed real estate broker;
- Any consumer finance company and any wholly owned subsidiary and affiliate;
- Any person licensed pursuant to chapter 520, F.S. (relating to retail installment sales);
- Any out-of-state consumer debt collector who does not solicit consumer debt accounts for collection from credit grantors who have a business presence in this state;
- Any FDIC-insured institution or subsidiary or affiliate thereof;
- Any original creditors (for consumer collections only);
- Any insurance company (restricted to title insurance companies for commercial collections); or
- Any member of the Florida Bar (except those members primarily engaged in the collection of commercial claims).[28]

Chapter 559, F.S., requires registration, bonding for commercial collections, and criminal penalties for violations of certain provisions. Section 559.72, F.S., prohibits consumer protection agencies from engaging in a range of intimidating or harassing tactics.

Fair Debt Collection Practices Act

[22] Section 197.413(2), F.S.
[23] Sections 197.413(4) and (5), F.S.
[24] Section 197.413(10), F.S.
[25] Section 197.413(3), F.S.; Op. Att'y Gen. Fla. 76-173 (1976) ("The tax collector fee officer may employ counsel if it becomes necessary to engage an attorney to bring or defend actions or proceedings in carrying out his statutory duties or functions and to compensate such attorney as a necessary expense of operating his office.").
[26] Section 197.413(3), F.S.
[27] *Williams v. Asset Acceptance, LLC*, 392 B.R. 882 (M.D. Fla. 2008).
[28] See Section 559.544(5), F.S.

The Fair Debt Collection Practices Act (Act) regulates the practices of "debt collectors."[29] The purpose of the Act is to eliminate abusive debt-collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt-collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt-collection abuses.[30] The Act expressly excludes any officer or employee of the United States or any state to the extent that collection is in the performance of official duties.[31] However, collection agents or attorneys hired for the purpose of collecting debts owed to the government are subject to the provisions of the Act.[32]

III. Effect of Proposed Changes:

Section 1 creates s. 125.01052, F.S., to explicitly authorize the board of county commissioners to engage in certain debt collection practices. The board of county commissioners may pursue the collection of any fees, service charges, fines, or costs to which it is entitled and which remain unpaid for 90 days or more.

The counties may refer the account to a private attorney who is a member in good standing of The Florida Bar or a collection agent who is registered and in good standing pursuant to chapter 559, F.S.

The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent may be added to the balance owed at the time the account is referred to the attorney or agent for collection, but may not exceed 40 percent of the amount owed at the time the account is referred for collection.

Section 2 creates s. 166.0498, F.S., the same authorization as section 1 for municipalities.

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.

[29] 173 A.L.R. Fed. 223 (2001); *see also*15 U.S.C.A. s. 1692a, *et seq*.
[30] 15 U.S.C.A. s. 1692(e).
[31] 15 U.S.C.A s. 1692a (6)(C).
[32] *See Richardson v. Baker*, 663 F. Supp. 651 (S.D.N.Y. 1987) (holding that a private firm under contract with the Department of Education to collect funds was not an exempt "debt collector" under the Fair Debt Collection Practices Act); *Jones v. Intuition, Inc.*, 12 F. Supp. 2d 775 (W.D. Tenn. 1998) (holding that a private, nonprofit firm that serviced a federal student loan program was not exempt under the Fair Debt Collection Practices Act as a state actor).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals who are delinquent may be assessed additional fines for collection. Private attorneys and collection agents may receive additional revenues from fees they receive for collecting moneys owed to local governments.

C. Government Sector Impact:

Local governments may hire attorneys or collection agents to assist in collecting delinquent accounts. Local governments may pay the attorneys or collection agents themselves or add their fees to the amount owed on the delinquent account.

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.

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Sachs) recommended the following:

Senate Amendment (with title amendment)

Delete lines 142 - 306
and insert:
Section 4. Paragraph (b) of subsection (1) of section 550.0951, Florida Statutes, is amended to read:
550.0951 Payment of daily license fee and taxes; penalties.—
(1)
(b) Each permitholder that cannot utilize the full amount of the exemption of $360,000 or $500,000 provided in s. 550.09514(1) or the daily license fee credit provided in this

section may, at any time after notifying the division in writing~~, elect once per state fiscal year~~ on a form provided by the division, ~~to~~ transfer such exemption or credit or any portion thereof to any greyhound permitholder which acts as a host track to such permitholder for the purpose of intertrack wagering. Notwithstanding any other provision of law, the exemption of $360,000 or $500,000 provided in s. 550.09514(1) for each greyhound permitholder that conducted live racing before July 1, 2011, but subsequently elects not to conduct live racing during a fiscal year shall be pooled, and each greyhound permitholder conducting a full schedule of live racing during a fiscal year shall be entitled to an additional tax credit in an amount equal to the product of the respective permitholder's percentage share of live and intertrack wagering handle under subsection (3) during the preceding fiscal year and the total value of tax credits available in the pool. Once an election to transfer such exemption or credit is filed with the division, it shall not be rescinded. The division shall disapprove the transfer when the amount of the exemption or credit or portion thereof is unavailable to the transferring permitholder for any reason, including being unavailable because the transferring permitholder did not conduct at least 100 live performances of at least eight races during the fiscal year, or when the permitholder who is entitled to transfer the exemption or credit or who is entitled to receive the exemption or credit owes taxes to the state pursuant to a deficiency letter or administrative complaint issued by the division. Upon approval of the transfer by the division, the transferred tax exemption or credit shall be effective for the first performance of the next payment

period as specified in subsection (5). The exemption or credit transferred to such host track may be applied by such host track against any taxes imposed by this chapter or daily license fees imposed by this chapter. The greyhound permitholder host track to which such exemption or credit is transferred shall reimburse such permitholder the exact monetary value of such transferred exemption or credit as actually applied against the taxes and daily license fees of the host track. The division shall ensure that all transfers of exemption or credit are made in accordance with this subsection and shall have the authority to adopt rules to ensure the implementation of this section.

Section 5. Paragraphs (b), (c), and (e) of subsection (2) of section 550.09514, Florida Statutes, are amended to read:

550.09514 Greyhound dogracing taxes; purse requirements.—

(2)

(b) Except as otherwise set forth herein, in addition to the minimum purse percentage required by paragraph (a), each permitholder <u>conducting live racing during a fiscal year</u> shall pay as purses an annual amount equal to 75 percent of the daily license fees paid by each permitholder for the 1994-1995 fiscal year. This purse supplement shall be disbursed weekly during the permitholder's race meet in an amount determined by dividing the annual purse supplement by the number of performances approved for the permitholder pursuant to its annual license and multiplying that amount by the number of performances conducted each week. ~~For the greyhound permitholders in the county where there are two greyhound permitholders located as specified in s. 550.615(6), such permitholders shall pay in the aggregate an amount equal to 75 percent of the daily license fees paid by~~

~~such permitholders for the 1994-1995 fiscal year. These permitholders shall be jointly and severally liable for such purse payments.~~ The additional purses provided by this paragraph must be used exclusively for purses other than stakes. The division shall conduct audits necessary to ensure compliance with this section.

(c)1. Each greyhound permitholder when conducting at least three live performances during any week shall pay purses in that week on wagers it accepts as a guest track on intertrack and simulcast greyhound races at the same rate as it pays on live races. Each greyhound permitholder when conducting at least three live performances during any week shall pay purses in that week, at the same rate as it pays on live races, on wagers accepted on greyhound races at a guest track which is not conducting live racing and is located within the same market area as the greyhound permitholder conducting at least three live performances during any week.

2. Each host greyhound permitholder shall pay purses on its simulcast and intertrack broadcasts of greyhound races to guest facilities that are located outside its market area in an amount equal to one quarter of an amount determined by subtracting the transmission costs of sending the simulcast or intertrack broadcasts from an amount determined by adding the fees received for greyhound simulcast races plus 3 percent of the greyhound intertrack handle at guest facilities that are located outside the market area of the host and that paid contractual fees to the host for such broadcasts of greyhound races. <u>For guest greyhound permitholders not conducting live racing during a fiscal year and not subject to the purse requirements of</u>

subparagraph 1., 3 percent of the greyhound intertrack handle shall be paid to the host greyhound permitholder for payment of purses at the host track.

(e) In addition to the purse requirements of paragraphs (a)-(c), each greyhound permitholder shall pay as purses an amount equal to one-third of the amount of the tax reduction on live and simulcast handle applicable to such permitholder as a result of the reductions in tax rates provided ~~by this act~~ through the amendments to s. 550.0951(3) in chapter 2000-354, Laws of Florida. With respect to intertrack wagering when the host and guest tracks are greyhound permitholders not within the same market area, an amount equal to the tax reduction applicable to the guest track handle as a result of the reduction in tax rates ~~rate~~ provided ~~by this act~~ through the amendments ~~amendment~~ to s. 550.0951(3) in chapter 2000-354, Laws of Florida, shall be distributed to the guest track, one-third of which amount shall be paid as purses at those ~~the~~ guest tracks conducting live racing ~~track~~. However, if the guest track is a greyhound permitholder within the market area of the host or if the guest track is not a greyhound permitholder, an amount equal to such tax reduction applicable to the guest track handle shall be retained by the host track, one-third of which amount shall be paid as purses at the host track. These purse funds shall be disbursed in the week received if the permitholder conducts at least one live performance during that week. If the permitholder does not conduct at least one live performance during the week in which the purse funds are received, the purse funds shall be disbursed weekly during the permitholder's next race meet in an amount determined by dividing the purse amount

by the number of performances approved for the permitholder pursuant to its annual license, and multiplying that amount by the number of performances conducted each week. The division shall conduct audits necessary to ensure compliance with this paragraph.

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

And the title is amended as follows:

Delete lines 16 - 17

and insert:

permitholder; amending s. 550.09514, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Sachs) recommended the following:

Senate Amendment

Delete lines 112 - 113

and insert:

28 or, for applications by greyhound permitholders relating to

the 2011-2012 fiscal year, through August 31, 2011.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Sachs) recommended the following:

Senate Amendment

Delete lines 390 - 393

and insert:

A greyhound permitholder situated in an area described in subsection (6) which accepts intertrack wagers on live greyhound signals is not required to obtain the written consent required by this subsection from any operating greyhound permitholder within its market area.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Sachs) recommended the following:

Senate Amendment (with title amendment)

Between lines 352 and 353
insert:

Section 7. Section 550.475, Florida Statutes, is amended to read:

550.475 Lease of pari-mutuel facilities by pari-mutuel permitholders.—Holders of valid pari-mutuel permits for the conduct of any jai alai games, dogracing, or thoroughbred and standardbred horse racing in this state are entitled to lease any and all of their facilities to any other holder of a same class valid pari-mutuel permit for jai alai games, dogracing, or

724078

thoroughbred or standardbred horse racing, when located within a 35-mile radius of each other; and such lessee is entitled to a permit and license to operate its pari-mutuel wagering activities ~~race meet~~ or jai alai games at the leased premises.

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

And the title is amended as follows:

Delete line 19

and insert:

provisions for payment of purses; amending s. 550.475, F.S.; conforming provisions to changes made by the act; amending s. 550.615,

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 Budget Subcommittee on Finance and Tax

BILL:	CS/SB 1594
INTRODUCER:	Regulated Industries Committee and Senator Sachs
SUBJECT:	Pari-mutuel Permitholders
DATE:	March 22, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	**Fav/CS**
2.	Fournier	Diez-Arguelles	BFT	**Pre-meeting**
3.			BGA	
4.			BC	
5.			RC	
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 CS deletes the live racing requirements for greyhound permitholders. It extends the deadline for applying to the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation (department) for the live racing dates, allowing greyhound permitholders time to amend their completed applications and remove or reduce their live racing schedule.

The CS permits greyhound permitholders to transfer unused tax credits at any time during the year, rather than once per yearand reduces the tax on handle for greyhound tracks that run live racing. However, any greyhound permitholder that is not conducting live racing during the fiscal year shall provide three percent of the intertrack wagering handle to the host track for payment of purses at the host track.

The CS provides that greyhound permitholders may conduct intertrack wagering and, if applicable, operate slot machine gaming operations, regardless of whether they have run live greyhound racing. It provides that a greyhound permitholder may operate a cardroom, regardless

of live racing, if the greyhound permitholder has conducted ten years of live racing prior to application for the cardroom license.

This CS amends the following sections of the Florida Statutes: 550.002, 550.01215, 550.054, 550.0951, 550.09514, 550.26165, 550.615, 550.6305, 551.104, 551.114, and 849.086.

II. Present Situation:

Background

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation provides regulatory oversight to pari-mutuel wagering activities, cardrooms located at pari-mutuel facilities, and slot machines located at pari-mutuel facilities located in Miami-Dade and Broward Counties. The mission of the division is the efficient, effective and fair regulation of authorized gaming at pari-mutuel facilities in Florida.[1]

The division's primary responsibilities include:

- Ensuring that races and games are conducted fairly and accurately;
- Ensuring the safety and welfare of racing animals;
- Collecting state revenue accurately and timely;
- Issuing occupational and permitholder operating licenses;
- Regulating pari-mutuel, cardroom, and slot machine operations;
- Ensuring that permitholders, licensees, and businesses related to the industries comply with state law; and
- Serving as the State Compliance Agency for the Compact between the Seminole Tribe of Florida and the State of Florida.

The division provides oversight to:

- 35 permitholders operating at 28 facilities:
  - 16 Greyhound
  - 3 Thoroughbred
  - 1 Harness
  - 6 Jai-Alai
  - 1 track offering limited intertrack wagering and horse sales
  - 1 Quarter Horse
- 23 Cardrooms operating at pari-mutuel facilities
- 5 Slot facilities located in Broward and Miami-Dade County pari-mutuel facilities

[1] http://www.myflorida.com/dbpr/pmw/index.html (last visited February 28, 2011).

Greyhound Racing

Greyhound racing was authorized in Florida in 1931.[2] Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a "lure," which is usually a mechanical hare or rabbit. Racing greyhounds are those which are bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.[3]

Greyhound Racing Pari-Mutuel Facilities			
Facility	**Location**	**Cardroom**	**Slots**
Daytona Beach Kennel Club	960 South Williamson Blvd. Daytona Beach, FL 32114	Yes	No
Derby Lane (St. Petersburg Kennel Club)	Post Office Box 22099 St. Petersburg, Florida 33742	Yes	No
Ebro Greyhound Park (Washington County Kennel Club)	6558 Dog Track Road Ebro, Florida 32437	Yes	No
Flagler Greyhound Track	Post Office Box 350940 Miami, Florida 33135	Yes	Yes
Jacksonville Kennel Club (racing at Orange Park)	Post Office Box 959 Orange Park, Florida 32067	No	No
Jefferson County Kennel Club	Post Office Box 400 Monticello, Florida 32345	Yes	No
Mardi Gras Racetrack	Post Office Box 2007 Hollywood, Florida 33022	Yes	Yes
Melbourne Greyhound Park	1100 North Wickham Road Melbourne, Florida 32935	Yes	No
Naples/Ft. Meyers Greyhound Track	Post Office Box 2567 Bonita Springs, Florida 34133	Yes	No
Orange Park Kennel Club	Post Office Box 959 Orange Park, Florida 32067	Yes	No
Palm Beach Kennel Club	1111 North Congress Avenue West Palm Beach, Florida 33409	Yes	No
Pensacola Greyhound Track	Post Office Box 12824 Pensacola, Florida 32591	Yes	No
Sanford Orlando/Penn Sanford	301 Dog Track Road Longwood, Florida 32750	No	No

[2] *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.
[3] Section 550.002(29), F.S.

