The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Wednesday, April 13, 2011
TIME: 9:15 —10:45 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
	Workshop on Remote Sales		
1	**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 Not Considered BFT 04/13/2011 BC	
2	**SB 942** Bogdanoff (Similar CS/H 671)	Tax Credits For Research and Development; Provides a tax credit for certain research and development expenses. Provides eligibility requirements for research and development tax credits. Provides limitations regarding eligibility. Provides an amount for such credit. Provides a maximum amount of credit that may be taken during a single tax year by a business enterprise. Prohibits the Department of Revenue from unreasonably withholding approval to sell or transfer an unused tax credit amount, etc. CM 04/05/2011 Favorable BFT 04/13/2011 BC RC	
3	**CS/SB 976** Commerce and Tourism / Bogdanoff (Similar H 943, Compare S 252)	Capital Formation for Infrastructure Projects; Provides for creation of the Florida Infrastructure Fund Partnership. Provides for management of the partnership by the Florida Opportunity Fund. Authorizes the fund to lend moneys to the partnership. Authorizes the partnership to invest in certain infrastructure projects. Creates the Florida Infrastructure Investment Trust. Provides for the trust's issuance of certificates to investment partners. Specifies that the certificates guarantee the availability of tax credits under certain conditions, etc. CM 04/05/2011 Fav/CS BFT 04/13/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 1198** Communications, Energy, and Public Utilities / Bogdanoff (Similar CS/CS/H 887)	Communications Services Tax; Requires that a dealer compute the communications services tax based on a rounding algorithm. Provides options to the dealer for applying the rounding algorithm. Provides that a dealer is not required to collect the tax based on a bracket system. Removes the provision requiring the Department of Revenue to make available tax amounts and applicable brackets. Provides that the act does not provide a basis for assessment of any tax not paid or create a right to certain refunds or credits, etc. CU 03/21/2011 Fav/CS BFT 04/13/2011 BC	
5	**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 Temporarily Postponed BFT 04/13/2011 BC	
6	**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 Not Considered BFT 04/13/2011 BC RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**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 Not Considered BFT 04/13/2011 BC	

A proposed committee substitute for the following bill (SB 2042) is expected to be considered:

8	**SB 2042** Budget Subcommittee on Finance and Tax (Compare CS/CS/H 531)	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 Not Considered BFT 04/13/2011 BC	
9	**SB 2044** Budget Subcommittee on Finance and Tax (Compare CS/CS/H 907, CS/CS/H 7005, CS/CS/S 728, S 1384, S 2156)	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 Not Considered BFT 04/13/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/SB 2050** Commerce and Tourism / Braynon (Similar H 1415, S 1708)	Destination Resorts; Creates the Destination Resort Commission within the Department of Revenue. Exempts the Destination Resort Commission from specified provisions of the Administrative Procedure Act. Creates the Destination Resort Act. Provides that the Destination Resort Commission is a separate budget entity from the Department of Revenue. Provides for the appointment and qualifications of members of the commission. Provides for the selection of the chair and vice chair of the commission. Provides that the chair is the administrative head of the commission, etc. CM 04/05/2011 Fav/CS BFT 04/13/2011 BC	

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the 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.

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

[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 (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. 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:

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(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 of emergency excise tax paid or accrued as a

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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.

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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.

16. The amount taken as a credit for the taxable year under s. 220.194.

Section 2. Section 220.194, Florida Statutes, is created to read:

220.194 Research and development tax credit.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Base amount" means the average of the business enterprise's qualified research expenses in this state allowed under 26 U.S.C. s. 41 for the 4 taxable years preceding the taxable year for which the credit is determined. The qualified research expenses taken into account in computing the base amount shall be determined on a basis consistent with the determination of qualified research expenses for the taxable year.

(b) "Business enterprise" means any corporation as defined in s. 220.03 which meets the definition of a target industry business as defined in s. 288.106.

(c) "Qualified research expenses" mean research expenses qualifying for the credit under 26 U.S.C. s. 41 for in-house research expenses incurred in this state or contract research expenses incurred in this state. The term does not include research conducted outside this state or research expenses that do not qualify for a credit under 26 U.S.C. s. 41.

(2) TAX CREDIT.—Subject to the limitations contained in paragraph (e), a business enterprise is eligible for a credit against the tax imposed by this chapter if the business

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enterprise has qualified research expenses in this state in the taxable year exceeding the base amount and, for the same taxable year, claims and is allowed a research credit for such qualified research expenses under 26 U.S.C. s. 41.

(a) The tax credit shall be 10 percent of the excess qualified research expenses over the base amount. However, the maximum tax credit for a business enterprise that has not been in existence for at least 4 taxable years immediately preceding the taxable year is reduced by 25 percent for each taxable year for which the business enterprise, or a predecessor corporation that was a business enterprise, did not exist.

(b) The credit taken in any taxable year may not exceed 50 percent of the business enterprise's remaining net income tax liability under this chapter after all other credits have been applied under s. 220.02(8).

(c) Any unused credit authorized under this section may be carried forward and claimed by the taxpayer for up to 5 years following the close of the taxable year in which the qualified research expenses are incurred.

(d) The combined total amount of tax credits which may be granted to all business enterprises under this section during any calendar year is $15 million. Applications may be filed with the department on or after March 20 for qualified research expenses incurred within the preceding calendar year, and credits shall be granted in the order in which completed applications are received.

(3) RECALCULATION OF CREDIT AMOUNT.—If the amount of qualified research expenses is reduced as a result of a federal audit or examination, the credit granted pursuant to this

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section must be recalculated. The taxpayer must file amended returns for all affected years pursuant to s. 220.23(2), and the taxpayer must pay to the department the difference between the initial credit amount taken and the recalculated credit amount.

(4) RULES.—The department may adopt rules to administer this section, including, but not limited to, rules prescribing forms and application procedures and dates, and may establish guidelines for making an affirmative showing of qualification for a credit and any evidence needed to substantiate a claim for credit under this section.

Section 3. 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. 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, and those enumerated in s. 220.194.

Section 4. This act shall take effect July 1, 2011, and applies for taxable years beginning on or after January 1, 2012.

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========== 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 tax credits for research and development; amending s. 220.13, F.S.; redefining the term "adjusted federal income" to include the amount of a certain research and development tax credit; creating s. 220.194, F.S.; providing definitions; providing a tax credit for certain research and development expenses; providing eligibility requirements for research and development tax credits; providing limitations regarding eligibility; providing an amount for such credit; providing a maximum amount of credit that may be taken during a taxable year by a business enterprise; providing that any unused credit may be carried forward for a specified period; limiting the total amount of tax credits which may be approved by the department in a calendar year; providing that applications for credits may be filed on or after a specified date; requiring that the credits be granted in the order in which applications are received; requiring the recalculation of a credit under certain circumstances; authorizing the department to adopt rules; amending s. 220.02, F.S.; revising legislative intent to include the research and development tax credit in the ordered list according to which credits against corporate income

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tax or franchise tax are applied; providing for application; 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 942
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Tax Credits for Research and Development
DATE:	April 5, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Favorable**
2.	Babin	Diez-Arguelles	BFT	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

Congress first enacted a research and development (R&D) tax credit in 1981 to encourage scientific initiatives and innovation among U.S. businesses. As of 2008, 38 states offered R&D tax credits against corporate or other state tax liability.