Sarasota Kennel Club	5400 Bradenton Road Sarasota, Florida 34234	Yes	No
St. Johns Kennel Club (racing at Orange Park)	Post Office Box 959 Orange Park, Florida 32067	Yes	No
Tampa Greyhound Track (racing at Derby Lane)	Post Office Box 8096 Tampa, Florida 33674	Yes	No

Full Schedule of Live Racing

Section 550.002(11), F.S., defines what constitutes a full schedule of live racing. Each type of permit has a different requirement.

FULL SCHEDULE OF LIVE RACING OR GAMES	
Type of Facility	**Full Schedule**
Greyhound Racing	100 live evening or matinee performances
Jai Alai[4]	100 live evening or matinee performances
Harness Racing	100 live regular wagering performances
Thoroughbred Racing	40 live regular wagering performances
Quarter horse Racing[5]	20 live regular wagering performances

A live performance must consist of no fewer than eight races or games conducted live for a minimum of three performances each week at the permitholder's facility.[6]

[4] Generally a jai alai fronton must conduct 100 performances to constitute a full schedule of games. However, two exceptions exist. 1) For a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its facility has been less than $4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of at least 40 live evening or matinee performances constitutes a full schedule of live games. 2) If the fronton operates slot machines in its facility, then the conduct of at least 150 performances constitutes a full schedule.

[5] For year 2011-2012, a full schedule of live racing for a quarter horse facility will be 30 live regular wagering performances. For every year after 2012-2013, a full schedule of live racing for a quarter horse facility will be 40 live regular wagering performances. If the quarter horse facility leases another track, the conduct of 160 events (or 20 performances) will constitute a full schedule of live racing. However, any quarter horse facility running live at its own track may agree to an alternate schedule of 20 live performances if the permitholder and either the Quarter Horse Racing Association or the horsemen's association representing the majority of the owners and trainers at the facility agree to the reduced racing schedule.

[6] Section 550.002(11), F.S.

Intertrack Wagering

Wagers on live races at other tracks are divided into categories called intertrack and simulcast wagering under the Florida Statutes. Intertrack wagering is defined as "a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal re-broadcast from, another in-state pari-mutuel facility."[7] Simulcast wagering, on the other hand, is defined as "broadcasting events occurring live at an in-state location to an out-of-state location, or receiving at an in-state location events occurring live at an out-of-state location, by the transmittal, retransmittal, reception, and re-broadcast of television or radio signals by wire, cable, satellite, microwave, or other electrical or electronic means for receiving or re-broadcasting the events."[8]

Intertrack and simulcast wagering transactions occur between guest and host tracks. The host track is defined as "a track or fronton conducting a live or simulcast race or game that is the subject of an intertrack wager."[9] A host track transmits signals to a guest track.

Simulcasting may only be accepted between facilities with the same class of pari-mutuel permits. For example, horseracing permitholders may only receive signals from other horseracing permitholders.

Simulcast and intertrack wagering have rules and regulations depending on the market area, which is the area within 25 miles of the track or fronton.[10] For example, guest tracks within the market area of the operating permitholder must receive consent from the host track to receive the same class signal.[11] However, in general, in order for the track or fronton to participate in intertrack or simulcast wagering, the track or fronton must be licensed by the division and must have conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers.[12]

Cardrooms

Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. A cardroom may be operated only at the location specified on the cardroom license issued by the division and such location may be only where the permitholder is authorized to conduct pari-mutuel wagering activities subject to its pari-mutuel permit. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e. where the facility has no stake in the outcome. Such activity is regulated

[7] Section 550.002(17), F.S.
[8] Section 550.002(32), F.S.
[9] Section 550.002(16), F.S.
[10] Section 550.002(19), F.S.
[11] Section 550.615(4), F.S.
[12] Section 550.615(2), F.S.

by the department and must be approved by ordinance of the county commission where the pari-mutuel facility is located.

Section 849.086(2)(a), F.S., defines an "authorized game" at a cardroom as a game or series of games of poker which are played in a non-banking manner.[13] Wagering may only be conducted using chips or tokens; the player's cash must be converted by the cardroom before the player may participate in a game of poker.[14] The cardroom operator may limit the amount wagered in any game.[15]

A cardroom may operate at the pari-mutuel facility for 18 hours per day on Monday through Friday and 24 hours on Saturday and Sunday and specified holidays.[16] Cardrooms may not be operated beyond the hour limitations regardless of the number of permits located at a single facility.[17]

In order to renew a cardroom operator license, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior to the initial application if the permitholder conducted a full schedule of live racing in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to the application. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.[18]

Slot Machines

During the 2004 General Election, the electors approved Amendment 4 to the Florida Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. On January 29, 2008, another referendum was held under the provisions of Amendment 4, in which the slot machines in Miami-Dade County were approved. Under the provisions of the amendment, seven pari-mutuel facilities are eligible to conduct slot machine gaming. Of the seven, five are operating slot machines.[19]

[13] A "banking game" is defined in s. 849.086(2)(b), F.S., as "a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers or in which the cardroom establishes a bank against which participants play."
[14] Section 849.086(8)(a), F.S.
[15] Section 849.086(8)(b), F.S.
[16] Section 849.086(7)(b), F.S.
[17] Section 849.086(7)(a), F.S.
[18] Section 849.086(5)(b), F.S.
[19] The Isle at Pompano Park, Mardi Gras Gaming, Gulfstream Park, Calder/Tropical Park, and Flagler Dog Track and Magic City are currently operating slot machines.

In addition to the seven locations authorized for slot machines under the Florida Constitution, on July 1, 2010, a statutory amendment expanded the locations that were authorized slot machine gaming to include pari-mutuel facilities located in a charter county or a county that has a referendum approving slots that was approved by law or the Constitution, provided that such facility has conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.[20] Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. Under the statutory provision, one additional facility became eligible for slot machine gaming, Hialeah Park (a quarter horse facility).[21] Hialeah Park has applied for a license to conduct slot machine gaming but is not currently operating slot machine gaming.

In order to conduct slot machine gaming, the slot machine applicant must conduct a full schedule of live racing the prior year.[22] Slot machine licensees are required to pay a licensure fee of $2.5 million for fiscal year 2010-2011. The annual slot machine licensure fee is reduced in fiscal year 2011-2012 to $2 million.[23]

In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.[24] If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.[25]

Purses

Section 550.09514, F.S., governs greyhound purse payments. Greyhound permitholders are required to pay a minimum purse payment plus a supplement payment of 75 percent of the daily license fees paid during the 1994-1995 fiscal year.[26]

Greyhound permitholders who conduct at least three live performances during a week must pay purses on wagers it accepts as a guest track on intertrack and simulcast greyhound races at the

[20] *See*, ch. 2010-29, L.O.F. and s 551.102(4), F.S.
[21] Currently the provision is being challenged as violating s. 23, Art. X, Florida Constitution. The trial court upheld the constitutionality in Leon County. That decision is on appeal to the First District Court of Appeal. *See* consolidated cases, *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D11-130 (Fla. 1st DCA) and *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D10-6780 (Fla. 1st DCA).
[22] Chapter 551.104(4)(c), F.S.
[23] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was $3 million.
[24] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.
[25] Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was $103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.
[26] Sections 550.09514(2)(a)-(b), F.S.

same rate it pays on live races. In addition, greyhound tracks pay one-third of any tax reduction on live and simulcast handle as purses.[27]

The division requires adequate documentation to ensure that the purses paid by greyhound permitholders on live racing does not fall below the amount paid in the 1993-1994 fiscal year.[28] During each race week, the permitholder is required to have a weekly report available to show the division staff and kennel operators the amount of purses paid on live racing, simulcast, and intertrack wagering.[29]

Each greyhound permitholder shall pay purse awards directly to the dog owners who have filed proper tax paperwork with the permitholder.[30]

In addition to paying purses on pari-mutuel activity, each greyhound permitholder is also required to pay 4 percent of the cardroom's monthly gross receipts to supplement greyhound purses.[31]

Greyhound Taxes and Credits[32]

Greyhound permitholders pay a tax on handle of 5.5 percent.[33] Each host greyhound track must also pay taxes on the greyhound broadcasts it sends to other tracks.[34] For the dog tracks located in three contiguous counties, the tax on handle for intertrack wagers is 3.9 percent.[35] However, each permitholder has a tax credit of $360,000 and pays no tax on handle until that credit is utilized.[36] For the three greyhound permitholders that conducted a full schedule of live racing in 1995, and are closest to another state that authorizes greyhound pari-mutuel wagering, the maximum tax credit per state fiscal year is $500,000.[37] Each permitholder, who cannot utilize the full tax exemption, may notify the division that the permitholder wishes to transfer their credits to another greyhound permitholder.[38] Each permitholder may only transfer credits once per year, and may only transfer credits to another greyhound permitholder who acted as a host track to the permitholder for intertrack wagering.

III. Effect of Proposed Changes:

The CS provides that there is no live racing requirement for greyhound permitholders. The CS extends the deadline for application for live racing to August 31, 2011, to give greyhound

[27] Section 550.09514(2)(e), F.S.
[28] Section 550.09514(2)(d), F.S.
[29] Section 550.09514(2)(f), F.S.
[30] Section 550.09514(2)(g), F.S.
[31] Section 849.086(13)(d)1., F.S.
[32] In fiscal year 2009-2010, greyhound tracks generated over $290 million in total handle. The division collected over $5 million in taxes and fees, over $2.5 million of which was generated from live greyhound racing. Division of Pari-mutuel Wagering, *79th Annual Report*, Fiscal Year 2009-2010.
[33] Section 550.0951(3)(b)1., F.S.
[34] Section 550.09514(2)(c), F.S.
[35] Section 550.0951(3)(c)2., F.S.
[36] *See*, s. 550.09514(1), F.S.
[37] *Id*. The three tracks that receive a $500,000 credit are Jefferson County Kennel Club, Pensacola Greyhound Track, and Washington County Kennel Club (Ebro Greyhound Park).
[38] Section 550.0951(1)(b), F.S.

permitholders time to amend their applications and reduce or remove their live racing performances. The CS removes all references that require a live schedule of racing for greyhound racing permitholders.

The CS allows each greyhound permitholder to transfer unused tax credits at any time, rather than once per state fiscal year. The CS provides that the division shall disapprove of any credit transfer if the transferring permitholder did not conduct a minimum of 100 live performances of eight events in the fiscal year.

The CS deletes the provision that requires greyhound permitholders in a county where there are only two greyhound permitholders to pay an aggregate daily license fee tax equal to 75 percent of the daily license fees paid by such permitholders for the 1994-1995 fiscal year. Instead, all greyhound permitholders who conduct live racing must pay a daily license fee tax equal to 75 percent of the daily license fees paid by each permitholder for the 1994-1995 fiscal year.

The CS reduces the tax on handle for greyhound racing from 5.5 percent to 3.45 percent. For greyhound permitholders who do not conduct live racing during the fiscal year, 3 percent of the greyhound's intertrack handle shall be paid to the host greyhound permitholder for payment of purses at the host track. The CS increases the tax on handle from 0.5 percent to 3.45 percent for intertrack and simulcast handle if the guest track is located outside the market area and within the market area of a thoroughbred track conducting a live meet.

The CS deletes the provision that prohibited intertrack wagering without consent to be conducted in any county where there are only two permits, one for dogracing and one for jai alai, except during live racing.

The CS provides that greyhound facilities may conduct intertrack wagering even if they do not conduct live racing in the prior year.

The CS provides that greyhound facilities may conduct slot machine gaming, if authorized, regardless of whether the facility has conducted live racing.

The CS amends the requirements for a cardroom, and provides that a greyhound permitholder may operate a cardroom even if it did not run live racing, so long as the permitholder has conducted 10 years of live racing immediately preceding its application for a cardroom license or if the permitholder has converted its permit pursuant to s. 550.054(14), F.S. However, if no live racing occurs, no part of the cardroom receipts are required to be used to supplement purses.

Currently, there is one inactive greyhound permit in Key West, Florida. The inactive permit could, as a result of this CS, begin operations of intertrack wagering without opening a pari-mutuel track or conducting a single live race.[39] The track could not, however, open a cardroom.

[39] There are two greyhound permits operating at the Mardi Gras facility in Broward County. Under current law, one permit could reopen its facility back at the permitted location (in Miami-Dade County) and lease live racing back to the Mardi Gras facility. Under current law, the new facility could operate a cardroom and conduct intertrack wagering so long as live races occur either at the new facility or are continued to be leased back to the Mardi Gras facility. As a result of this bill, the new track would not be required to lease races or run any live races to operate a cardroom or intertrack wagering. However, it appears that in order for the track to be an "eligible facility" for the purpose of conducting slot machine gaming, the new

The CS 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:

The Revenue Estimating Conference has determined the impact of the tax rate reduction and offsetting increase in intertrack wagering to be a $1.4 million reduction in cash and recurring General Revenue.

B. Private Sector Impact:

If greyhound facilities choose not to run pari-mutuel events, the dogs that normally run at those tracks will likely be unable to run in other events. Dog breeders, owners, and trainers could potentially be out of business or experience a decrease in business as a result of less greyhound racing in the state.

Opponents of the legislation also note that a pari-mutuel permitholder that no longer runs live racing at the facility will solely be operating a cardroom, intertrack wagering, and, if authorized, a slot machine facility. At the present time, the operation of cardrooms and slot machine gaming is contingent on the facility satisfying minimum racing requirements. This CS removes those requirements for greyhounds and allows the facilities to cease all live racing.

C. Government Sector Impact:

The department's analysis indicates that it may need fewer personnel to inspect the greyhound tracksif live racing is reduced.

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facility would be required to run live races for two calendar years prior to applying for a slot machine license from the division. This bill does not change the definition of "eligible facility" in s. 551.102(4), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This CS deletes the live racing requirements for greyhound permitholders but the full schedule of live racing or performance requirements for horse racing and jai alai still exist.

Revenue sharing with the Seminole Indian Compact relies on continued exclusivity of casino style and Class III gaming. Games legal as of February 1, 2010 have no impact on payments from the Tribe. Pari-mutuel wagering activities have no impact on payments from the Tribe. Because this CS provides flexibility in the minimum number of live racing for greyhound permitholders and does not authorize any new facilities or new gaming in the state, this CS should have no impact on revenue sharing with the Tribe.

VIII. Additional Information:

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

CS by Regulated Industries on March 16, 2011:
The CS provides that tax credits may not be utilized unless the greyhound permitholder has conducted at least 100 live performances of eight races. The CS clarifies that greyhound permitholders do not have to get permission for intertrack wagering from other greyhound tracks in their market area. The CS provides that in order to conduct a cardroom, the greyhound permitholder must have conducted 10 years of live racing prior to application.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 98 - 138

and insert:

Section 4. Section 626.9362, Florida Statutes, is created to read:

626.9362 Multistate reciprocal agreement or compact fiscal analysis.—For the purpose of carrying out the Nonadmitted and Reinsurance Reform Act of 2010, 15 U.S.C. 8201 et seq., the insurance commissioner, in conjunction with the Florida Surplus Lines Service Office, shall conduct a fiscal analysis of the impact of this state entering into the Nonadmitted Insurance

Multi-State Agreement and the Surplus Lines Insurance Multi-State Compliance Compact for determining eligibility for placement of nonadmitted insurance, for payment, reporting, and collection of the premium tax on nonadmitted insurance. The fiscal analysis report must also include:

(1) The date that the Nonadmitted Insurance Multi-State Agreement took effect and a copy of all rules, regulations, and procedures, adopted pursuant to the agreement.

(2) The date that the Surplus Lines Insurance Multi-State Compliance Compact took effect and a copy of all rules, regulations, and procedures, adopted pursuant to the compact.

(3) The names of the states that have joined or agreed to join the Nonadmitted Insurance Multi-State Agreement and the Surplus Lines Insurance Multi-State Agreement as of the date of the estimates required under subsections (5)-(8).

(4) The total amount of nonadmitted insurance premium and the premium tax payable on such premium by each state named in (3).

(5) An estimate of the total premium on nonadmitted insurance covering properties, risks, or exposures located solely in this state and an estimate of the amount of premium tax payable on those properties, risks, or exposures. The estimate also must include the number of policies, the number and location of risks covered, the source of the information, and the methods used to make the estimate.

(6) An estimate of the total amount of premium on nonadmitted insurance covering properties, risks, or exposures located in multiple states for which this state is the home state, as defined in the Nonadmitted and Reinsurance Reform Act

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of 2010, and the total amount of premium tax payable to this state on those properties, risks, or exposures if this state is not a member of the Nonadmitted Insurance Multi-State Agreement or the Surplus Lines Insurance Multi-State Compliance Compact. The estimate also must include the number of policies, the number and location of risks covered, the source of the information, and the methods used to make the estimate.

(7) An estimate of the total amount of premium on nonadmitted insurance covering properties, risks, or exposures located in multiple states where Florida is the home state, as defined in the Nonadmitted and Reinsurance Reform Act, and the total amount of premium tax payable to this state on those properties, risks, or exposures payable to this state if this state is a member of the Nonadmitted Insurance Multi-State Agreement and if this state is a member of the Surplus Lines Insurance Multi-State Compliance Compact. The estimate also must include the number of policies, the number and location of risks covered, the source of the information, and the methods used to make the estimate.

(8) An estimate of the total amount of premium on nonadmitted insurance covering properties, risks, or exposures located in multiple states where a state other than this state is the home state, as defined in the Nonadmitted Reinsurance Reform Act, and the total amount of premium tax payable to this state on those properties, risks, or exposures payable to this state if this state is a member of the Nonadmitted Insurance Multi-State Agreement and if this state is a member of the Surplus Lines Insurance Multi-State Compliance Compact. The estimate also must include the number of policies, the number

and location of risks covered, the source of the information, and the methods used to make the estimate.

The insurance commissioner shall submit the fiscal analysis report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2011. The fiscal analysis must include the information used to complete the analysis and a recommendation of whether fiscal advantages to this state exist to enter into a multistate reciprocal compact or agreement.

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

And the title is amended as follows:

Delete lines 14 - 54

and insert:

certain circumstances; creating s. 626.9362, F.S.; requiring the insurance commissioner, in conjunction with the Florida Surplus Lines Service Office, to conduct a fiscal analysis of the benefits this state would receive by participating in the Nonadmitted Insurance Multi-State Agreement or the Surplus Lines Insurance Multi-State Compliance Compact; requiring the findings and recommendations of the analysis to be reported to the Governor and the Legislature; providing for application; amending s. 626.938, F.S.; requiring certain insureds or self insurers engaging in specified insurance transactions with a foreign or alien insurer to compute the premium tax and service fees based on the gross premium under certain

circumstances; requiring such insureds or self insurers to pay the applicable premium tax to the department and the service fee to the Florida Surplus Lines Service Office on or before a specified time; providing an effective date.

WHEREAS, the 111th Congress passed the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), and

WHEREAS, the NRRA provides that no state other than the home state of an insured may require any premium tax payment for nonadmitted insurance and defines "home state" as the state in which an insured maintains its principal place of business [15 U.S.C. s. 8206], and

WHEREAS, as a result of the NRRA, premium tax payments that would otherwise be paid to Florida will be paid to other states, and

WHEREAS, the NRRA allows states to enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state, and

WHEREAS, the National Association of Insurance Commissioners and the National Conference of Insurance Legislators have adopted agreements or compacts for states to use for that purpose, and

WHEREAS, a state must enter into an agreement or otherwise establish procedures to allocate among the states the premium taxes on nonadmitted insurance paid to an insured's home state before the expiration of a 330-day period that began on July 21, 2010, to apply to the payment of taxes to other states on the effective date of this act, pursuant to the NRRA [15 U.S.C. s.

8201], NOW, THEREFORE,

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 98 - 138.

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

And the title is amended as follows:

Delete lines 14 - 54

and insert:

certain circumstances; amending s. 626.938, F.S.; requiring certain insureds or self-insurers engaging in specified insurance transactions with a foreign or alien insurer to compute the premium tax and service

fees based on the gross premium under certain circumstances; requiring such insureds or self insurers to pay the applicable premium tax to the department and the service fee to the Florida Surplus Lines Service Office on or before a specified time; 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 Budget Subcommittee on Finance and Tax

BILL:	CS/SB 1816
INTRODUCER:	Banking and Insurance Committee and Senators Fasano and Richter
SUBJECT:	Surplus Lines Insurance
DATE:	March 28, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Fournier	Diez-Arguelles	BFT	**Pre-meeting**
3.			BGA	
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:

Surplus lines insurance is an alternative type of insurance coverage by which consumers can buy property-liability insurance from unauthorized (non-admitted) insurers when they are unable to purchase needed coverage from admitted insurers. The premiums charged for surplus lines coverages are subject to a 5 percent tax on premiums and a service fee of up to 0.3 percent. When a surplus lines policy covers risks over multiple states, Florida requires payment of the 5 percent surplus lines tax and the 0.3 percent service fee on the portion of the premium which is properly allocable to the risks or exposures located in this state.

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) was included within the Federal Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRRA (ss. 15 USC 8201-8206) limits regulatory authority over nonadmitted (surplus lines) insurance to the home state of the insured (policyholder). Under the NRRA, Florida will no longer have jurisdiction to collect taxes and fees on surplus lines policies that cover risks over Florida and other states unless Florida is the home state of the insured. This may result in significant loss of tax revenue. However, the NRRA authorizes states to enter into agreements with one another for home states to collect taxes on multi-state risks and then allocate tax revenue to the state where the insured risks are located.

Senate Bill 1816 amends s. 626.932(3), F.S., to apply the surplus lines tax to the entire premium if the state is the home state of the insured as defined in the NRRA. The bill also authorizes the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) to enter into cooperative reciprocal agreements with other states to collect and allocate nonadmitted insurance taxes for multistate risks pursuant to the NRRA. Finally, the bill also provides that surplus lines agents, and insureds that do not use a surplus lines agent to procure coverage, have 45 days after the end of the calendar quarter to file an affidavit describing transactions handled during the last quarter and pay the required premium tax and fees.

This bill substantially amends the following sections of the Florida Statutes: 626.931, 626.932, 626.9325, 626.9362, and 626.938.

II. Present Situation:

Surplus Lines Insurance Coverage – Background

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR) pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,[1] are broadly regulated by the OIR under the Insurance Code as to reserves, surplus as to policyholders, solvency, rates and forms, market conduct, permissible investments, and affiliate relationships.[2] Authorized insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.[3]

Surplus lines insurers are regulated by the state, but do not have to obtain a COA and are not required to adhere to the other requirements mentioned above. Surplus lines insurance is an alternative type of insurance coverage by which consumers can buy property-liability insurance from unauthorized (non-admitted) insurers when they are unable to purchase the coverage they need from admitted insurers. Surplus lines insurance is coverage provided by a company that is not licensed in Florida, but is allowed to transact insurance in the state as an "eligible" insurer[4] under the surplus lines law (ss. 626.913-626.937, F.S.). Under this law, insurance may only be purchased from a surplus lines carrier if the necessary amount of coverage cannot be procured after a diligent effort to buy the coverage from authorized insurers.[5] Rates charged by a surplus lines carrier must not be lower than the rate applicable and in use by the majority of the authorized insurers writing similar coverages on similar risks in Florida.[6] Likewise, a surplus

[1] An "authorized" or "admitted" insurer is one duly authorized by a COA to transact insurance in this state.
[2] The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[3] For example, Florida licensed direct writers of property and casualty insurance must be members of the Florida Insurance Guaranty Association, which handles the claims of insolvent insurers under part II of ch. 631, F.S., and insurers offering workers' compensation coverage in Florida must be members of the Florida Workers' Compensation Insurance Guaranty Association, which provides payment of covered claims for insurers that are declared insolvent under part V of ch. 631, F.S.
[4] An "eligible surplus lines insurer" as defined in s. 626.914(2), F.S., is an "unauthorized insurer" which has been made eligible by the Office of Insurance Regulation to issue insurance coverage under the surplus lines law.
[5] See s. 626.914(4), F.S. A "diligent effort" is defined as seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage being sought. The rejections must be documented.
[6] Section 626.916(1)(b), F.S.

lines policy contract form must not be more favorable to the insured as to the coverage or rate offered by the majority of authorized carriers.[7]

The surplus lines law contains specific financial and other requirements that unauthorized insurers must comply with in order to become eligible surplus lines insurers and obtain approval by the OIR. For example, a surplus lines insurer must maintain a surplus as to policyholders of not less than $15 million and have been licensed in its state or country of domicile for at least three years.[8]

Historically, surplus lines insurers have never been held subject to Florida's regulation of rates, forms, or other requirements under ch. 627, F.S., as are admitted insurers.[9] This is true of the regulatory treatment of surplus lines insurers in other states across the country. The different regulatory treatment is due to the unique nature of surplus lines insurance because it covers consumer needs arising from emerging technologies, new business practices, or changing legal environments which require a quick response that is often difficult for admitted insurers to provide, according to representatives with the Florida Surplus Lines Office.

Florida Surplus Lines Service Office and Surplus Lines Agents

In 1997, the Legislature created the Florida Surplus Lines Service Office (FSLSO), a non-profit association designed to act as a "self-regulating organization" to permit better access by consumers to approved surplus lines insurers.[10] The FSLSO is governed by a nine-person board of governors and is required to perform its functions under a plan of operation approved by the OIR. The FSLSO:

- Receives, records, and reviews all surplus lines insurance policies;
- Maintains records of policies;
- Prepares and delivers quarterly reports of each surplus agent's business to each agent;
- Collects and remits the surplus lines tax; and
- Performs other activities as specified by statute.

There are 1,215 licensed surplus lines agents in Florida which are authorized to handle the placement of insurance coverages with surplus lines insurers and are deemed to be members of the FSLSO. These agents are required to report and file with the FSLSO a copy of, or information on, each surplus lines insurance policy, including the name of the insured and insurer, the policy number and its effective date, the policy's expiration date, the type of coverage, the premium, and other information.

Surplus Lines Premium Tax and Other Fees

[7] Section 626.916(1)(c), F.S.
[8] Section 626.918, F.S.
[9] *See Affidavits In Support of Intervenor-Plaintiff Essex Insurance Company's Amended Motion for Summary Judgment* by Steve Parton, Office of Insurance Regulation, General Counsel, and Belinda Miller, Office of Insurance Regulation, Deputy Commissioner for Property and Casualty Insurance, filed in *Howard v. Choice Hotels International, Inc.*, Case No. CA06-680-55 (Fla. 7th Cir. Tr. Ct. 2008).
[10] Chapter 97-196, Laws of Fla. Section 626.921, F.S.

There are 172 surplus lines insurers writing insurance in Florida with over $4 billion in written premiums during 2009.[11] These premiums are subject to a premium receipts tax of 5 percent.[12] The surplus lines premium tax rate is more than double the rate for admitted carriers. Surplus lines premiums are also subject to a service fee of up to 0.3 percent, as determined by the office, of the total gross premium of each surplus lines policy for the cost of operation of the service office.[13] The surplus lines agent collects the tax and the service fee from the insured at the time of the delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance. Florida also applies the premium tax and the service fee to the gross premium of policies purchased from an unauthorized insurer when the insurance is not purchased from a Florida-authorized surplus lines insurer. In 2009, the FSLSO collected $180,784,308 in taxes and $3,673,838 in fees. The 2009 revenue constituted a decrease from the prior two years. The FSLSO collected taxes totaling $194,670,864 in 2008 and $211,285,737 in 2007.

A surplus lines policy often covers risks or exposures that are only partially in this state. For example, the policy might cover multiple structures located across multiple states. In this instance, the surplus lines tax is computed on the portion of the premium which is properly allocable to the risks or exposures located in this state. The FSLSO has promulgated different methods of determining the taxes and service fees payable to Florida for a multi-state risk. The tax for multi-state residential property is determined by calculating the premium for structures and other property permanently located in Florida. The surplus lines agent makes the calculation and remits the proper tax and fee payment for the portion of the risk based in Florida. Representatives from the FSLSO estimate that approximately 10 percent of surplus lines premium tax revenue is attributable to taxes on multi-state risks.

Nonadmitted and Reinsurance Reform Act of 2010

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) was included within the Federal Dodd-Frank Wall Street Reform and Consumer Protection Act [H.R. 4173 (2010)]. The NRRA creates 15 USC 8201-8206, governing nonadmitted (surplus lines) insurance. The NRRA limits regulatory authority to the home state of the insured (policyholder). The insured's home state is the state in which the insured maintains its principal place of business or an individual's principal residence.

The NRRA allows only the home state of an insured to require premium tax payments for nonadmitted insurance. However, the NRRA allows states to enter into a compact to allocate the premium taxes paid to the insured's home state to the various states where the risks are located. If the compact is enacted on or before June 15, 2011, the compact will apply to premium taxes that must be paid to states that are signatories to the compact. However, if the compact is enacted after that date, it will not be effective until January 1 of the first year after the compact is enacted.

[11] Florida Surplus Lines Service Office.
[12] Section 626.932, F.S.
[13] Section 626.921(3)(f), F.S.

The NRRA specifies that the placement of nonadmitted insurance is subject only to the statutory and regulatory requirements of the insured's home state.[14] Only the insured's home state may require the licensure of a surplus lines broker (agent) to sell, solicit or negotiate nonadmitted insurance with respect to that insured. Surplus lines policies purchased on risks located entirely in Florida will continue to be subject to Florida law. However, if the risk is located in multiple states, under the NRRA the home state has sole jurisdiction over all aspects of the insurance policy. For example, if a surplus lines policy is purchased on a risk covering multiple states, Florida will only have jurisdiction if Florida is the home state of the insured. If Florida lacks jurisdiction over the surplus lines policy, the state will not be able to collect premium taxes and fees on the Florida portion of the risk. Representatives from the Office of Insurance Regulation and the Florida Surplus Lines Service Office indicate that Florida is likely to lose $15 to $20 millions in tax revenue if the state is unable to collect surplus lines premium taxes on multi-state risks.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.931(1), F.S., to allow surplus lines agents 45 days after the end of the calendar quarter to file an affidavit stating that the agent has submitted all of the agent's surplus lines transactions to the Florida Surplus Lines Service Office. Current law requires the affidavit to be filed on or before the end of the month after the end of the quarter.