SB 942 creates an R&D tax credit against the Florida corporate income tax. The maximum amount of R&D tax credits that can be approved by the Department of Revenue (DOR) during any calendar year is $15 million. Credits cannot be claimed until a taxable year that begins on or after January 1, 2012.

The bill outlines a formula for computing the tax credit. Basically, the credit is equal to 10 percent of the amount a business's qualified R&D expenses in the current taxable year exceeds the business's average R&D expenses over the previous 4 taxable years. Other key points are:

- An R&D tax credit may not exceed 50 percent of a business enterprise's corporate tax liability in a taxable year, after any other corporate tax credits have been applied.
- To qualify for the tax credit, a business enterprise must be a target industry, as defined in s. 288.106, F.S.
- A business enterprise may carry forward any unused tax credit for up to 5 years.
- A business enterprise may transfer or sell its unused credits to another business enterprise within 1 year after they were originally approved. The purchasing business or assignee must use the tax credits in the same year that the transfer or purchase was made.

DOR is directed to adopt rules to implement and administer the new R&D tax credit.
SB 942 creates s. 220.194, F.S., and amends s. 220.02, F.S.

II. Present Situation:

Federal tax credit

The "U.S. Research and Experimentation Tax Credit" was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.[1] Originally, the credit was 25 percent of qualified research expenses that exceeded the previous year's expenses, and the types of expenses that qualified were limited to scientific or experimental research. Over the years, the tax credit formula has been modified several times and the types of eligible expenses changed.[2]

The current federal credit provides credit for three types of expenses: (1) qualified research expenses, (2) basic research payments, and (3) payments to energy research consortiums.[3] However, the current language of the bill only provides a state credit for the qualified research expenses.

Under current federal law, "qualified research expenses" include wages paid to in-house research staff, supplies used in research activities (not including land, improvements to land or certain depreciable property), and up to 65 percent of funds paid to contracted personnel for qualified research.[4] "Qualified research" includes research undertaken to discover technological information that is intended to be useful in the development of a new or improved business process, product, software, formula, invention or other business component that will be used by the company or which the company intends to sell, license, or lease.[5]

The federal tax credit for qualified expenses is an incremental tax credit because a company is only rewarded if it increases its R&D spending as compared to its spending during a predetermined base period. The amount of the federal tax credit can be determined by three different methods, depending in part on how long the company has been in business. Under the basic formula, the tax credit is equal to 20 percent of the current tax year's qualified R&D expenses over the base amount, which is calculated using a ratio of qualified R&D expenses and gross receipts during the period of 1984 through 1988.[6] Newer companies can use simpler formulas that still compare current year R&D spending with past years.

Business entities that do not pay federal corporate income tax, such as "S corporations" and partnerships, are allowed to "pass-through" their federal R&D credits to shareholders or partners, based on these individuals' shares in such business entities.[7]

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[1] "The U.S. Research and Experimentation Tax Credit in the 1990s" by Francisco Moris. National Science Foundation Report #NSF05-316 published July 2005. Retrieved at http://www.nsf.gov/statistics/infbrief/nsf05316/ and "The Prospects for Economic Recovery," prepared by the Congressional Budget Office. Published February 1982. Pertinent information on pages 87-93. Retrieved at http://www.cbo.gov/ftpdocs/51xx/doc5135/doc03b-Part8.pdf. Sites last visited April 8, 2011.

[2] The U.S. General Accounting Office has prepared two reports over the years that examine changes in the tax credit program and analyze the program's impact. GAO/GGD-89-114 is found at http://archive.gao.gov/d26t7/139607.pdf. GAO/GGD-96-43 is found at http://www.gao.gov/archive/1996/gg96043.pdf. Sites last visited on April 9, 2011.

[3] 26 USC sec. 41(a)(1)

[4] 26 USC sec. 41(b).

[5] 26 USC sec. 41(d).

[6] 26 USC sec. 41(c).

[7] 26 USC sec. 41 (g).

For the 2008 federal tax year, 12,736 companies claimed $8.3 billion in R&D tax credits, including $167.7 million claimed via "pass-through" entities.[8] Manufacturing companies claimed the largest percentage of research tax credits, $5.76 billion worth.[9]

Since its inception, the federal R&D tax credit has lapsed several times. Most recently, Congress reauthorized the R&D tax credit in December 2010 through December 31, 2011.[10]

Other states' R&D tax credits

Thirty-eight states have enacted an R&D tax credit.[11] The majority of the states appear to use the federal definitions for credit eligibility and follow the federal formula for establishing a base time period. Some states allow the tax credit to be taken only against their state income tax, while others allow it to be taken against a variety of state tax liabilities. Also, some states offer the highest tax credit rate to R&D activities done in conjunction with university partners, while others make no distinction. Five states[12] offer refundable tax credits, meaning those states remit to eligible businesses the excess difference between their taxes owed and the amount of R&D tax credit they earned.

Statistics

Internationally, the United States, in 2007, ranked first in R&D expenditures, at $344 billion, most of it spent on defense research.[13] The nation's R&D expenditures as a measure of the Gross Domestic Product have remained stable over the last several years around 2.6 percent, which ranks 7th internationally.[14] Many nations offer a version of R&D tax credits, which are considered an important economic-development tool.[15]

According to research[16] compiled by the Alliance for Science & Technology Research in America, in 2007 Florida's business R&D ranked 17th in the nation, totaling less than 2 percent of the U.S., but private- and public-sector R&D affiliated with state universities ranked in the top 10 nationally, based on 2006 statistics.

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[8] Internal Revenue Service, Statistics of Income Division. Retrievable at http://www.irs.gov/taxstats/article/0,,id=164402,00.html. Last visited April 9, 2011.

[9] Ibid.

[10] The most recent extension was accomplished by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L.111 - 312, signed into law on December 17, 2010.

[11] "Iowa's Research Activities Tax Credit Tax Credits Program Evaluation Study." Iowa Department of Revenue. Published January 2008. Appendix/Table 6, on pages 37-41 of the report lists details of all 38 states' R&D tax credits. See: http://www.iowa.gov/tax/taxlaw/IDRTaxCreditEvalJan2008.pdf.

[12] Hawaii, Iowa, Louisiana, Nebraska, and New York are the states. Ibid.

[13] "Briefing Note on the United States." Organisation for Economic and Co-operation and Development's Science, Technology and Industry Scoreboard 2007. Retrievable at http://www.oecd.org/dataoecd/19/11/39695454.pdf. Last visited April 9, 2011.

[14] Organisation for Economic and Co-operation and Development's Fact Book for 2009. Retrievable at: http://oberon.sourceoecd.org/vl=5806526/cl=18/nw=1/rpsv/factbook/07/01/01/index.htm. Last visited April 9, 2011.

[15] "2010 Global Survey of R&D Tax Incentives," prepared by Deloitte and published in January 2011. Available at: http://www.nam.org/~/media/C917926074BE4CE8A4E7AF2C017D67A2/Global_RD_Survey_Final.pdf.

[16] The Alliance for Science & Technology Research in America, 2010 report. Available at http://www.usinnovation.org/state/pdf_cvd/CVD10FloridaR&D.pdf. Last visited April 9, 2011.