Section 2. Amends s. 626.932(3), F.S., to specify that the surplus lines tax shall be computed on the gross premium when the surplus lines policy covers risks that are only partially in Florida and Florida is the home state as defined by the NRRA.

Section 3. Amends s. 626.9325, F.S., to allow surplus lines agents 45 days following each calendar quarter to pay to the Surplus Lines Service Office all service fees related to policies reported during the previous quarter. Current law requires monthly payments. The fee will be computed on the gross premium when the surplus lines policy covers risks that are only partially in Florida, and Florida is the home state as defined by the NRRA.

Section 4. Creates s. 626.9362, F.S., to authorize the Department of Financial Services and the OIR to enter into cooperative reciprocal agreements with other states to collect and allocate nonadmitted insurance taxes for multistate risks pursuant to the NRRA. The agreements are authorized to create a comprehensive system for reporting, collecting, and allocating these taxes. The agreement may:

- Create a clearinghouse to receive and disburse nonadmitted insurance taxes;
- Create reporting requirements;
- Determine the methods for collecting and forwarding taxes to the appropriate state;
- Develop a premium tax allocation formula for multi-state nonadmitted risks;
- Provide for audits and exchanging information; and
- Facilitate the reasonable administration of the cooperative reciprocal agreement.

[14] The act does not preempt a state law restricting the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

The reciprocal agreements must be implemented by the Florida Surplus Lines Service Office, which is authorized to collect the total tax imposed on a multi-state risk nonadmitted insurance premium. The OIR and the DFS are granted rulemaking authority to administer agreements reached with other states.

Section 5. Amends s. 626.938(3), F.S., to require that insureds that do not use a surplus lines agent to procure surplus lines coverage must pay the surplus lines premium tax and the service fee within 45 days following each calendar quarter in which the insurance was procured. Current law requires payment within 30 days after the insurance is procured. The section also specifies that the surplus lines tax paid by the insured shall be computed on the gross premium when the surplus lines policy covers risks that are only partially in Florida and Florida is the home state as defined by the NRRA.

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:

Statutory authorization to compact or enter reciprocal agreements with other states potentially implicates the “nondelegation doctrine.” Article III, Section 1 of the Florida Constitution states that "[t]he legislative power of the state shall be vested in a legislature of the State of Florida.” The Florida Supreme Court has held that this constitutional provision requires application of a "strict separation of powers doctrine...which `encompasses two fundamental prohibitions'." *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 763, 769 (Fla. 2005) (quoting *State v. Cotton*, 769 So.2d 345, 353 (Fla. 2000), and *Chiles*, 589 So.2d at 264). No branch of Government may delegate its constitutionally assigned powers to another branch. *Chiles*, 589 So.2d at 264.

The Legislature may constitutionally transfer subordinate functions to "permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions." *Microtel v. Fla. Pub. Serv. Comm'n*, 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep't of Citrus v. Griffin*, 239 So.2d 577 (Fla.1970)). However, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law." *Sims v. State*, 754 So.2d 657, 668 (2000). Further, the nondelegation doctrine precludes the legislature from delegating its powers "absent ascertainable minimal standards and guidelines." *Dep't of Bus. Reg., Div.*

of Alcoholic Beverages & Tobacco v. Jones, 474 So.2d 359, 361 (Fla. 1st DCA 1985). When the Legislature delegates power to another body, it "must clearly announce adequate standards to guide ... in the execution of the powers delegated." *Martin, 916 So.2d at 770.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Under the provisions of the NRRA, after the expiration of a 330 day period that began on July 1, 2010, Florida will not have jurisdiction to collect taxes and fees on surplus lines policies that cover multi-state risks unless Florida is the home state of the insured. This bill amends Florida Statutes to tax the gross premium if Florida is an insured's "home state" as defined in the NRRA. It also authorizes the DFS and OIR to enter into a cooperative reciprocal agreement with other states to collect and allocate surplus lines insurance taxes for multi-state policies. The impact of these changes is positive but indeterminate to the General Revenue Fund.

B. Private Sector Impact:

The creation of a uniform clearinghouse to collect information, taxes, and fees related to surplus lines insurance on multi-state risks will be less burdensome to surplus lines agents and entities purchasing such insurance. Currently, agents must file reports and pay taxes to multiple different states and perform calculations regarding the appropriate tax revenues due the various states.

C. Government Sector Impact:

Representatives from the OIR state that implementation of the legislation can be absorbed within current resources of the office.

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 Banking and Insurance Committee on March 22, 2011

The committee substitute corrects drafting errors to the bill.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 160 - 183

and insert:

Section 3. Section 193.011, Florida Statutes, is amended to read:

193.011 Factors to consider in deriving just valuation.—In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser must consider ~~shall take into consideration~~ the following factors:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive

of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length.~~;~~

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor if ~~when~~ the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium.~~;~~

(3) The location of said property.~~;~~

(4) The quantity or size of said property.~~;~~

(5) The cost of said property and the present replacement value of any improvements thereon.~~;~~

(6) The condition of said property.~~;~~

(7) The income from said property.~~; and~~

(8) The net proceeds of the sale of the property, as received by the seller~~,~~ after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing~~,~~ and allowance for unconventional or

atypical terms of financing arrangements. If ~~When~~ the net proceeds of the sale of any property are used ~~utilized~~, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

(9) The net proceeds of the sale of properties sold by March 31 in the year of assessment if:

(a) The net proceeds of the sales are reasonable evidence of the value of properties on January 1; and

(b) The value of real property is declining in the area where the properties were sold.

Section 4. Paragraphs (n) and (p) of subsection (2) and subsection (4) of section 193.114, Florida Statutes, are amended to read:

193.114 Preparation of assessment rolls.—

(2) The real property assessment roll shall include:

(n) The recorded selling ~~For each sale of the property in the previous year, the sale~~ price, ownership transfer ~~sale~~ date, and official record book and page number or clerk instrument number for each deed or other instrument transferring ownership of real property and recorded or otherwise discovered during the period beginning 1 year before the assessment date and up to the date the assessment roll is submitted to the department.~~, and~~ The basis for qualification or disqualification as an arms-length transaction of each transfer or sale shall be included on the assessment roll. ~~Sale data must be current on all tax rolls~~

~~submitted to the department, and~~ Sale qualification decisions for transfers must be recorded on the assessment ~~tax~~ roll within 3 months after the ~~sale~~ date that the deed or other transfer instrument is recorded or otherwise discovered. For purposes of this paragraph, the term "ownership transfer date" means the date on which the deed or other transfer instrument is signed and notarized or otherwise executed.

(p) The name and address of the owner ~~or fiduciary responsible for the payment of taxes on the property and an indicator of fiduciary capacity, as appropriate~~.

(4)(a) For every change made to the assessed or taxable value of a parcel on an assessment roll subsequent to the mailing of the notice provided for in s. 200.069, the property appraiser shall document the reason for such change in the public records of the office of the property appraiser in a manner acceptable to the executive director or the executive director's designee. For every change made to the assessed or taxable value of a parcel on the assessment roll as the result of an informal conference under s. 194.011(2), only the department may review whether such changes are consistent with the law.

(b) For every change that decreases the assessed or taxable value of a parcel on an assessment roll between the time of complete submission of the tax roll pursuant to s. 193.1142(3) and mailing of the notice provided for in s. 200.069, the property appraiser shall document the reason for such change in the public records of the office of the property appraiser in a manner acceptable to the executive director or the executive director's designee.

(c) Changes made by the value adjustment board are not subject to the requirements of this subsection.

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

And the title is amended as follows:

Delete lines 6 - 10

and insert:

Tax Administration Task Force; amending s. 193.011, F.S.; requiring a property appraiser to consider sales completed during a specified period after the assessment date in determining just valuation of real property under certain circumstances; amending s. 193.114, F.S.; revising provisions requiring that certain information be included on the real property assessment roll following a transfer of ownership; defining the term "ownership transfer date"; limiting the review of changes in the assessed value of real property resulting from an informal conference with the taxpayer to a review by the Department of Revenue; amending

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/04/2011	.	
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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 184 - 231.

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

And the title is amended as follows:

Delete lines 11 - 17

and insert:

ss. 193.1554 and 193.1555, F.S.;

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 184 - 231

and insert:

Section 4. Effective July 1, 2011, and applicable to assessments beginning with the 2011 tax year, subsection (2) of section 193.122, Florida Statutes, are amended to read:

193.122 Certificates of value adjustment board and property appraiser; extensions on the assessment rolls.—

(2) After the first certification of the tax rolls by the value adjustment board, the property appraiser shall make all required extensions on the rolls to show the tax attributable to

126584

all taxable property. Upon completion of these extensions, and upon satisfying himself or herself that all property is properly taxed, the property appraiser shall certify the tax rolls and shall within 1 week thereafter publish notice of the date and fact of extension and certification in a periodical meeting the requirements of s. 50.011 and publicly display a notice of the date of certification in the office of the property appraiser and publish the notice on the website of the property appraiser. The property appraiser shall also supply notice of the date of the certification to any taxpayer who requests one in writing. These certificates and notices shall be made in the form required by the department and shall be attached to each roll as required by the department by regulation.

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

And the title is amended as follows:

Delete lines 11 - 17

and insert:

s. 193.122, F.S.; requiring a property appraiser to publish a notice of the date of certification of the tax roll on the appraiser's website; amending ss. 193.1554 and 193.1555, F.S.;

869834

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment

Delete line 265
and insert:
nonresidential or nonhomestead real property shall be assessed at just value as

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 347 - 481
and insert:

Section 12. Subsection (2) of section 194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.—

(2) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance no less than 25 calendar days prior to the day of such scheduled

appearance. Upon receipt of this notification, the petitioner shall have the right to reschedule the hearing a single time by submitting to the clerk of the governing body of the county a written request to reschedule, no less than 5 calendar days before the day of the originally scheduled hearing. A copy of the property record card containing relevant information used in computing the taxpayer's current assessment shall be included with such notice, if said card was requested by the taxpayer. Such request shall be made by checking an appropriate box on the petition form. No petitioner shall be required to wait for more than a reasonable time not to exceed 4 hours from the scheduled time; and, if his or her petition is not heard in that time, the petitioner may, at his or her option, report to the chairperson of the meeting that he or she intends to leave; and, if he or she is not heard immediately, ~~the petitioner's administrative remedies will be deemed to be exhausted, and~~ he or she may be rescheduled for good cause ~~seek further relief as he or she deems appropriate~~. Failure on three occasions with respect to any single tax year to convene at the scheduled time of meetings of the board shall constitute grounds for removal from office by the Governor for neglect of duties.

Section 13. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.—

(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 after ~~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. When a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of the decisions, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer and~~,~~ the property appraiser~~, and the department~~ of the decision of the board. If requested by the Department of Revenue, the clerk shall provide these notices or relevant statistics in the manner and form requested by the department.

Section 14. Effective July 1, 2011, and applying to assessments beginning with the 2011 tax year, subsection (1) of section 194.035, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

194.035 Special magistrates; property evaluators.—

(1) 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


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magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county having ~~with~~ a population of 75,000 or fewer ~~less~~. Subject to appropriation, the department shall reimburse counties having ~~with~~ a population of 75,000 or fewer ~~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 of fewer ~~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, deferrals, 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 ~~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.

(4)(a) If, before a final decision, any communication is received from a party concerning a complaint about a special magistrate, a copy of the communication shall promptly be furnished to all parties, the board clerk, and legal counsel for the board. Such communication may not be furnished to the board or special magistrate unless a copy is immediately furnished to all parties. However, a party may waive notice under this paragraph.

426866

(b) The legal counsel for the board must review the communication, obtain such other information regarding the complaint as reasonably necessary, and advise the board as to any action that should be taken in response to the communication. Such action may include requiring the special magistrate to implement the requirements of law or to reconsider the recommended decision. The board may also remove a special magistrate from serving further in an official capacity if he or she subsequently fails to comply with the board's action.

(c) A recommended decision may not be reconsidered as the result of communications concerning a complaint until all parties have been furnished all communications, and have been afforded adequate opportunity to respond.

(d) The board clerk shall notify the parties of any action taken by the board concerning the complaint about the special magistrate.

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

And the title is amended as follows:

Delete lines 34 - 47

and insert:

amending s. 194.034, F.S.; deleting a requirement that the Department of Revenue be notified of decisions by the value adjustment board or special magistrate; requiring that the clerk provide certain information to the department upon request; amending s. 194.035, F.S.; deleting requirements that the department establish the range of payments for special magistrates and that reimbursements to counties be


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prorated under certain circumstances; requiring that all parties to a petition be notified of certain communications concerning a complaint relating to a special magistrate; directing the legal counsel for the board to review certain communications, obtain other information, and advise the board; providing for removal of a special magistrate under certain circumstances; prohibiting a counsel’s recommended decision from being reconsidered until certain conditions are fulfilled; requiring notification of all parties of actions taken by the board concerning the complaint about the special magistrate; amending s.

118524

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 547 - 550
and insert:
after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2), or after 60 days from the date a decision is rendered concerning such

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 52 - 54
and insert:

amending s. 194.171, F.S.; defining the term "rendered" for purposes of determining the time period to contest a tax assessment; amending s. 195.096, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 674 - 696

and insert:

homestead exemptions shall be applied in the order that results in the lowest taxable value. ~~as follows:~~

~~(a) The exemption in paragraph (1)(a) shall apply to the first $25,000 of assessed value;~~

~~(b) The second $25,000 of assessed value shall be taxable unless other exemptions, as listed in paragraph (d), are applicable in the order listed;~~

~~(c) The additional homestead exemption in paragraph (1)(b),~~

191694

~~for levies other than school district levies, shall be applied to the assessed value greater than $50,000 before any other exemptions are applied to that assessed value; and~~

~~(d) Other exemptions include and shall be applied in the following order: widows, widowers, blind persons, and disabled persons, as provided in s. 196.202; disabled ex-servicemembers and surviving spouses, as provided in s. 196.24, applicable to all levies; the local option low-income senior exemption up to $50,000, applicable to county levies or municipal levies, as provided in s. 196.075; and the veterans percentage discount, as provided in s. 196.082.~~

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

And the title is amended as follows:

Delete lines 64 - 66

and insert:

196.031, F.S.; providing for ad valorem tax exemptions to be applied in the order that results in the lowest taxable value of a homestead; amending s. 196.081, F.S.; authorizing an

900886

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment

Delete line 707
and insert:
be refunded. An application for a refund of excess taxes paid must be submitted within the time period specified in s. 197.182(1)(c).

Delete line 716
and insert:
excess taxes paid shall be refunded. An application for a refund of excess taxes paid must be submitted within the time period

900886

specified in s. 197.182(1)(c).

Delete line 727
and insert:
be refunded. An application for a refund of excess taxes paid must be submitted within the time period specified in s. 197.182(1)(c).

Delete line 737
and insert:
application, and the excess taxes paid shall be refunded. An application for a refund of excess taxes paid must be submitted within the time period specified in s. 197.182(1)(c).

Delete line 766
and insert:
the excess taxes paid shall be refunded. An application for a refund of excess taxes paid must be submitted within the time period specified in s. 197.182(1)(c).

Delete line 794
and insert:
application, and the excess taxes paid shall be refunded. An application for a refund of excess taxes paid must be submitted within the time period specified in s. 197.182(1)(c).

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Substitute for Amendment (900886)

Delete line 707

and insert:

be refunded. Any refund of excess taxes paid shall be limited to the time period set forth in s. 197.182(1)(c).

Delete line 716

and insert:

excess taxes paid shall be refunded. Any refund of excess taxes paid shall be limited to the time period set forth in s. 197.182(1)(c).

185704

Delete line 727
and insert:
be refunded. Any refund of excess taxes paid shall be limited to the time period set forth in s. 197.182(1)(c).

Delete line 737
and insert:
application, and the excess taxes paid shall be refunded. Any refund of excess taxes paid shall be limited to the time period set forth in s. 197.182(1)(c).

Delete line 766
and insert:
the excess taxes paid shall be refunded. Any refund of excess taxes paid shall be limited to the time period set forth in s. 197.182(1)(c).

Delete line 794
and insert:
application, and the excess taxes paid shall be refunded. Any refund of excess taxes paid shall be limited to the time period set forth in s. 197.182(1)(c).

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 795 - 1005
and insert:
Section 28. Paragraph (i) of subsection (1) of section 197.182, Florida Statutes, is amended to read:
197.182 Department of Revenue to pass upon and order refunds.—
(1)
(i) If the refund is not one that can be directly acted upon by the tax collector, for which an order from the department is required, the tax collector shall forward the

538026

claim for refund to the department upon receipt of the correction from the property appraiser or 30 days after the claim for refund, whichever occurs first. This provision does not apply to corrections resulting in refunds of less than $2,500 ~~$400~~, which the tax collector shall make directly, without order from the department, and from undistributed funds, and may make without approval of the various taxing authorities.

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

And the title is amended as follows:

Delete lines 94 - 110

and insert:

Government; amending s. 197.182, F.S.; increasing the maximum value of refund that may be made by the tax collector without approval by the Department of Revenue; amending ss.

262358

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1102 - 1116.

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

And the title is amended as follows:

Delete lines 113 - 114

and insert:

amending s.

766148

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Before line 126
insert:

Section 1. Subsection (11) is added to section 200.069, Florida Statutes, to read:

200.069 Notice of proposed property taxes and non-ad valorem assessments.—Pursuant to s. 200.065(2)(b), the property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction and at the expense of the county, shall prepare and deliver by first-class mail to each taxpayer to be

766148

listed on the current year's assessment roll a notice of proposed property taxes, which notice shall contain the elements and use the format provided in the following form. Notwithstanding the provisions of s. 195.022, no county officer shall use a form other than that provided herein. The Department of Revenue may adjust the spacing and placement on the form of the elements listed in this section as it considers necessary based on changes in conditions necessitated by various taxing authorities. If the elements are in the order listed, the placement of the listed columns may be varied at the discretion and expense of the property appraiser, and the property appraiser may use printing technology and devices to complete the form, the spacing, and the placement of the information in the columns. A county officer may use a form other than that provided by the department for purposes of this part, but only if his or her office pays the related expenses and he or she obtains prior written permission from the executive director of the department; however, a county officer may not use a form the substantive content of which is at variance with the form prescribed by the department. The county officer may continue to use such an approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director.

(11) At the request of the governing body of the county, the property appraiser shall mail an additional form to each taxpayer within his or her jurisdiction along with the notice of proposed taxes. Any costs related to this form shall be borne by the county. The form may include information regarding the proposed budget for the county, inform taxpayers of the portion

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of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission, and include:

(a) The dollar value of proposed nonvoted property tax funding for each constitutional officer and the county commission;

(b) The percent of the total nonvoted property tax revenues designated for each constitutional officer and the county commission in the proposed budget; and

(c) The proposed nonvoted millage rate for each constitutional officer and the county commission, calculated by multiplying the percent of the total nonvoted property tax revenues designated for each entity by the county's proposed nonvoted millage rate.

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

And the title is amended as follows:

Between lines 2 and 3

insert:

amending s. 200.069, F.S.; requiring a property appraiser, at the request of the governing body of a county, to mail an additional form along with the notice of proposed taxes to notify taxpayers of the portion of the proposed nonvoted county millage rate that is attributable to each constitutional officer and the county commission;

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 Budget Subcommittee on Finance and Tax

BILL:	SB 2042
INTRODUCER:	Budget Subcommittee on Finance and Tax
SUBJECT:	Administration of Property Tax
DATE:	March 29, 2011 REVISED:

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

I. Summary:

This bill clarifies ambiguous language and corrects drafting errors in the property tax statutes. It also standardizes statutory requirements for applying for tax deferral and appealing VAB decisions, reduces the Department of Revenue's role in approving tax refunds, and reduces the number of reports that must be submitted to the department. It allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government, and deletes obsolete statutory provisions.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 192.001, 192.117, 193.114, 193.122, 193.155, 193.1554, 193.1555, 193.501, 193.503, 193.505, 194.011, 194.032, 194.034, 194.035, 194.037, 194.171, 195.096, 195.0985, 195.099, 196.031, 196.081, 196.082, 196.091, 196.101, 296.121, 196.202, 196.24, 197.122, 197.182, 197.2301, 197.253, 197.3041, 197.3073, 197.323, 200.065, 218.12, and 218.125.

II. Present Situation:

Section 195.002, F.S., provides that the Department of Revenue (department) shall have general supervision of the assessment and valuation of property, and over tax collection and all other aspects of the administration of such taxes. In its supervisory roll, the department from time to time identifies provisions of Florida Statutes that appear to contain drafting errors, are inconsistent with other statutory provisions, or are not consistent with efficient tax administration. This bill contains recommendations, suggested by the department and approved by the Governor and Cabinet, to address some of these issues.

In 2008 Florida voters approved Amendment 1 to the State Constitution, which increased the homestead exemption, provided portability of the Save Our Home tax limitation, and limited assessment increases for non-homestead property. The Legislature has also made significant changes to property tax statutes in recent years—imposing limitations on local millage rates, changing the value adjustment board (VAB) process, and changing the burden of proof in assessment challenges. Since these changes have been in effect, it has become apparent that some of the language implementing them contained drafting errors, left certain questions unanswered, or created administrative difficulties. Inconsistencies with other statutory provisions have also been uncovered, creating further challenges in implementing the constitutional and statutory changes.

III. Effect of Proposed Changes:

This bill clarifies ambiguous language and corrects drafting errors that have become apparent since these property tax law changes were implemented. It also standardizes statutory requirements for applying for tax deferral and appealing VAB decisions, reduces the department's role in approving tax refunds, and reduces the number of reports that must be submitted to the department. It allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government, and deletes obsolete statutory provisions.

(See section by section analysis below.)

Section 1
Present situation: Section 192.001, F.S., provides definitions of terms used in the statutes governing the imposition of ad valorem taxes. Some of these definitions have not been amended to conform to changes that have been enacted in other ad valorem statutes.

Proposed change: This bill amends the definitions of "assessed value of property" to make it consistent with Art VII of the Florida Constitution, as amended in 2008. It amends "complete submission of the rolls" to conform to s. 193.114, F.S., as amended in 2008.

Section 2 repeals s. 192.117, F.S., which created the Property Tax Administration Task Force. This task force was dissolved in 2004.

Section 3
Present situation: Subsection (2) of s. 193.114, F.S., lists items that must be included on the real property assessment roll. When this section was amended in 2008, some of the changes made at that time used terms that are inconsistent with established practice and terminology, and this has led to confusion for the property appraisers.

Proposed change: Paragraph (n) of this subsection is amended to change the recorded selling price requirement from the two most recently recorded selling prices to the recorded selling prices required by s. 193.114, F.S., and to replace the term "sale price" with "recorded selling price" to clarify that the price submitted must be the amount indicated by the documentary stamps posted on the transfer document. The term "sale" is replaced with "transfer" to clarify that all real property transfers recorded or otherwise discovered during the period beginning 1

year before the assessment date, and up to the date the roll is submitted to the department, must be included on the assessment roll. "Transfer date" is defined as the date on which the transfer document was signed and notarized, and sale qualification decisions must be recorded on the assessment roll within 3 months after the deed or other transfer instrument is recorded or otherwise discovered.

Paragraph (p) is amended to delete the requirement that the assessment roll contain the name and address of a fiduciary responsible for payment of property taxes.

Section 4
Present situation: Subsection (4) of s. 193.122, F.S., provides that the property appraiser must appeal a value adjustment board decision within 30 days of recertification under subsection (3) of that section.

Proposed change: Effective July 1, 2011 and applying to assessments beginning with the 2011 tax year, this subsection is amended to clarify that the appeal must be made within 30 days after the date the decision is rendered. This conforms to other changes made in the bill to clarify the timeline for appealing VAB decisions, however, it may lead to additional uncertainty because there is no official record of this date comparable to the recertification date.

Section 5
Present situation: Subsection (8) of s. 193.155, F.S., allows a taxpayer to transfer certain amounts of his or her Save Our Home assessment limitation to a newly-acquired homestead, but the transfer must be applied for by a certain date in order to get the full benefit of the transfer. The statute refers to an application for "homestead" instead an application for "assessment" under this subsection, and questions have been raised about whether this reference is correct.

Proposed change: Effective July 1, 2011, the bill amends the language to clarify that the required application is for "assessment" instead of "homestead" and that the assessment reduction is calculated as if the application had been timely filed.

Sections 6 and 7
Present situation: Amendment 1, approved by the voters in 2008, provided that the assessed value of certain property cannot increase by more than 10 percent over the prior year. Sections 193.1554 and 193.1555, F.S., which implement this provision, require that property be assessed at just (full) value the first year the property is "placed on the tax roll." It is not clear from the statutory language that "placed on the tax roll" is meant to include property that was already on the roll in a different classification, although the fiscal impact estimates provided at the time were based on that assumption.[1] These sections also provide for assessment of combined or divided parcels, but do not specify how to assess parcels that are combined or divided after the assessment date but before the tax bills are sent.

[1] In *Sommers v. Orange County Property Appraiser, et.al.*, a recent summary judgment issued by the Ninth Judicial Circuit Court, it was ruled that the Sommers were entitled to the 10 % assessment limitation on their previously homesteaded property without first reassessing the home to its full market value. The court based its ruling on constitutional language implemented in section 193,1554(3), F.S.

Proposed change: These sections are amended to clarify that property must be assessed at full value when it is subject to a new limitation, and that parcels combined or divided after January 1 are not considered combined or divided for purposes of assessment until the January 1 that the parcels are first assessed as combined or divided, even though they are combined or divided for purposes of the tax notice.

Sections 8, 9 and 10
Present situation: Sections 193.501, 193.503, 193.505., F.S., provide reduced assessments for lands subject to a conservation easement or other development limitation, historic property used for commercial or certain nonprofit purposes, or historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted, respectively. The statutes require repayment of the reduced tax liabilities if the use is not maintained for the required period, and local tax collectors are required to report this repayment information to the department. These repayments are rare and this information is not needed by the department.

Proposed change: These sections are amended to delete the reporting requirement.

Section 11 and Sections 31- 33
Present situation: Sections 194.011(3)(d), 197.253(2)(b), 197.3041(2)(b), and 197.3073(2)(b), F.S., provide conflicting requirements regarding the time allowed to file a petition for homestead tax deferral. Section 194.011, F.S., provides 30 days following the mailing of the notice by the property appraiser, but the sections in ch. 197 provide 20 days.

Proposed change: These provisions are amended to provide the 30-day window of opportunity, and s. 194.011, F.S., is amended to include cross-references to all homestead tax deferral provisions.

Section 12
Present situation: An obsolete provision in s. 194.032(2), F.S., requires a petitioner to wait at least 4 hours for his or her VAB hearing before being able to file in circuit court, even though a petitioner is no longer required to exhaust all administrative remedies (i.e., the VAB) before filing a circuit court petition.

Proposed change: This section repeals the obsolete statutory language providing the 4 hour waiting requirement for filing in circuit court, and limits the waiting time for petitioners to a "reasonable time."

This section also creates a new subsection that prescribes how the VAB must handle a complaint that a special magistrate did not follow the requirements of state law. It provides that a special magistrate is subject to removal from serving in that capacity upon being found to have failed to follow the requirements of state law.

Section 13
Present situation: Section 194.034(2), F.S., requires the VAB clerk to provide notice to taxpayer petitioners, property appraisers, and the department of board decisions.

Proposed changes: This subsection is amended to delete the requirement that the department be notified of every VAB decision. It allows the department to request notification or relevant statistics.

Section 14
Present situation: Section 194.035(1), F.S., provides that, subject to an appropriation, the department will reimburse certain counties for their special magistrate expenses, and the department will establish a reasonable range for special magistrate payments. No appropriations have been provided for these payments.

Proposed change: Effective July 1 and applying to assessments beginning with the 2011 tax year, these provisions are deleted from the statute.

Section 15
Present situation: Section 194.037(1), F.S., requires the clerk of each VAB to provide a public notice of the findings and results of VAB actions, and prescribes the format of this notice. One of the required elements of the notice is the net change in taxable value as a result of VAB actions. It does not specify which taxable value—county, school board, or special district—is to be reported.

Proposed change: Effective July 1 and applying to assessments beginning with the 2011 tax year, this subsection is amended to specify that the change in county taxable value is to be reported by the clerk.

Section 16
Present situation: When a VAB petitioner receives a decision from the board, the petitioner has 60 days in which to contest the decision in circuit court. There is confusion on when the 60 days begins—some courts have based the time frame on the date the VAB decision is mailed, but others have used the date the property appraiser first certifies the assessment roll prior to mailing the decision. Taxpayers that appeal to the circuit court without using the VAB process have 60 days from the date the roll is certified to initiate the appeal. It is sometimes difficult to determine this date.

Proposed change: Effective July 1 and applying to assessments beginning with the 2011 tax year, s. 194.171(2), F.S., is amended to begin the 60 day window of opportunity to appeal to the circuit court on the date the VAB decision is mailed or otherwise transmitted to the petitioner, or on the tax notice postmark date if a VAB appeal is not made.

Sections 17 and 18
Present situation: Sections 195.096 and 195.0985, F.S., require the department to report the results of its in-depth review of the assessment rolls of each county. The findings must be published and copies must be forwarded to legislative staff and county officials. The statutory reporting requirements contain different reporting dates and redundant requirements.

Proposed change: The bill amends subsections (2) and (3) of s. 195.096 to standardize reporting requirements for the in-depth assessment roll review, and repeals s. 195.0985, F.S., which contains a redundant requirement.