III. Effect of Proposed Changes:

SB 942 creates a Florida R&D tax credit program. The Florida tax credit is modeled after the federal research tax credit in Title 26 U.S. Code section 41, and incorporates some of its definitions.

Section 1: Creates s. 220.194, F.S., which authorizes an R&D tax credit against state corporate income taxes. It explains the formula that will be used to compute the actual amount of tax credit available to individual eligible businesses.

For established businesses, the tax credit will be equal to 10 percent of the excess of the current year's qualified research expenses in Florida over the average of R&D expenditures in Florida for the previous 4 taxable years. For businesses in existence fewer than 4 years, the credit amount is reduced by 25 percent for each year the business did not exist within the 4-year base period.

The bill defines a number of terms; key among them are:

- Business enterprise means any corporation as defined in s. 220.03, F.S., that is also a target industry business[17] as defined in s. 288.106(1)(o), F.S. *(This is an erroneous cross-reference. The correct cross-reference is s. 288.106(2)(t), F.S.)*; and
- Qualified research expenses mean research expenses qualifying for the federal credit under section 41 of the Internal Revenue Code for in-house or contract research expenses within Florida. Research and Development conducted out of state and research that does not qualify for credit under the federal code are not eligible for credit.

The state tax credit taken in any 1 tax year may not exceed 50 percent of the business enterprise's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled, have been applied.

Any unused credits may either be carried forward by the business that originally earned it for up to 5 years following the year in which the qualified research expenses were incurred, or they may be assigned or sold to another corporate income taxpayer who also is a business enterprise, and thus, a target industry business. In the latter instance:

- The business that earned R&D tax credits may assign or sell them if it has not claimed the credits within 1 year of DOR having approved them.
- The business that has been assigned the credits or has purchased them must use the credits in the same taxable year in which they were purchased or assigned.
- Assigned or purchased credits must have been exchanged for at least 75 percent of their face value.

[17] The "target industry list" is a list of industry sectors that meet criteria related to high wage, high growth potential, and market independence. It is developed by the Governor's Office of Tourism, Trade, and Economic Development, in consultation with Enterprise Florida, Inc. The 2011 targeted industry list was approved by OTTED in January and includes eight categories: Clean Tech; Life Sciences; Information Technology; Aviation/Aerospace; Homeland Security/Defense; Financial/Professional Services; Emerging Technologies; and Other Manufacturing.

The maximum amount of R&D credits that may be approved by DOR during any calendar year is $15 million. Applicants must apply to the Department of Revenue on or after March 20 of the tax year for qualified research expenses incurred in the preceding calendar year. Applicants are awarded credit in the order in which the applications are received.

Finally, DOR is directed to adopt rules governing the manner and form of the R&D tax credit application, and may establish guidelines for businesses seeking to affirm their qualification for the credit.

Section 2: Amends s. 220.02, F.S., to establish the order in which a corporate taxpayer may claim the R&D tax credit compared to all other potential corporate income tax credits. The R&D tax credit is taken after all other corporate credits.

Section 3: Specifies that the bill becomes law July 1, 2011, but that the credits cannot be claimed prior to a taxable year beginning on or after January 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

At its March 4, 2011, meeting, the Revenue Estimating Conference determined by consensus that SB 942 will have a negative fiscal impact of $5 million in cash for FY 2011-2012 and a negative $15 million recurring fiscal impact.

B. Private Sector Impact:

Startups as well as established companies could benefit from a state R&D tax credit program, either directly and through the credit transfer program, as long as they meet the eligibility criteria.

C. Government Sector Impact:

DOR expects that it will experience and insignificant operational impact.

VI. Technical Deficiencies:

As stated above, the reference to the definition for "target industry" is erroneous and should be corrected to s. 288.106(2)(t), F.S.

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.

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

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 976
INTRODUCER:	Commerce and Tourism Committee and Senator Bogdanoff
SUBJECT:	Capital Formation for Infrastructure Projects
DATE:	April 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Fav/CS**
2.	Fournier	Diez-Arguelles	BFT	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

In 2007 the Legislature created the $29.5 million Florida Opportunity Fund (FOF) to support venture capital investments to assist emerging Florida companies representing certain industry sectors. The FOF's mission has broadened since then, and as of June 30, 2010, the FOF had invested just over $3 million – matched on a $2-to-$1 basis by private investment partners – into six investment fund accounts. The FOF's private investment partners benefit only if the investments make money.

CS/SB 976 creates a new venture capital investment program--the Florida Infrastructure Fund Partnership (partnership). The partnership will award up to $700 million in certificates for state tax credits for an equal amount in private investments in strategic infrastructure projects. The credits may be redeemed by the investors only to recoup losses of their capital investment. The earliest that the credits may be claimed is 2023.

The FOF will serve as the general partner for the partnership. A new entity, the Florida Infrastructure Investment Trust (trust), is created to administer the certificates and tax credits associated with the new investment program.

No more than $150 million tax credits may be claimed in a state fiscal year.

The partnership and the trust are granted access to confidential taxpayer information maintained by the state Department of Revenue to assist in the implementation of the program.

CS/SB 976 creates ss. 288.9627 and 288.9628, F.S., and amends ss. 288.9621, 288.9622, and 288.9623, F.S.

II. Present Situation:

The Venture Capital Industry[1]

"Venture capital" is money provided by investment professionals who invest in young, rapidly growing companies that have the potential to develop into significant economic contributors. It is an important source of equity for startup companies, and supports entrepreneurs by providing funds to develop ideas and basic science into products and services. Venture capitalists generally:

- Finance new and rapidly growing companies;
- Purchase equity securities;
- Assist in the development of new products or services;
- Add value to the company through active participation;
- Take higher risks with the expectation of higher rewards; and
- Have a long-term orientation.

Venture capitalists actively work with the company's management by contributing their expertise and experience gained from helping other companies with similar growth challenges. A venture capitalist may invest before there is a real product or company, known as "seed investing," or may provide capital to a company in its first or second stages of development, known as "early stage investing." Venture capitalists mitigate their risks by developing a portfolio of young companies into a single venture fund.

Over the past decade, a number of states have adopted programs targeting the formal venture capital industry. Programs fall into three approaches:[2]

- Direct investment by state agencies to individual businesses through state-controlled institutions;
- Investment by state agencies or pension funds into privately managed funds or a portfolio of privately managed funds, to expand local venture capital; and
- Private investment spurred by state's offering tax credits or other incentives for qualifying investments.

Venture Capital in Florida

Florida ranked 15th in the United States in calendar year 2010 in venture capital investment, with Florida companies receiving about $190 million, down about 35 percent from the previous year.[3]

[1] The primary source for information in this section is the National Venture Capital Association website, including the 2011 NVCA Annual Yearbook, available at http://www.nvca.org/def.html . Last visited March 30, 2011.

[2] Economic Development Finance, written by Karl F. Seidman. Published in 2005 by Sage Publications. On file with the Senate Commerce and Tourism Committee. Information on page 253.

An earlier study indicated that the revenue of venture-backed companies headquartered in Florida in 2008 was $75.5 million – ranked 9th in the nation – and these companies' employment totaled 242,074 – ranked 11th nationally.[4]

The Florida Opportunity Fund (FOF)

Created by the Legislature in 2007,[5] the FOF was intended to attract venture capital investment into targeted Florida industries by providing state matching funds. The FOF is organized as a private, not-for-profit corporation under ch. 617, F.S., with a 5-member board of directors selected by an EFI appointments committee.[6] The FOF's administrative staff is provided by EFI, and has a separate investment manager, Florida First Partners, comprised of Florida-based MILCOM Venture Partners[7] and the Credit Suisse Customized Fund Investment Group.[8]

The Legislature appropriated $29.5 million for investments from the FOF in FY 2007-2008.

Initial charge

The FOF was established as a fund-of-funds program, meaning that it could invest only in investment funds, not directly in individual businesses. Additionally, the investment funds had to match the state $2 for every $1 it invested. The emphasis was on "seed" and early-stage investments, because proponents of creating the FOF concluded that these types of companies were least likely to have access to venture funding and traditional financing. Targeted industries for the FOF investments included, but were not limited to, life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense.

To be eligible for state participation, an investment fund must have an experienced and successful investment manager or team, and must focus on investment opportunities in Florida.

In FY 2008-09, the FOF invested $594,000 in its first fund-- Element Partners II--according to FOF's financial statements. As of June 30, 2010, the FOF had six investment fund partners, and had invested just over $3 million.

Expansion of investment authority

In 2009, the Florida Legislature amended s. 288.9624, F.S., to allow the FOF to make direct investments, including loans, in individual businesses and infrastructure projects; to form or operate other entities; and to accept funds from other public and private sources for use as

[3] Information reported in Feb. 6, 2011, Orlando Sentinel article, on file with the Senate Commerce and Tourism Committee, and based on the national Moneytree survey by PwC http://www.floridaventureforum.org/newsletter.asp.

[4] Venture Impact: The Economic Importance of Venture Capital-Backed Companies to the U.S. Economy. Prepared by Global Insight. Information on Page 14. Available at: http://www.nvca.org/index.php?option=com_content&view=article&id=255&Itemid=103. Last visited March 30, 2011.

[5] HB 83 (ch. 2007-189, L.O.F.)

[6] The current FOF board of directors is comprised of: chairman Kenneth Wright, partner with Baker Hostetler; vice chairman Andrew Hyltin, president of CNL Private Equity Corporation; Thomas Cornish, president and CEO of Seitlin Insurance and Advisory Services; Brian Nicholas, executive with the Acquired Asset Group of BB&T; and Pedro Pizarro, chairman and CEO of eLandia Group.

[7] More information available at http://www.milcomvp.com/.

[8] More information available at https://www.credit-suisse.com/us/en/.

investments.[9] These direct investments must be made in Florida infrastructure projects, or in businesses that are Florida-based or have significant business activities in Florida and operate in technology sectors that are strategic to Florida, including the original list of industry types. The FOF may not use its original appropriation of $29.5 million to make direct investments or for any purposes not specified in the original legislation.

In May 2010, the FOF launched a direct investment program with the Florida Energy and Climate Commission, a 9-member board housed administratively in the Governor's Office that is the lead entity for state energy and climate-change programs and policies. This new FOF fund is expected to increase the availability of investment capital in Florida for businesses engaged in developing or producing energy-efficient or renewable energy (EE/RE) products or services. The FOF has access to $36 million initially in federal funds to make investments in qualifying businesses. Fund investments are restricted by statute to be used for facility and equipment improvement with EE/RE products; acquisition or demonstration of renewable energy products; and improvement of existing production, manufacturing, assembly, or distribution processes to reduce consumption or increase the efficient use of energy in such processes.

Reporting Requirements
The FOF is required by statute to submit an annual report by December 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes, at a minimum:

- An accounting of the amount of investments disbursed by the FOF;
- The progress of the FOF in accomplishing its responsibilities;
- A description of the benefits to the state resulting from the FOF, including the number of businesses and jobs created, the number of associated industries started, and the growth of related research projects; and
- Independently audited financial statements for the FOF that show receipts and expenditures during the preceding fiscal year for personnel, administration, and operating costs.

Infrastructure Funding in Florida
For nearly 6 decades, Florida has been one of the fastest-growing states in the nation, with population expanding from 3 million in 1950 to nearly 19 million in 2010.[10] Demand for energy, transportation, and communication systems expanded rapidly over the past several decades. Current projections suggest Florida may add an additional 5 million new residents by the year 2030,[11] contributing to growth in demand for strategic infrastructure.

In order to meet future capacity over the next 20-25 years, it is estimated that Florida will need:

- $47.0 billion for highway and rail infrastructure; [12]
- $29.9 billion for water and wastewater facilities and infrastructure;[13]

[9] HB 7031 (ch. 2009-251, L.O.F.)
[10] 2010 Census, Apportionment Population and Number of Representatives by State. United States Census Bureau. Interactive map at http://2010.census.gov/2010census/data/. Site last visited March 31, 2011.
[11] Florida Census Day Population: 1970-2030, Office of Economic and Demographic Research, August 2010. http://edr.state.fl.us/Content/population-demographics/data/index.cfm. Last visited March 31, 2011.
[12] Strategic Intermodal System Unfunded Needs Plan, Florida Department of Transportation, May 2006. http://www.dot.state.fl.us/planning/systems/mspi/sisnplan.shtm. Site last visited March 31, 2011.

- $3.5 billion for aviation facilities and infrastructure;[14]
- $2.8 billion for seaport facilities and infrastructure;[15] and
- $2.5 billion for storm water management.[16]

Contingent Tax Credit Programs
Contingent tax credits help raise money for state-affiliated venture capital initiatives without immediately affecting state revenues. Contingent tax credit programs are statutory state guarantees established to encourage venture capital investment into state target industries. Eight states – Arkansas, Iowa, Michigan, Ohio, Oklahoma, Oregon, South Carolina and Utah – have initiated programs authorizing the issuance of contingent tax credits to investors in state-sponsored funds of funds, providing investments in companies.[17] It does not appear that any state has created an infrastructure funding program backed by contingent state tax credits similar to the one proposed in SB 976.

III. Effect of Proposed Changes:

CS/SB 976 broadens the Capital Formation Act in Part X of ch. 288, F.S., to create the Florida Infrastructure Fund Partnership and the Florida Infrastructure Investment Trust as a means to attract private capital to finance large-scale infrastructure improvements in this state. The bill provides up to $700 million in tax credits, which are equal to the investors' net capital losses and are available to investors at the investment's designated maturity date. The credits cannot be claimed prior to 12 years from the date of the investment; based on the bill's effective date, credits may not be claimed before July 1, 2023.

Section 1: Amends s. 288.9621, F.S., to modify the short title, Florida Capital Formation Act, in Part X of ch. 288, F.S.

Section 2: Amends s. 288.9621, F.S., to broaden legislative intent with respect to the need for more seed capital and early-stage venture capital to include infrastructure projects.

Section 3: Amends s. 288.9623, F.S., to add several definitions relevant to the proposed Florida Infrastructure Fund Partnership. Key definitions are:

- Certificate means a contract between the trust and an investment partner which guarantees the availability of transferable tax credits in order to guarantee the partner's capital investment in the partnership.