Section 19
Present Situation: Section 195.099, F.S., requires the department to review the assessment of new, rebuilt, or expanded businesses in designated enterprise zones or "brownfield" areas.

Proposed change: This section is amended to allow the department to review these assessments as the need arises for such review.

Section 20
Present Situation: Section 196.031, F.S., specifies the order in which various exemptions are applied to homestead property. Under present law, the order of exemptions has the result that some properties where only a portion of the property is homesteaded are not able to take full advantage of all the exemptions.

Proposed change: This section is amended to require that exemptions applicable to only homestead property be taken before exemptions that apply to both homestead and non-homestead property, in order to maximize the value of the exemptions.

Sections 21-24 and 26-27
Present situation: Sections 196.081, 196.082. 196.091, and196.101, 196.202, and 196.24, F.S., provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions. In order to qualify, a taxpayer must obtain a disability letter from the United States government, the United States Department of Veterans Affairs or its predecessor, or the Social Security Administration, and the person may not receive a discount or exemption until the letter is obtained.

Proposed change: The bill amends these sections to allow a disabled taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer providing the required documentation. Once the documentation is received by the property appraiser the exemption is granted back to the date of the original application and a refund of excess tax payments is made.

Section 25
Present situation: Section 196.121, F.S., requires the department to furnish printed homestead exemption forms to the property appraisers. This requirement is obsolete since the forms are provided electronically and funding for printed forms has been eliminated.

Proposed change: The bill amends this section to delete the requirement for printed forms and clarify that the department will provide electronic funds.

Sections 28-30 and Section 34
Present situation: Sections 197.122 and 197.182, F.S., require the department to review most property tax refunds and ss. 197.2301 and 197.323, F.S., provide that department approval is not required for refunds of certain tax overpayments.

Proposed change: Sections 197.122 and 197.182, F.S., are amended to require the department to periodically review tax refund procedures instead of reviewing and approving individual tax

refunds. The sections are amended to provide additional guidance to the tax collector in making refunds, and require the tax collector and property appraiser to cooperate in the conduct of the department's procedural reviews. Sections 197.2301 and 197.323, F.S., are amended to conform to changes in the refund approval process.

Section 35
Present situation: The statutory language used to limit local governments' millage rates contains a reference to the prior year's rate. In an apparent drafting error, the phrase "is adopted" was used instead of "was adopted" in referring to that rate, causing uncertainty in the phrase's meaning.

Proposed change: Section 200.065(5)(a), F.S., is amended in the bill to change the phrase from "is adopted" to "was adopted".

Sections 36 and 37
Present situation: Section 218.12 and 218.125, F.S., provide for distributions to fiscally constrained counties for tax losses due to constitutional changes approved by the voters in 2008. There is no provision in the statute for addressing what happens if a county fails to apply for the distribution. The statute requires counties to report their maximum millage under ch. 200, F.S., but the citation to that chapter is not correct. Finally, distributions under both sections are calculated by multiplying the current year reduction in taxable value by the prior year's millage rate, rather than the current year's rate.

Proposed change: The bill amends these sections to specify that if a county fails to apply for distribution under these sections its share reverts to the fund from which the appropriation is made. The maximum millage calculation references are corrected, and the calculation of the distribution is based on the current year millage.

Section 38 provides that, except as otherwise provided, this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b), of the Florida Constitution, provides that "except upon a approval by two-thirds of members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February1, 1989".[2] Since this bill would reduce a county or municipality's authority to raise revenue in the aggregate, it may require a two-thirds vote of the membership of each house of the Legislature for passage if the magnitude of that reduction is found to be significant for the purposes of this provision.

[2] FLA. CONST. art. VII, s. 18(b).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Proposed changes to ss. 196.081, 196.082. 196.091, and196.101, 196.202, and 196.24, F.S., which provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions, have the potential to reduce local governments' property tax revenue. The bill amends these sections to allow a disabled taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer providing the required documentation. Once the documentation is received by the property appraiser the exemption is granted back to the date of the original application and a refund of excess tax payments is made.

Proposed changes to ss. 193.1554 and 193.1555, F.S., which clarify that property must be assessed at full value when it is subject to a new limitation under these provisions, have the potential to increase local governments' property tax revenue.

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

B. Private Sector Impact:

This bill has several provisions that clarify the process by which taxpayers apply for various property tax exemptions and other tax preferences.

C. Government Sector Impact:

This bill reduces the role of the Department of Revenue in receiving various reports and approving property tax refunds, and is expected to provide greater efficiency in its oversight of property tax administration. Other statutory corrections and clarifications should also reduce the department's workload with respect to property tax oversight.

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.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Between lines 58 and 59
insert:

Section 1. Effective upon this act becoming a law, and applicable retroactive to January 1, 2011, subsection (4) of section 198.13, Florida Statutes, is amended to read:

198.13 Tax return to be made in certain cases; certificate of nonliability.—

(4) Notwithstanding any other provisions of this section and applicable to the estate of a decedent who dies after December 31, 2004, if, upon the death of the decedent, a state

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death tax credit or a generation-skipping transfer credit is not allowable pursuant to the Internal Revenue Code of 1986, as amended:

(a) The personal representative of the estate is not required to file a return under subsection (1) in connection with the estate.

(b) The person who would otherwise be required to file a return reporting a generation-skipping transfer under subsection (3) is not required to file such a return in connection with the estate.

The provisions of this subsection do not apply to estates of decedents dying after December 31, 2012 ~~2010~~.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to tax administration; amending s. 198.13, F.S.; extending provisions allowing for nonfiling of certain estate tax returns; providing for retroactive application; repealing ss.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 113 - 151
and insert:
Section 3. Effective upon this act becoming a law, section 212.131, Florida Statutes, is created to read:
212.131 Information reports required for sales of alcoholic beverages and tobacco products.—
(1)(a) For the sole purpose of enforcing the collection of the tax levied by this chapter on retail sales, the department shall require every seller of alcoholic beverages or tobacco products to file an information report of any sales of those

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products to any retailer in this state.

(b) As used in this section, the term:

1. "Seller" means any manufacturer, wholesaler, or distributor of alcoholic beverages or tobacco products who sells to a retailer in this state.

2. "Retailer" means a person engaged in the business of making sales at retail and who holds a license pursuant to chapters 561 through 565 or a permit pursuant to chapters 210 and 569.

(2)(a) The information report must be filed electronically by using the department's e-filing website or secure FTP or EDI files with the department's e-filing provider. The information report must contain:

1. The seller's name;

2. The seller's beverage license or tobacco permit number;

3. The retailer's name;

4. The retailer's beverage license or tobacco permit number;

5. The retailer's address, including street address, municipality, state, and five-digit ZIP code;

6. The general item type, such as cigarettes, cigars, tobacco, beer, wine, spirits, or any combination of those items; and

7. The net monthly sales total, in dollars sold to each retailer.

(b) The department may annually waive the requirement to submit the information report through an electronic data interchange due to problems arising from the seller's computer capabilities, data system changes, or operating procedures. The

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annual request for a waiver must be in writing and the seller must demonstrate that such circumstances exist. A waiver under this paragraph does not operate to relieve the seller from the obligation to file an information report.

(3) The information report must contain the required information for the period from July 1 through June 30. The information report is due annually on July 1 for the preceding reporting period and is delinquent if not received by the department by September 30.

(4) Any seller who fails to provide the information report by September 30 is subject to a penalty of $1,000 for every month, or part thereof, the report is not provided, up to a maximum amount of $10,000. This penalty must be settled or compromised if it is determined by the department that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud.

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

And the title is amended as follows:

Delete lines 8 - 16

and insert:

directing the Department of Revenue to require that sellers of alcoholic beverages or tobacco products file information reports of sales of those products to retailers in the state; defining terms; requiring that the report be filed electronically; providing for the content of each report; providing for certain exceptions to the electronic filing requirement; specifying the period for reporting information;


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providing a penalty for failure of a seller to provide the information report when due; amending s. 212.14, F.S.; authorizing the

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 230 - 404
and insert:
Section 7. Section 213.758, Florida Statutes, is amended to read:
213.758 Transfer of tax liabilities.—
(1) As used in this section, the term:
(a) "Business" means any activity regularly engaged in by any person, or caused to be engaged in by any person, for the purpose of private or public gain, benefit, or advantage. The term does not include occasional or isolated sales or

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transactions involving property or services by a person who does not hold himself or herself out as engaged in business. A discrete division or portion of a business is not a separate business and must be aggregated with all other divisions or portions that constitute a business if the division or portion is not a separate legal entity.

(b) "Financial institution" means a financial institution as defined in s. 655.005 and any person who controls, is controlled by, or is under common control with a financial institution.

(c) "Insider" has the same meaning as defined in s. 726.102(7). The term also includes:

1. A manager, a managing member, or a person in control of a limited liability company; or

2. A relative, as defined in s. 726.102(11), of any person described in subparagraph 1.

(d) ~~(a)~~ "Involuntary transfer" means a transfer of a business, assets of a business, or stock of goods of a business made without the consent of the transferor, including, but not limited to, a transfer:

1. That occurs due to the foreclosure of a security interest issued to a person who is not an insider ~~as defined in s. 726.102~~;

2. That results from an eminent domain or condemnation action;

3. Pursuant to chapter 61, chapter 702, or the United States Bankruptcy Code;

4. To a financial institution~~, as defined in s. 655.005,~~ if the transfer is made to satisfy the transferor's debt to the

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financial institution; or

5. To a third party to the extent that the proceeds are used to satisfy the transferor's indebtedness to a financial institution ~~as defined in s. 655.005~~. If the third party receives assets worth more than the indebtedness, the transfer of the excess may not be deemed an involuntary transfer.

(e) "Stock of goods" means the inventory of a business held for sale to customers in the ordinary course of business.

(f) "Tax" means any tax, interest, penalty, surcharge, or fee administered by the department pursuant to chapter 443 or any of the chapters specified in s. 213.05, excluding chapter 220, the corporate income tax code.

(g) ~~(b)~~ "Transfer" means every mode, direct or indirect, with or without consideration, of disposing of or parting with a business, assets of the business, or stock of goods of the business~~,~~ and includes, but is not limited to, assigning, conveying, demising, gifting, granting, or selling, other than to customers in the ordinary course of business, to a transferee or to a group of transferees who are acting in concert. A business is considered transferred when there is a transfer of more than 50 percent of:

1. The business;

2. The assets of the business; or

3. The stock of goods of the business.

(2) A taxpayer engaged in a business who is liable for any tax arising from the operation of that business~~, interest, penalty, surcharge, or fee administered by the department pursuant to chapter 443 or described in s. 72.011(1), excluding corporate income tax,~~ and who quits the ~~a~~ business without the

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benefit of a purchaser, successor, or assignee, or without transferring the business, assets of the business, or stock of goods of the business to a transferee, must file a final return for the business and make full payment of all taxes arising from the operation of that business within 15 days after quitting the business. ~~A taxpayer who fails to file a final return and make payment may not engage in any business in this state until the final return has been filed and all taxes, interest, or penalties due have been paid.~~ The Department of Legal Affairs may seek an injunction at the request of the department to prevent further business activity of a taxpayer who fails to file a final return and make payment of the taxes associated with the operation of the business until such taxes ~~tax, interest, or penalties~~ are paid. A temporary injunction enjoining further business activity shall ~~may~~ be granted by a circuit court if the taxpayer fails to file the final return and make payment of any taxes owed and if the department provided at least 20 days' written notice to the taxpayer of its intention to seek an injunction ~~without notice~~.

(3) A taxpayer who is liable for taxes with respect to a business and~~, interest, or penalties levied under chapter 443 or any of the chapters specified in s. 213.05, excluding corporate income tax,~~ who transfers the ~~taxpayer's~~ business, assets of the business, or stock of goods of the business, must file a final return and make full payment within 15 days after the date of transfer.

(4)(a) A transferee, or a group of transferees acting in concert, of more than 50 percent of a business, assets of a business, or stock of goods of a business is liable for any

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unpaid tax~~, interest, or penalties~~ owed by the transferor arising from the operation of that business unless:

1.a. The transferor provides a receipt or certificate of compliance from the department to the transferee showing that the transferor has not received a notice of audit and the transferor has filed all required tax returns and has paid all tax arising ~~is not liable for taxes, interest, or penalties~~ from the operation of the business identified on the returns filed; and

b. There were no insiders in common between the transferor and the transferee at the time of the transfer; or ~~and~~

2. The department finds that the transferor is not liable for taxes, interest, or penalties after an audit of the transferor's books and records. The audit may be requested by the transferee or the transferor and, if not done pursuant to the certified audit program under s. 213.285, must be completed by the department within 90 days after the records are made available to the department. The department may charge a fee for the cost of the audit if it has not issued a notice of intent to audit by the time the request for the audit is received.

(b) A transferee may withhold a portion of the consideration for a business, assets of a business, or stock of goods of a business to pay the tax ~~taxes, interest, or penalties~~ owed to the state by the transferor taxpayer arising from the operation of the business. The transferee shall pay the withheld consideration to the state within 30 days after the date of the transfer. If the consideration withheld is less than the transferor's liability, the transferor remains liable for the deficiency.

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(c) ~~A transferee who acquires the business or stock of goods and fails to pay the taxes, interest, or penalties due may not engage in any business in the state until the taxes, interest, or penalties are paid.~~ The Department of Legal Affairs may seek an injunction at the request of the department to prevent further business activity of a transferee who is liable for unpaid tax of a transferor and who fails to pay or cause to be paid the transferee's maximum liability for such tax due until such maximum liability for the tax is~~, interest, or penalties are~~ paid. A temporary injunction enjoining further business activity shall ~~may~~ be granted by a circuit court if:

1. The assessment against the transferee is final and:

a. The time for filing a contest under s. 72.011 has expired; or

b. Any contest filed pursuant to s. 72.011 resulted in a final and nonappealable judgment sustaining any part of the assessment; and

2. The department has provided at least 20 days' prior written notice to the transferee of its intention to seek an injunction ~~without notice~~.

(5) The transferee, or transferees acting in concert, of more than 50 percent of a business, assets of a business, or stock of goods of a business who are liable for any tax pursuant to this section are jointly and severally liable with the transferor for the payment of the tax ~~taxes, interest, or penalties~~ owed to the state from the operation of the business by the transferor up to the transferee's or transferees' maximum liability for such tax due.

(6) The maximum liability of a transferee pursuant to this

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section is equal to the fair market value of the business, assets of the business, or stock of goods of the business ~~property~~ transferred to the transferee or the total purchase price paid by the transferee for the business, assets of the business, or stock of goods of the business, whichever is greater.

(a) The fair market value must be determined net of any liens or liabilities, with the exception of liens or liabilities owed to insiders.

(b) The total purchase price must be determined net of liens and liabilities against the assets, with the exception of:

1. Liens or liabilities owed to insiders.

2. Liens or liabilities assumed by the transferee which are not liens or liabilities owed to insiders.

(7) After notice by the department of transferee liability under this section, the transferee has 60 days within which to file an action as provided in chapter 72.

(8) This section does not impose liability on a transferee of a business, assets of a business, or stock of goods of a business pursuant to an involuntary transfer.