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[13] Clean Watersheds Needs Survey 2008 Report to Congress, United States Environmental Protection Agency. http://water.epa.gov/scitech/datait/databases/cwns/2008reportdata.cfm. Site last visited March 31, 2011.
[14] Strategic Intermodal System Unfunded Needs Plan, May 2006.
[15] Strategic Intermodal System Unfunded Needs Plan, May 2006.
[16] Clean Watersheds Needs Survey 2008 Report to Congress.
[17] Various reports are available about one or all of these states' programs. As a sample, see "Building a Regional Venture Capital Industry with Contingent Tax Credits," at http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/d726ee6624cfb02c86257577007238da/$FILE/nasvftaxcredits.pdf.; "Government Based Private Equity Programs," at http://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/93e41838bbf61b5b8825781f005a8545/$FILE/Neilson.CDFA%20Presentation_Jan%202011.pdf.; Utah's Fund of Funds program, at http://www.utahfundoffunds.com/; and Invest Iowa, at http://www.investiowa.com/icic/web.nsf/pages/fundoffunds.html. Last visited March 24, 2011.

- Commitment agreement means a contract between the partnership and an investment partner under which the partner commits to providing a specified amount of investment capital in exchange for an ownership interest in the partnership.
- Infrastructure project means a capital project in this state for a facility or other infrastructure need of the state, a county, or a municipality. Eligible categories of infrastructure projects are: a water or wastewater system, communication system, power system, transportation system, renewable energy system, ancillary or support system for any of these types of projects, or other strategic infrastructure of the state, a county, or a municipality.
- Investment partner or partner means a person, other than the partnership, the FOF, or the trust, who purchases an ownership interest in the partnership or who is a transferee of such interests.
- Net capital loss means an amount equal to the difference between the total investment capital advanced by the investment partner and the amount of aggregate actual distributions received by the investment partner.
- Tax credit means a credit issued against the taxes specified in s. 288.9628(7)(c), F.S.

Section 4: Creates s. 288.9627, F.S., the Florida Infrastructure Fund Partnership. This section details how the partnership is created, its purposes, and how it operates.

Governance
The FOF is authorized to facilitate the creation of the partnership, which will be organized and operated under ch. 620, F.S., as a private, for-profit, limited partnership or limited liability partnership. The partnership is not an instrumentality of the state.

The FOF is identified as the general partner for the partnership, and is authorized to loan up to $750,000 to the partnership for use in paying initial organizational expenses and to solicit investment partners. The FOF also is responsible for managing the partnership's business affairs, including, but not limited to:

- Hiring one or more investment managers to assist with the management of the partnership;[18]
- Soliciting and negotiating the terms, contracting, and receipt of the investment capital;
- Receiving investment returns, paying investment partners and approving investments; and
- Engaging in other activities necessary to operate the partnership.

Infrastructure Investments
The partnership is authorized to make direct investments in Florida-based infrastructure projects that foster economic development and meet an important infrastructure need of the state. Eligible infrastructure projects include: water or wastewater systems, communication system, power system, transportation system, renewable energy system, ancillary or support system for any of these types of projects, or other strategic infrastructure located within the state.

[18] The FOF may consider hiring only investment managers that have maintained an office in Florida for at least 2 years. Candidates also will be evaluated on the basis of level of experience, quality of management, investment philosophy and process, demonstrable success in fundraising, and private investment results.

Capital for these investments must be raised by the partnership through "commitment agreements" with investment partners; the terms of the commitment agreements must be approved by the FOF's board. Investments can be accepted by the partnership beginning July 1, 2011. CS/SB 976 provides for the concurrent issuance of certificates by the Florida Infrastructure Investment Trust *(described in Section 5 below)* for future, tax credits that guarantee the return of only the equity portion of the investments to the partners.

These tax credits will guarantee the equity or principal investment to the partners, but not the potential earnings.

CS/SB 976 requires that the total principal investment payable to the partnership and the total amount of tax credits to be issued by the Department of Revenue (DOR) may not exceed $700 million. However, if the partnership fails to obtain investment commitments totaling at least $100 million by December 1, 2012, then the partnership must cancel all agreements and return the equity investments to the partners.

Investment decision-making
Additionally, the partnership may only invest in infrastructure projects which:

- Fulfill an infrastructure need in the state;
- Raise at least an equal amount of equity from other sources as is invested by the partnership; and
- Have appropriate legal controls in place to ensure that no infrastructure project will be fraudulently closed.

The partnership must evaluate potential infrastructure projects based on the following factors:

- The written business plan for the project, including all expected revenue sources;
- The likelihood of the project attracting operating capital through grants or from investors or other lenders;
- The management team for the proposed project;
- The project's job creation potential in Florida;
- The financial resources of the entity proposing the project;
- The presence of reasonable safeguards to ensure the project provides a continuing benefit for residents of the state; and
- Other factors deemed by the partnership to be relevant to the likelihood of the success of the project.

Additionally, the partnership may not invest more than 20 percent of its total capital in any single infrastructure project. The partnership is prohibited from investing in any infrastructure project authorized under the Florida Rail Enterprise Act, related to high-speed rail projects;[19] with any financial institution or company identified in s. 215.472, F.S., that engages in commerce with Cuba; or with any "scrutinized company," as that term is defined in s. 215.473, F.S., relating to companies that engage in commerce with Iran and Sudan.

[19] Sections 341.8201 – 341.842. F.S.

Provisions related to the Credit of the State
CS/SB 976 prohibits the partnership and the FOF from pledging the credit or taxing power of the state or any political subdivision of the state, nor are their obligations debt of the state or other political subdivisions. Finally, the partnership and the FOF must pay their debts only from their own resources.

Reporting Requirements
The partnership must submit an annual report December 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report, at a minimum, must include:

- An accounting of the amount of investment capital raised and disbursed by the partnership.
- The progress of the partnership's activities, including the progress of infrastructure projects that have received direct investments.
- A description of the costs and benefits to the state resulting from the partnership's investments, including:
    - A list of infrastructure projects;
    - The costs and benefits of each project to the state;
    - The number of businesses and associated industries affected;
    - The number, types, and average annual wage of jobs created or retained; and
    - The impact of the program on the state's economy.
- Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for the partnership's operating costs.

Section 5: Creates s. 288.9628, F.S., the Florida Infrastructure Investment Trust (trust), a state beneficiary public trust, to be governed by an independent board of trustees (board).

Governance
The board is comprised of Florida's Chief Financial Officer; the Executive Director of the Office of Trade, Tourism, and Economic Development; and the Vice Chair of Enterprise Florida, Inc., or their respective designees. The bill allows an administrative officer to act on behalf of the trust under the direction of the board. The board members and the administrative officer are prohibited from receiving compensation from, and having a financial interest in, any investment partner. They serve without compensation, but are entitled to reimbursement of their expenses. CS/SB 976 specifies that each board member and staff "has a duty of care to the trust." The trust and the FOF may seek reimbursements for expenses by charging a fee for the issuance of certificates to investment partners. The fee may be no more than .25 percent of the aggregate investment capital committed to the partnership.

Powers and duties of the trust
CS/SB 976 authorizes the trust to:

- Engage consultants and retain professional services;
- Issue tax certificates to the investment partners, redeemable for tax credits;
- Sell the tax credits;
- Expend funds and invest funds; and
- Enter into contracts, and bond or insure against loss.

As mentioned above, the trust may issue certificates, redeemable against the state tax credits, to partners that make equity investments in the partnership. A certificate issued to a partner guarantees the availability of tax credits equal to the principal investment specified in the partner's commitment agreement with the partnership. Certificates issued by the trust may not exceed a total aggregate of $700 million of tax credits. Further, a certificate issued by the trust must have a specific calendar year maturity date designated by the trust of no earlier than 12 years after the date of issuance. A partner's certificate and related tax credits can be transferred to a new owner in whole or in part.

CS/SB 976 specifies that the provisions of ch. 517, F.S., dealing with regulation of securities, do not apply to the certificates and tax credits transferred or sold under this program.

Notification and Election of Tax Credits
If, on the maturity date of a certificate, a partner's principal investment has suffered a "net capital loss," the partnership must provide written notification of this circumstance to the partner. As defined earlier, "net capital loss" is defined to mean an amount equal to the difference between the total investment capital made by the investment partner to the partnership and the amount of the aggregate actual distributions received by the investment partner. The notification must include, at a minimum, the following information as of the date of the notice:

- A good-faith estimate of the fair-market value of the partnership's assets;
- The total capital investment of all partners;
- The total amount of distributions received by the partners; and
- The amount of the tax credit(s) for which the partner is entitled to be issued by DOR.

Upon receipt of notice from the partnership, each affected partner may elect to:

- Have the tax credits issued in its name;
- Authorize the trust to sell the tax credits on its behalf, with the proceeds of the sale paid to the partner; or
- Maintain its investment in the partnership.

An affected partner has 30 days, after receiving notification, to provide written notification to the partnership and the trust which option it has chosen. This election is final, except if the trust is unable within 90 days to sell enough tax credits to reimburse an affected partner who elected to have the trust sell tax credits for reimbursement of a net capital loss. Failing to provide a timely notice will result in the investment partner being deemed to have elected to maintain investment in the partnership.

Issuance and Sale of Tax Credits
In the event that a partner becomes eligible for tax credits and elects to claim tax credits under the program, the trust will, on behalf of the partner, apply to DOR for the issuance of tax credits. The tax credits certified by DOR may not exceed the partner's net capital loss. The partner must agree in writing to transfer its interest in the partnership to the FOF before receiving the tax credits.

Alternatively, the trust may sell tax credits on behalf of a partner, in an amount no more than the lesser of the maximum amount of tax credits available under the terms of the certificate issued to the partner, or the amount necessary to repay a partner's net capital loss. Again, before receiving the proceeds from the trust's sale of tax credits, the partner must agree in writing to transfer its interest in the partnership to the FOF.

Within 30 days following receipt of a partner's election or the trust's sale of the tax credits, the trust must notify the partnership and then apply to DOR for issuance of the tax credits in the name of the partner or purchaser. The application must include the following information:

- The partnership's certification of the amount of credits to be issued;
- Identification of the applicable taxpayer; and
- The state tax against which the credits can be applied.

Within 30 days of the receipt of an application, DOR must issue tax credits to the partner or purchaser in the amount designated by the trust in the application. If the trust is unable to sell the partner's tax credits within 90 days, the partner may modify its election choice, to include having the unsold credits issued such partner, less the proceeds of any sold tax credits, or direct the trust to continue trying to sell the credits until the partner's investment is made whole.

As specified earlier, the amount of tax credits that may be claimed or applied against state taxes may not exceed $150 million in a state fiscal year.

The tax credits issued by DOR can be used to offset state sales, corporate, or premium insurance tax liability, or as refund of taxes paid; such credits must be applied to tax liability, or taken as a refund within 7 years after the credits are issued. As mentioned earlier, the credits also can be sold or transferred to another taxpayer.

CS/SB 976 specifies that the tax credits, when issued to a partner, are an obligation of the state, secured exclusively by the ownership interest transferred to the FOF by the partner who investment generated the tax credits. In that case, the state's recovery is limited to the forfeited ownership interest. The FOF is not liable to the state for repayment of the used tax credits.

DOR is directed to account for the tax credits used pursuant to the provisions of CS/SB 976 and to make that information available to the partnership.

Finally, CS/SB 976 provides that ch. 517, F.S., dealing with regulation of securities, does not apply to the certificates and credits transferred or sold pursuant to the provisions of the bill.

Section 6: Amends s.213.053, F.S., to authorize DOR to enter into a written agreement with the partnership and the trust to make available to those entities information related to the tax credits available under this program.

Section 7: Provides an effective date of July 1, 2011.

Other Potential Implications:

The bill provides that an investment partner may elect to have the trust sell his or her certificate, which authorizes tax credits equal to the total amount of the investment capital committed to the partnership by the partner. The trust may sell the certificate in an amount that does not exceed the lesser of:

1. The maximum amount of the certificate issued to the investment partner; or
2. The amount necessary to yield proceeds to the investment partner equal to his or her net capital investment as of the date of the partnership's notice.

Since tax certificates typically sell at a discount from their face value, for a partner selling certificates representing his or her entire capital investment, the sales may not yield enough funds to repay the amount of their initial investments.

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:

At its March 10, 2011, meeting, the Revenue Estimating Conference (REC) determined that SB 976 will have a recurring negative, but indeterminate, impact on both state and local government revenues.

The REC noted in its written estimate report that, "It is not possible to determine what net operating capital losses could be 12 years out, therefore the Cap ($150 million annually) is assumed to be the maximum recurring amount." Further, the REC noted that, "This bill exposes the state to contingent future tax credits ranging from $0 to $700 million, beginning in 2023 at the earliest."

B. Private Sector Impact:

Indeterminate, but potentially positive for both businesses and residents of the areas where the infrastructure projects are constructed.

C. Government Sector Impact:

Indeterminate. DOR may incur some costs associated with administratively handling the issuance and transfer, where applicable, of the tax credits.

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 Commerce and Tourism Committee on April 5, 2011:
The committee adopted a strike-all amendment at its meeting that made a number of technical and clarifying changes, and added the provision authorizing DOR to share confidential taxpayer information related to the tax credits with the partnership and the trust.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 202.16, Florida Statutes, is amended to read:

202.16 Payment.—The taxes imposed or administered under this chapter and chapter 203 shall be collected from all dealers of taxable communications services on the sale at retail in this state of communications services taxable under this chapter and chapter 203. The full amount of the taxes on a credit sale, installment sale, or sale made on any kind of deferred payment

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plan is due at the moment of the transaction in the same manner as a cash sale.

(3)(a) A dealer must compute the tax due on the sale of communications services imposed pursuant to this chapter and chapter 203 based on a rounding algorithm that meets the following criteria:

1. The computation of the tax must be carried to the third decimal place.

2. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

(b) The rounding algorithm must be applied to the local communications services tax imposed pursuant to this chapter separately from its application to the communications services taxes imposed pursuant to s. 202.12 and the gross receipts taxes imposed pursuant to s. 203.01.

(c) A dealer may apply the rounding algorithm to the taxes imposed pursuant to ss. 202.12 and 203.01 in one of the following ways:

1. Apply the rounding algorithm to the combined taxes imposed pursuant to ss. 202.12 and 203.01.

2. Apply the rounding algorithm to the communications services taxes imposed pursuant to s. 202.12(1) and apply the rounding algorithm separately to the combined gross receipts taxes imposed pursuant to ss. 203.01(1)(b)2. and 203.01(1)(b)3.