(9) The department may adopt rules necessary to administer and enforce this section.

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

And the title is amended as follows:

Delete lines 27 - 46

and insert:

the terms "business," "financial institution," "insider," "stock of goods," and "tax"; redefining the


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terms "involuntary transfer" and "transfer" for purposes of provisions establishing tax liability following the disposition of a business; requiring that a taxpayer engaged in a business who is liable for any tax arising from the business and who quits the business file a final return with the department within a specified time; requiring a circuit court to grant a temporary injunction to prevent further business activity by a taxpayer who fails to file a final return and remit taxes; requiring the Department of Revenue to provide at least 20 days' notice before seeking an injunction; providing that a transferee of more than 50 percent of the assets of a business is liable for unpaid tax owed by the transferor; revising conditions under which a transferee is exempt from liability for taxes accrued by the transferor; revising the circumstances under which the Department of Revenue may seek an injunction against a transferee who fails to pay taxes accrued by the transferor; providing circumstances in which a circuit court is required to grant an injunction against a transferee; revising the methodology used to determine the maximum tax liability of a transferee; amending s. 322.142, F.S.; authorizing the

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Between lines 476 and 477

insert:

Section 10. Under Florida's constitutional form of government, taxation is a legislative power that cannot be delegated. Therefore, any ruling, agreement, or contract, whether written or oral, express or implied, between a retailer and this state's executive branch, including any office, agency or department, stating, agreeing, or ruling that the out-of-state retailer is not required to collect sales and use tax on sales to residents of this state despite the presence of an in-

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state warehouse, distribution center, or fulfillment center owned or operated by the retailer or by an affiliated person of the retailer is void unless it is specifically approved by a general law enacted by the Legislature.

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

And the title is amended as follows:

Delete line 54

and insert:

providing tax collection services; voiding certain rulings, agreements, or contracts between an executive branch entity of this state and a retailer which provide that the retailer is not required to collect sales and use tax on sales to residents of this state; providing effective

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Between lines 476 and 477
insert:

Section 10. Effective January 1, 2012, paragraph (a) of subsection (1) of section 72.011, Florida Statutes, is amended to read:

72.011 Jurisdiction of circuit courts in specific tax matters; administrative hearings and appeals; time for commencing action; parties; deposits.—

(1)(a) A taxpayer may contest the legality of any assessment or denial of refund of tax, fee, surcharge, permit,

interest, or penalty provided for under s. 125.0104, s. 125.0108, chapter 198, chapter 199, chapter 201, chapter 202, chapter 203, chapter 206, chapter 207, chapter 210, chapter 211, chapter 212, chapter 213, ~~chapter 220,~~ chapter 221, s. 379.362(3), chapter 376, s. 403.717, s. 403.718, s. 403.7185, s. 538.09, s. 538.25, chapter 550, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, chapter 624, or s. 681.117 by filing an action in circuit court; or, alternatively, the taxpayer may file a petition under the applicable provisions of chapter 120. However, once an action has been initiated under s. 120.56, s. 120.565, s. 120.569, s. 120.57, or s. 120.80(14)(b), no action relating to the same subject matter may be filed by the taxpayer in circuit court, and judicial review shall be exclusively limited to appellate review pursuant to s. 120.68; and once an action has been initiated in circuit court, no action may be brought under chapter 120.

Section 11. Effective January 1, 2012, section 72.041, Florida Statutes, is amended to read:

72.041 Tax liabilities arising under the laws of other states.—Actions to enforce lawfully imposed sales, use, and corporate income taxes and motor and other fuel taxes of another state may be brought in a court of this state under the following conditions:

(1) The state seeking to institute an action for the collection, assessment, or enforcement of a lawfully imposed tax must have extended a like courtesy to this state;

(2) Venue for any action under this section shall be the circuit court of the county in which the defendant resides;

(3) This section does not apply to the enforcement of tax

warrants of another state unless the warrant has been obtained as a result of a judgment entered by a court of competent jurisdiction in the taxing state or unless the courts of the state seeking to enforce its warrant allow the enforcement of the warrants issued by the Department of Revenue pursuant to chapters 206, 212, 213, and ~~220, and~~ 221; and

(4) All tax liabilities owing to this state or any of its subdivisions shall be paid first and shall be prior in right to any tax liability arising under the laws of other states.

Section 12. Effective January 1, 2012, subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 220.194 ~~221.02~~, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, those enumerated in s. 220.1875, those enumerated in s. 220.192, those enumerated in s. 220.193, those enumerated in s. 288.9916, those enumerated in s. 220.1899, and those enumerated in s. 220.1896.

Section 13. Effective January 1, 2012, paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount

equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) *Additions.*—There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of

the credit allowable for the taxable year under s. 220.182. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

6. The amount taken as a credit under s. 220.194 ~~of emergency excise tax paid or accrued as a liability to this state under chapter 221~~ which ~~tax~~ is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.1875. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. This addition is not intended to result in adding the same expense back to income more than once.

12. The amount taken as a credit for the taxable year under s. 220.192.

13. The amount taken as a credit for the taxable year under s. 220.193.

14. Any portion of a qualified investment, as defined in s. 288.9913, which is claimed as a deduction by the taxpayer and taken as a credit against income tax pursuant to s. 288.9916.

15. The costs to acquire a tax credit pursuant to s. 288.1254(5) that are deducted from or otherwise reduce federal taxable income for the taxable year.

Section 14. Effective January 1, 2012, section 220.194, Florida Statutes, is created to read:

220.194 Emergency excise tax credit.—

(1) Beginning with taxable years ending in 2012, a taxpayer who has earned, but not yet taken, a credit for emergency excise tax paid under former s. 221.02 may take such credit against the tax imposed by this chapter.

(2) If a credit granted pursuant to this section is not fully used in taxable years ending in 2012 because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers in the order provided in s. 220.02(8).

Section 15. Effective January 1, 2012, subsection (4) of section 220.801, Florida Statutes, is amended to read:

220.801 Penalties; failure to timely file returns.—

(4) The provisions of this section shall specifically apply to the notice of federal change required under s. 220.23~~, and to any tax returns required under chapter 221, relating to the~~

~~emergency excise tax~~.

Section 16. Effective January 1, 2012, section 213.05, Florida Statutes, is amended to read:

213.05 Department of Revenue; control and administration of revenue laws.—The Department of Revenue shall have only those responsibilities for ad valorem taxation specified to the department in chapter 192, taxation, general provisions; chapter 193, assessments; chapter 194, administrative and judicial review of property taxes; chapter 195, property assessment administration and finance; chapter 196, exemption; chapter 197, tax collections, sales, and liens; chapter 199, intangible personal property taxes; and chapter 200, determination of millage. The Department of Revenue shall have the responsibility of regulating, controlling, and administering all revenue laws and performing all duties as provided in s. 125.0104, the Local Option Tourist Development Act; s. 125.0108, tourist impact tax; chapter 198, estate taxes; chapter 201, excise tax on documents; chapter 202, communications services tax; chapter 203, gross receipts taxes; chapter 206, motor and other fuel taxes; chapter 211, tax on production of oil and gas and severance of solid minerals; chapter 212, tax on sales, use, and other transactions; chapter 220, income tax code; ~~chapter 221, emergency excise tax;~~ ss. 336.021 and 336.025, taxes on motor fuel and special fuel; s. 376.11, pollutant spill prevention and control; s. 403.718, waste tire fees; s. 403.7185, lead-acid battery fees; s. 538.09, registration of secondhand dealers; s. 538.25, registration of secondary metals recyclers; s. 624.4621, group self-insurer’s fund premium tax; s. 624.5091, retaliatory tax; s. 624.475, commercial self-insurance fund premium tax; ss.

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624.509-624.511, insurance code: administration and general provisions; s. 624.515, State Fire Marshal regulatory assessment; s. 627.357, medical malpractice self-insurance premium tax; s. 629.5011, reciprocal insurers premium tax; and s. 681.117, motor vehicle warranty enforcement.

Section 17. Effective January 1, 2012, subsection (1) and paragraph (k) of subsection (8) of section 213.053, Florida Statutes, as amended by chapter 2010-280, Laws of Florida, are amended to read:

213.053 Confidentiality and information sharing.—

(1) This section applies to:

(a) Section 125.0104, county government;

(b) Section 125.0108, tourist impact tax;

(c) Chapter 175, municipal firefighters' pension trust funds;

(d) Chapter 185, municipal police officers' retirement trust funds;

(e) Chapter 198, estate taxes;

(f) Chapter 199, intangible personal property taxes;

(g) Chapter 201, excise tax on documents;

(h) Chapter 202, the Communications Services Tax Simplification Law;

(i) Chapter 203, gross receipts taxes;

(j) Chapter 211, tax on severance and production of minerals;

(k) Chapter 212, tax on sales, use, and other transactions;

(l) Chapter 220, income tax code;

~~(m) Chapter 221, emergency excise tax;~~

(m) ~~(n)~~ Section 252.372, emergency management, preparedness,

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and assistance surcharge;

(n) ~~(o)~~ Section 379.362(3), Apalachicola Bay oyster surcharge;

(o) ~~(p)~~ Chapter 376, pollutant spill prevention and control;

(p) ~~(q)~~ Section 403.718, waste tire fees;

(q) ~~(r)~~ Section 403.7185, lead-acid battery fees;

(r) ~~(s)~~ Section 538.09, registration of secondhand dealers;

(s) ~~(t)~~ Section 538.25, registration of secondary metals recyclers;

(t) ~~(u)~~ Sections 624.501 and 624.509-624.515, insurance code;

(u) ~~(v)~~ Section 681.117, motor vehicle warranty enforcement; and

(v) ~~(w)~~ Section 896.102, reports of financial transactions in trade or business.

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

(k)1. Payment information relative to chapters 199, 201, 202, 212, 220, ~~221, and~~ 624, and former chapter 221 to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, in the administration of the tax refund program for qualified defense contractors and space flight business contractors authorized by s. 288.1045 and the tax refund program for qualified target industry businesses authorized by s. 288.106.

2. Information relative to tax credits taken by a business under s. 220.191 and exemptions or tax refunds received by a business under s. 212.08(5)(j) to the Office of Tourism, Trade,

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and Economic Development, or its employees or agents that are identified in writing by the office to the department, in the administration and evaluation of the capital investment tax credit program authorized in s. 220.191 and the semiconductor, defense, and space tax exemption program authorized in s. 212.08(5)(j).

3. Information relative to tax credits taken by a taxpayer pursuant to the tax credit programs created in ss. 193.017; 212.08(5)(g),(h),(n),(o) and (p); 212.08(15); 212.096; 212.097; 212.098; 220.181; 220.182; 220.183; 220.184; 220.1845; 220.185; 220.1895; 220.19; 220.191; 220.192; 220.193; 288.0656; 288.99; 290.007; 376.30781; 420.5093; 420.5099; 550.0951; 550.26352; 550.2704; 601.155; 624.509; 624.510; 624.5105; and 624.5107 to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, for use in the administration or evaluation of such programs.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 18. Effective January 1, 2012, subsection (12) of section 213.255, Florida Statutes, is amended to read:

213.255 Interest.—Interest shall be paid on overpayments of taxes, payment of taxes not due, or taxes paid in error, subject

to the following conditions:

(12) The rate of interest shall be the adjusted rate established pursuant to s. 213.235, except that the annual rate of interest shall never be greater than 11 percent. This annual rate of interest shall be applied to all refunds of taxes administered by the department except for corporate income taxes ~~and emergency excise taxes~~ governed by ss. 220.721 and 220.723.

Section 19. Effective January 1, 2012, chapter 221, Florida Statutes, consisting of section 221.01, 221.02, 221.04, and 221.05, is repealed.

Section 20. Effective January 1, 2012, paragraph (a) of subsection (6) of section 288.075, Florida Statutes, is amended to read:

288.075 Confidentiality of records.—

(6) ECONOMIC INCENTIVE PROGRAMS.—

(a) The following information held by an economic development agency pursuant to the administration of an economic incentive program for qualified businesses is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period not to exceed the duration of the incentive agreement, including an agreement authorizing a tax refund or tax credit, or upon termination of the incentive agreement:

1. The percentage of the business’s sales occurring outside this state and, for businesses applying under s. 288.1045, the percentage of the business’s gross receipts derived from Department of Defense contracts during the 5 years immediately preceding the date the business’s application is submitted.

2. The anticipated wages for the project jobs that the

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business plans to create, as reported on the application for certification.

3. The average wage actually paid by the business for those jobs created by the project or an employee's personal identifying information which is held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax credit, or incentive agreement programs or of the job creation requirements of such programs.

4. The amount of:

a. Taxes on sales, use, and other transactions paid pursuant to chapter 212;

b. Corporate income taxes paid pursuant to chapter 220;

c. Intangible personal property taxes paid pursuant to chapter 199;

~~d. Emergency excise taxes paid pursuant to chapter 221;~~

d.~~e.~~ Insurance premium taxes paid pursuant to chapter 624;

e.~~f.~~ Excise taxes paid on documents pursuant to chapter 201;

f.~~g.~~ Ad valorem taxes paid, as defined in s. 220.03(1); or

g.~~h.~~ State communications services taxes paid pursuant to chapter 202.

Section 21. Effective January 1, 2012, paragraph (f) of subsection (2) of section 288.1045, Florida Statutes, is amended to read:

288.1045 Qualified defense contractor and space flight business tax refund program.—

(2) GRANTING OF A TAX REFUND; ELIGIBLE AMOUNTS.—

(f) After entering into a tax refund agreement pursuant to subsection (4), a qualified applicant may:

1. Receive refunds from the account for corporate income taxes due and paid pursuant to chapter 220 by that business beginning with the first taxable year of the business which begins after entering into the agreement.

2. Receive refunds from the account for the following taxes due and paid by that business after entering into the agreement:

a. Taxes on sales, use, and other transactions paid pursuant to chapter 212.

b. Intangible personal property taxes paid pursuant to chapter 199.

~~c. Emergency excise taxes paid pursuant to chapter 221.~~

c.~~d.~~ Excise taxes paid on documents pursuant to chapter 201.

d.~~e.~~ Ad valorem taxes paid, as defined in s. 220.03(1)(a) on June 1, 1996.

e.~~f.~~ State communications services taxes administered under chapter 202. This provision does not apply to the gross receipts tax imposed under chapter 203 and administered under chapter 202 or the local communications services tax authorized under s. 202.19.

However, a qualified applicant may not receive a tax refund pursuant to this section for any amount of credit, refund, or exemption granted such contractor for any of such taxes. If a refund for such taxes is provided by the office, which taxes are subsequently adjusted by the application of any credit, refund, or exemption granted to the qualified applicant other than that provided in this section, the qualified applicant shall reimburse the Economic Development Trust Fund for the amount of

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such credit, refund, or exemption. A qualified applicant must notify and tender payment to the office within 20 days after receiving a credit, refund, or exemption, other than that provided in this section. The addition of communications services taxes administered under chapter 202 is remedial in nature and retroactive to October 1, 2001. The office may make supplemental tax refund payments to allow for tax refunds for communications services taxes paid by an eligible qualified defense contractor after October 1, 2001.