3. Apply the rounding algorithm to the combined taxes imposed pursuant to ss. 202.12(1) and 203.01(1)(b)3., as allowed by ss. 202.12001 and 203.001, and apply the rounding algorithm separately to the gross receipts tax imposed pursuant to s.

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203.01(1)(b)2.

(d) Under paragraph (b) or paragraph (c), a dealer may apply the rounding algorithm to the aggregate tax amount that is computed on all taxable items on an invoice or to each tax amount that is computed on one or more, but less than all, taxable items on an invoice. The aggregate tax amount for all items on the invoice must equal at least the result that would have been obtained if the rounding algorithm had been applied to the aggregate tax amount computed on all taxable items on the invoice. A dealer may satisfy this requirement by setting a minimum tax amount of not less than 1 cent with respect to each item, or group of items, to which the rounding algorithm is applied.

(e) The department may not require a dealer to collect the tax based on a bracket system. ~~Notwithstanding the rate of tax on the sale of communications services imposed pursuant to this chapter and chapter 203, the department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to this chapter and chapter 203.~~

Section 2. This act is intended to be remedial in nature and applies retroactively. This act does not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid under s. 202.16, Florida Statutes, before July 1, 2011.

Section 3. This act shall take effect July 1, 2011.

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

306410

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to communications services tax; amending s. 202.16, F.S.; requiring that a dealer compute the communications services tax based on a rounding algorithm; providing criteria; providing for application of the tax; providing options to the dealer for applying the rounding algorithm; providing that a dealer may apply the rounding algorithm to the aggregate tax amount under certain conditions; providing that a dealer is not required to collect the tax based on a bracket system; removing the provision requiring the Department of Revenue to make available tax amounts and applicable brackets; providing that the provisions of the act are remedial in nature and apply retroactively; providing that the act does not provide a basis for assessment of any tax not paid or create a right to certain refunds or credits; providing an effective date.

200464

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 everything after the enacting clause and insert:

Section 1. Subsection (3) of section 202.16, Florida Statutes, is amended to read:

202.16 Payment.—The taxes imposed or administered under this chapter and chapter 203 shall be collected from all dealers of taxable communications services on the sale at retail in this state of communications services taxable under this chapter and chapter 203. The full amount of the taxes on a credit sale, installment sale, or sale made on any kind of deferred payment

plan is due at the moment of the transaction in the same manner as a cash sale.

(3)(a) A dealer must compute the tax due on the sale of communications services imposed pursuant to this chapter and chapter 203 based on a rounding algorithm that meets the following criteria:

1. The computation of the tax must be carried to the third decimal place.

2. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

(b) The rounding algorithm must be applied to the local communications services tax imposed pursuant to this chapter separately from its application to the communications services taxes imposed pursuant to s. 202.12 and the gross receipts taxes imposed pursuant to s. 203.01.

(c) A dealer may apply the rounding algorithm to the taxes imposed pursuant to ss. 202.12 and 203.01 in one of the following ways:

1. Apply the rounding algorithm to the combined taxes imposed pursuant to ss. 202.12 and 203.01.

2. Apply the rounding algorithm to the communications services taxes imposed pursuant to s. 202.12(1) and apply the rounding algorithm separately to the combined gross receipts taxes imposed pursuant to s. 203.01(1)(b)2. and 3.

3. Apply the rounding algorithm to the combined taxes imposed pursuant to ss. 202.12(1) and 203.01(1)(b)3., as allowed by ss. 202.12001 and 203.001, and apply the rounding algorithm separately to the gross receipts tax imposed pursuant to s.

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203.01(1)(b)2.

(d) Under paragraph (b) or paragraph (c), a dealer may apply the rounding algorithm to the aggregate tax amount that is computed on all taxable items on an invoice or to each tax amount that is computed on one or more, but less than all, taxable items on an invoice. The aggregate tax amount for all items on the invoice must equal at least the result that would have been obtained if the rounding algorithm had been applied to the aggregate tax amount computed on all taxable items on the invoice. A dealer may satisfy this requirement by setting a minimum tax amount of not less than 1 cent with respect to each item, or group of items, to which the rounding algorithm is applied.

(e) The department may not require a dealer to collect the tax based on a bracket system. ~~Notwithstanding the rate of tax on the sale of communications services imposed pursuant to this chapter and chapter 203, the department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to this chapter and chapter 203.~~

Section 2. Subsection (2) of section 202.19, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

202.19 Authorization to impose local communications services tax.—

(2)(a) ~~Charter~~ Counties and municipalities may levy the tax authorized by subsection (1) at a rate ~~of~~ up to the rate limitation ~~5.1 percent for municipalities and charter counties~~

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~~that have not chosen to levy permit fees, and at a rate of up to 4.98 percent for municipalities and charter counties that have chosen to levy permit fees~~.

~~(b) Noncharter counties may levy the tax authorized by subsection (1) at a rate of up to 1.6 percent.~~

(b)~~(c)~~ The maximum rate ~~rates~~ authorized by paragraph ~~paragraphs~~ (a) includes ~~and (b) do not include~~ the add-ons of up to 0.12 percent for municipalities and charter counties or of up to 0.24 percent for noncharter counties authorized pursuant to s. 337.401, and supersedes ~~nor do they supersede~~ conversion or emergency rates authorized by s. 202.20 which are in excess of these maximum rates.

(12) For purposes of this section, the rate limitation shall be the lesser of:

(a) The rate of the tax levied under subsection (2) as of April 1, 2011; or

(b) Five percent.

Section 3. The provisions of section 1 of this act are intended to be remedial in nature, apply retroactively, and do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid under s. 202.16, Florida Statutes, before October 1, 2011.

Section 4. Except as otherwise provided in section 3 of this act, this act shall take effect October 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:

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A bill to be entitled

An act relating to communications services tax; amending s. 202.16, F.S.; requiring that a dealer compute the communications services tax based on a rounding algorithm; providing criteria; providing for application of the tax; providing options to the dealer for applying the rounding algorithm; providing that a dealer may apply the rounding algorithm to the aggregate tax amount under certain conditions; providing that a dealer is not required to collect the tax based on a bracket system; removing the provision requiring the Department of Revenue to make available tax amounts and applicable brackets; amending s. 202.19, F.S.; allowing counties and municipalities to levy a discretionary communications tax at a rate up to the rate limitation; removing a maximum specified percentage; removing the criteria for maximum rates under certain conditions; providing a formula to calculate the rate limitation; providing that certain provisions of the act are remedial in nature and apply retroactively; providing that the act does not provide a basis for assessment of any tax not paid or create a right to certain refunds or credits; 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 1198
INTRODUCER:	Committee on Communications, Energy and Public Utilities and Senator Bogdanoff
SUBJECT:	Communications Services Tax
DATE:	March 28, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Fav/CS**
2.	Cote	Diez-Arguelles	BFT	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill requires that a communication service provider compute the tax due on a sale of communications services imposed pursuant to the communications services tax and the gross receipts tax based on a rounding algorithm that meets specified criteria. The bill is intended to be remedial in nature and to apply retroactively; however, it is not intended to provide a basis for an assessment of any tax not paid or to create a right to a refund of any tax paid under this section before July 1, 2011.