Section 22. Effective January 1, 2012, paragraph (d) of subsection (3) of section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(3) TAX REFUND; ELIGIBLE AMOUNTS.—

(d) After entering into a tax refund agreement under subsection (5), a qualified target industry business may:

1. Receive refunds from the account for the following taxes due and paid by that business beginning with the first taxable year of the business that begins after entering into the agreement:

a. Corporate income taxes under chapter 220.

b. Insurance premium tax under s. 624.509.

2. Receive refunds from the account for the following taxes due and paid by that business after entering into the agreement:

a. Taxes on sales, use, and other transactions under chapter 212.

b. Intangible personal property taxes under chapter 199.

~~c. Emergency excise taxes under chapter 221.~~

c.~~d.~~ Excise taxes on documents under chapter 201.

d.~~e.~~ Ad valorem taxes paid, as defined in s. 220.03(1).

e.~~f.~~ State communications services taxes administered under chapter 202. This provision does not apply to the gross receipts tax imposed under chapter 203 and administered under chapter 202 or the local communications services tax authorized under s. 202.19.

Section 23. Effective January 1, 2012, subsection (1) of section 334.30, Florida Statutes, is amended to read:

334.30 Public-private transportation facilities.—The Legislature finds and declares that there is a public need for the rapid construction of safe and efficient transportation facilities for the purpose of traveling within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.

(1) The department may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities. The department may advance projects programmed in the adopted 5-year work program or projects increasing transportation capacity and greater than $500 million in the 10-year Strategic Intermodal Plan using funds provided by public-private partnerships or private entities to be reimbursed from department funds for the project as programmed in the adopted work program. The department shall by rule establish an application fee for the submission of unsolicited proposals

under this section. The fee must be sufficient to pay the costs of evaluating the proposals. The department may engage the services of private consultants to assist in the evaluation. Before approval, the department must determine that the proposed project:

(a) Is in the public's best interest;

(b) Would not require state funds to be used unless the project is on the State Highway System;

(c) Would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default or cancellation of the agreement by the department;

(d) Would have adequate safeguards in place to ensure that the department or the private entity has the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations; and

(e) Would be owned by the department upon completion or termination of the agreement.

The department shall ensure that all reasonable costs to the state, related to transportation facilities that are not part of the State Highway System, are borne by the private entity. The department shall also ensure that all reasonable costs to the state and substantially affected local governments and utilities, related to the private transportation facility, are borne by the private entity for transportation facilities that are owned by private entities. For projects on the State Highway System, the department may use state resources to participate in funding and financing the project as provided for under the

department’s enabling legislation. Because the Legislature recognizes that private entities or consortia thereof would perform a governmental or public purpose or function when they enter into agreements with the department to design, build, operate, own, or finance transportation facilities, the transportation facilities, including leasehold interests thereof, are exempt from ad valorem taxes as provided in chapter 196 to the extent property is owned by the state or other government entity, and from intangible taxes as provided in chapter 199 and special assessments of the state, any city, town, county, special district, political subdivision of the state, or any other governmental entity. The private entities or consortia thereof are exempt from tax imposed by chapter 201 on all documents or obligations to pay money which arise out of the agreements to design, build, operate, own, lease, or finance transportation facilities. Any private entities or consortia thereof must pay any applicable corporate taxes as provided in chapter ~~chapters~~ 220 ~~and 221~~, and unemployment compensation taxes as provided in chapter 443, and sales and use tax as provided in chapter 212 shall be applicable. The private entities or consortia thereof must also register and collect the tax imposed by chapter 212 on all their direct sales and leases that are subject to tax under chapter 212. The agreement between the private entity or consortia thereof and the department establishing a transportation facility under this chapter constitutes documentation sufficient to claim any exemption under this section.

Section 24. Effective January 1, 2012, subsection (4), paragraph (a) of subsection (6), and subsection (7) of section

624.509, Florida Statutes, are amended to read:

624.509 Premium tax; rate and computation.—

(4) The income tax imposed under chapter 220 ~~and the emergency excise tax imposed under chapter 221~~ which is ~~are~~ paid by any insurer shall be credited against, and to the extent thereof shall discharge, the liability for tax imposed by this section for the annual period in which such tax payments are made. As to any insurer issuing policies insuring against loss or damage from the risks of fire, tornado, and certain casualty lines, the tax imposed by this section, as intended and contemplated by this subsection, shall be construed to mean the net amount of such tax remaining after there has been credited thereon such gross premium receipts tax as may be payable by such insurer in pursuance of the imposition of such tax by any incorporated cities or towns in the state for firefighters' relief and pension funds and police officers' retirement funds maintained in such cities or towns, as provided in and by relevant provisions of the Florida Statutes. For purposes of this subsection, payments of estimated income tax under chapter 220 ~~and of estimated emergency excise tax under chapter 221~~ shall be deemed paid either at the time the insurer actually files its annual returns under chapter 220 or at the time such returns are required to be filed, whichever first occurs, and not at such earlier time as such payments of estimated tax are actually made.

(6)(a) The total of the credit granted for the taxes paid by the insurer under chapter ~~chapters~~ 220 ~~and 221~~ and the credit granted by subsection (5) may ~~shall~~ not exceed 65 percent of the tax due under subsection (1) after deducting therefrom the taxes

paid by the insurer under ss. 175.101 and 185.08 and any assessments pursuant to s. 440.51.

(7) Credits and deductions against the tax imposed by this section shall be taken in the following order: deductions for assessments made pursuant to s. 440.51; credits for taxes paid under ss. 175.101 and 185.08; credits for income taxes paid under chapter 220~~, the emergency excise tax paid under chapter 221~~ and the credit allowed under subsection (5), as these credits are limited by subsection (6); all other available credits and deductions.

Section 25. Effective January 1, 2012, subsection (1) of section 624.51055, Florida Statutes, is amended to read:

624.51055 Credit for contributions to eligible nonprofit scholarship-funding organizations.—

(1) There is allowed a credit of 100 percent of an eligible contribution made to an eligible nonprofit scholarship-funding organization under s. 1002.395 against any tax due for a taxable year under s. 624.509(1). However, such a credit may not exceed 75 percent of the tax due under s. 624.509(1) after deducting from such tax deductions for assessments made pursuant to s. 440.51; credits for taxes paid under ss. 175.101 and 185.08; credits for income taxes paid under chapter 220; ~~credits for the emergency excise tax paid under chapter 221;~~ and the credit allowed under s. 624.509(5), as such credit is limited by s. 624.509(6). An insurer claiming a credit against premium tax liability under this section shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Section 624.5091 does not limit such credit in any manner.

Section 26. (1) The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, for the purpose of implementing this act.

(2) Notwithstanding any other provision of law, such emergency rules shall remain in effect for 6 months after the date adopted and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

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

And the title is amended as follows:

Delete line 54

and insert:

providing tax collection services; amending ss. 72.011 and 72.041, F.S.; deleting a reference to conform to the repeal of the emergency excise tax; amending ss. 220.02 and 220.13, F.S.; revising references to conform to the repeal of the emergency excise tax; creating s. 220.194, F.S.; creating a corporate income tax credit to continue credits available under the emergency excise tax; providing that a credit granted that is not fully used may be carried forward for a certain period; providing that the carryover credit may be used in a subsequent year under certain circumstances; amending ss. 220.801, 213.05, 213.053, and 213.255, F.S.; deleting references to conform to the repeal of the emergency excise tax; repealing ch. 221, F.S., relating to the emergency excise tax;

amending ss. 288.075, 288.1045, and 288.106, F.S.; deleting references to conform to the repeal of the emergency excise tax; amending ss. 334.30, 624.509, and 624.51055, F.S.; deleting references to conform to the repeal of the emergency excise tax; authorizing the executive director of the Department of Revenue to adopt emergency rules; providing effective

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment to Amendment (346856)

Delete line 16
and insert:
chapter 212, chapter 213, chapter 220, ~~chapter 221,~~ s.

Delete line 47
and insert:
chapters 206, 212, 213, and 220~~, and 221~~; and

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 Budget Subcommittee on Finance and Tax

BILL:	SB 2044
INTRODUCER:	Budget Subcommittee on Finance and Tax
SUBJECT:	Tax Administration
DATE:	March 29, 2011 REVISED:

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

I. Summary:

This bill clarifies the tax treatment of tax liabilities when a business or its inventory is sold and repeals obsolete sections relating to the sale of a business. It clearly establishes the department's authority to require security for certain individuals seeking to register new businesses, imposes a reporting requirement on wholesalers and distributors of alcoholic beverages and tobacco products, allows department staff to verify the identity of business owners by using driver's license photos, provides an incentive for businesses to comply with requests for records for audit purposes, and authorizes payroll service providers to file a memorandum of understanding with the department if they provide service for at least 100 employees, instead of 500, as required under current law.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 202.31, 212.10, 212.12, 212.131, 212.14, 213.053, 213.758, 322.142, and 443.131.

II. Present Situation:

The Department of Revenue (department) is charged with ensuring that the taxes it administers are carried out in a fair and equitable manner. Each year the Executive Director seeks approval of proposed legislative concepts by the Governor and Cabinet, in their role as the head of the department. The department's tax administration concepts are proposed to reduce the burden on taxpayers and to ensure that Florida's tax laws are applied in a consistent, cost-effective, and equitable manner.

(See section-by-section analysis below.)

III. Effect of Proposed Changes:

Section 1 repeals ss. 202.31 and 212.10, F.S., relating to liability for taxes following the sale of a business. These sections are no longer needed since s. 213.758, F.S., was created in ch. 2010-166, Laws of Florida.

Section 2
Present situation: Section 212.12(2)(d)1, F.S., contains redundant and potentially confusing language concerning the criminal penalty for failing to collect sales and use tax.

Proposed change: This bill deletes the redundant and confusing language and clarifies that a person who willfully fails to register after receiving notice commits a felony in the third degree. No new penalties are created in the bill. This section takes effect upon the act becoming a law.

Section 3
Present situation: The Department of Revenue has recognized that there are recurring tax law compliance problems in retail businesses with substantial alcohol and tobacco sales. The department periodically requests third-party information from wholesalers that sell these products to retail businesses in an effort to improve compliance, and some wholesalers and distributors provide the information voluntarily. Others, however, require the department to resort to expensive and cumbersome legal processes to obtain the information.

Proposed change: The bill creates s. 212.131, F.S., which requires alcohol and tobacco wholesalers to provide annual sales information to the department upon request. The report is due each July 1 for the preceding July 1 through June 30 period and is delinquent if not received by the department by September 30. The information report must be filed electronically through the department's specified data file format to ensure that the information is kept confidential. The electronic filing requirement may be waived if the seller demonstrates it causes problems for the seller, and any seller who fails to provide the information report timely is subject to a penalty of $1,000 for every month the report is not provided, up to a maximum amount of $10,000.

Section 4
Present situation: Section 212.14(4), F.S., authorizes the Department of Revenue to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a sales tax dealer's registration. Despite this requirement delinquent sales tax dealers are able to close down their business with tax liabilities, and to reopen under a new name, because the current provision does not clearly apply to all of the individuals who were responsible for prior delinquent tax accounts when they seek to register new businesses.

Proposed change: The bill revises s. 212.14(4) to authorize the department to require security for individuals who are responsible for prior delinquent accounts when they seek to register new businesses.

Section 5 authorizes the department to adopt emergency rules to administer the provisions of sections 3 and 4 of this act.

Section 6
Present situation: Payroll service providers (agents) that represent clients on unemployment tax natters before the department must file a power of attorney for each of their clients. If the provider represents at least 500 clients, s. 213.053(4), F.S., permits the provider to file a single memorandum of understanding with the department in lieu of the 500 individual powers of attorney.

Proposed change: The bill amends s. 213.053(4), F.S., to allow payroll service providers to file a memorandum of understanding with the department if they represent at least 100 clients. This reduces the administrative burden on the service provider and the department, and matches a similar provision in s. 442.163, F.S., which requires a person who prepared and filed employment reports for 100 or more employers in any quarter during the previous year to file by approved electronic means.

Section 7
Present situation: Section 213.758, F.S., which clarifies the transfer of tax liabilities when a business or its inventory is sold, was created last year. Since it was enacted, the business community has identified issues with this section that require additional clarification.

Proposed change: Section 213.758, F.S., is amended by the addition of definitions for "business," "financial institution," insider," "stock of goods," and "tax." The existing definition of "transfer" is expanded. The description of a taxpayer's liability for taxes if he or she quits a business without transferring the business or its assets is also expanded. A transferee's responsibilities for unpaid taxes of a transferor are explicitly identified.

Section 8
Present situation: The Department of Revenue staff does not have a way to verify the identity of business owners prior to visiting businesses during audits and cannot be sure that the person with whom they are working during field visits is the business owner. Under s. 322.142, F.S., the Department of Highway Safety and Motor Vehicles maintains a file of the digital image and signatures of drivers' license holders. These records may be shared with the Department of Revenue for child support enforcement purposes but not for other purposes.

Proposed change: The bill amends s. 322.142, F.S., to allow the Department of Revenue to use drivers' license images to establish positive identification for tax administration proposes.

Section 9
Present situation: Florida law provides a standard unemployment tax rate, and allows many businesses to receive a lower rate if they meet certain criteria, including being in compliance with the law. Section 443.131, F.S., lists the criteria necessary for a business to be in compliance, but it does not explicitly state that a taxpayer must comply with records requests during audits to qualify for the reduced tax rate.

Proposed change: Section 443.131, F.S., is amended to create an additional condition for receiving a lower-than-standard unemployment tax rate. The condition is that the employer has produced records requested by AWI or the department for audit purposes. This section takes effect upon the bill becoming a law.

Section 10 provides that except as otherwise expressly provided in this act (see sections 2 and 9), and except for this section, which shall take effect upon becoming a law, 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:

The department anticipates that some provisions of this bill will improve enforcement and collection of state tax laws:

- Information provided by tobacco products and alcoholic beverage wholesalers is expected to improve sales tax compliance among retailers.
- Improved compliance with unemployment tax reporting is expected to improve the department's audit capability

The Revenue Estimating Conference has not completed a fiscal impact analysis of these provisions.

The Revenue Estimating Conference has determined the impact of changes in the statute governing transfer of tax liabilities to be negative but indeterminate.

B. Private Sector Impact:

This bill has the following effects on the private sector:

- It requires alcoholic beverage and tobacco products manufacturers and wholesalers to file annual reports with the department of sales of these products to any retailer in the state.
- It authorizes the department to require additional persons to provide a cash deposit, bond, or other security as a condition of obtaining or retaining a sales and use tax dealer's certificate of registration.
- It allows a payroll service provider that provides services for more than 100 employers to enter into a memorandum of understanding with the department, reducing administrative costs for the service provider.

- It clarifies the conditions under which a transferee may be liable for unpaid tax of a transferor.
- It provides that an employer may not qualify for a reduced unemployment tax rate unless the employer has produced all records that were requested by the department or the Agency for Workforce Innovation.

C. Government Sector Impact:

The bill is expected to improve tax administration by providing additional information about sales of alcoholic beverages and tobacco products, improving compliance with requests for information from employers for unemployment tax purposes, and reducing administrative costs for payroll service provider accounts.

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.