The bill substantially amends section 202.16 of the Florida Statutes.

II. Present Situation:

Chapter 202, F.S., establishes the Communications Services Tax Simplification Law. This law restructured taxes applicable to a broad array of communications services, including local and long distance telephone services, cable television, direct-to-home satellite television, and other related services.

The communications services tax (CST) replaced and consolidated several different state and local taxes and fees into two taxes: the Florida CST and the local CST. The Florida CST is established in s. 202.12, F.S., and is applied at a rate of 6.65 percent to all communications services except direct-to-home satellite services, which are taxed at a rate of 10.8 percent. The local CST is established in s. 202.19, F.S., varies by jurisdiction, and is not applicable to direct-to-home satellite services. The Florida CST and the local CST are collected by communications service providers and remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.

Chapter 203, F.S., provides for gross receipts tax of 2.52 percent applied to communication services. The state CST and gross receipt tax result in a combined rate of 9.17 percent applied to the purchase of most communication services. Direct-to-home services are taxed at a rate of 2.37 percent, for a combined state CST and gross receipt tax rate of 13.17 percent.

Section 202.16(3), F.S., requires the Department of Revenue (DOR) to make available to dealers, in an electronic format or otherwise, the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to chapters 202 and 203, F.S. To clarify the law, the DOR has created proposed Rule 12A-19.021, F.A.C. [1]. The purpose of the proposed rule is to make available the tax amounts and brackets applicable to each taxable sale of communication services on the DOR's website. The proposed rule provides that any communication services tax resulting in a fraction of a cent is rounded to the next whole cent. The DOR has held a public workshop and multiple hearings to address concerns or questions regarding the proposed rule. At this time, no rule has been adopted.

III. Effect of Proposed Changes:

Section 1 amends s. 202.16, F.S., to require that a communication service provider compute the tax due on a sale of communications services based on a rounding algorithm that meets the following criteria:

- The tax computation must be carried to the third decimal place.
- The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

A service provider will be allowed to compute the tax due on a sale of communications services on an item or an invoice basis.

The rounding algorithm must be applied to the local CST separately from its application to the state CST and gross receipts tax.

A dealer may elect to apply the rounding algorithm to the communications services taxes imposed pursuant to ss. 202.12 and 203.01, F.S., in one of the following manners:

- Apply the rounding algorithm to the combined communications services tax imposed pursuant to ss. 202.12 and 203.01, F.S.

[1] http://dor.myflorida.com/dor/rules/12a-19021.html

- Apply the rounding algorithm separately to the communications services tax imposed pursuant to s. 202.12(1)(a), F.S., and gross receipt tax imposed pursuant to ss. 203.01(1)(b)2, and 203.01(1)(b)3, F.S.
- Apply the rounding algorithm to the combined taxes imposed pursuant to ss. 202.12(1)(a) and 203.01(1)(b)3., F.S., as allowed by s. 203.001, F.S., and apply the rounding algorithm separately to the gross receipts tax pursuant to s. 203.01(1)(b)2, F.S.

A dealer is not required to collect the tax based on a bracket system.

Section 2 provides that the bill is intended to be remedial in nature and to apply retroactively; however, it is not intended to provide a basis for an assessment of any tax not paid or to create a right to a refund of any tax paid under this section before July 1, 2011.

Section 3 provides that the bill takes 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:

On April 8, 2011, the REC determined that this bill, if amended to clarify how taxable items would be treated, would have no impact on state or local revenues because the proposed change does not differ from current administration.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Communications, Energy, and Public Utilities on March 21, 2011.
The committee substitute requires application of the rounding algorithm to the local communications services tax separately from the state taxes, and provides a more detailed statement of how the algorithm may be applied to the state taxes.

B. Amendments:

None.

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

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	**Temporarily Postponed**
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.

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

569554

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.

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.;

724078

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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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,

454804

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.

231646

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)

Between lines 306 and 307
insert:

Section 6. Subsection (9) of section 550.105, Florida Statutes, is amended to read:

550.105 Occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.—

(9) The tax imposed by this section is in lieu of all license, excise, or occupational taxes to the state or any county, municipality, or other political subdivision, except

231646

that, if a race meeting or game is held or conducted in a municipality, the municipality may assess and collect an additional tax against any person conducting live racing or games within its corporate limits, which tax may not exceed $150 per day for horseracing or $50 per day for dogracing, simulcasts, intertrack wagering, cardroom games, or jai alai. Except as provided in this chapter, a municipality may not assess or collect any additional excise or revenue tax against any person conducting race meetings within the corporate limits of the municipality or against any patron of any such person.

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

And the title is amended as follows:

Between lines 20 and 21

insert:

amending s. 550.105, F.S.; limiting the taxes that may be imposed on a person who conducts simulcasts, intertrack wagering, or cardroom games;

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: 4/11/2011

	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, and, beginning in FY 2012-13, a $0.3 million recurring reduction in revenue to the Principal State School Trust Fund because of loss in escheated tickets.

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.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 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


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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
Comm: WD	.	
04/11/2011	.	
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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 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


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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.

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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

Between lines 123 and 124
insert:
(g) Providing for the collection of a service fee to fund the operations and activities of the clearinghouse which shall not exceed 0.3 percent of the gross premium on transactions processed by the clearinghouse.

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.

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

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Proposed Committee Substitute by the Committee on Budget Subcommittee on Finance and Tax

A bill to be entitled

An act relating to the administration of property tax; amending s. 192.001, F.S.; clarifying definitions governing the administration of property tax; repealing s. 192.117, F.S., relating to the Property Tax Administration Task Force; 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"; amending 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 s. 193.155, F.S.; clarifying provisions allowing a taxpayer to file an application for homestead assessment in the year following eligibility; amending ss. 193.1554 and 193.1555, F.S.; specifying that property is assessed at just value as of January 1 of the year that the property becomes eligible for assessment rather than the year in which the property is placed on the tax roll; providing for the assessment of a parcel that is created by combining or dividing a parcel that is eligible for assessment as nonhomestead residential property or nonresidential real property; amending ss. 193.501, 193.503, and 193.505, F.S.; deleting provisions requiring that the tax collector report deferred tax liability to the

Department of Revenue; amending s. 194.011, F.S.; clarifying provisions requiring that an objection to an assessment be filed within a specified period; amending s. 194.032, F.S.; providing for a petitioner's hearing before the value adjustment board to be rescheduled under certain circumstances; 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 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. 194.037, F.S.; revising requirements for the information that is provided by the clerk in a newspaper of general circulation regarding the tax

impact of petitions before the value adjustment board; amending s. 194.171, F.S.; defining the term "rendered" for purposes of determining the time within which to contest a tax assessment; amending s. 195.096, F.S.; revising requirements for the Department of Revenue to provide certain information concerning its review of assessment rolls to the Legislature and county commissions; providing for such information to be provided upon request; repealing s. 195.0985, F.S., relating to a requirement that the department publish annual ratio studies; amending s. 195.099, F.S.; allowing the department discretion in reviewing assessments of certain businesses; amending s. 196.012, F.S.; revising the definitions of the terms "new business" and "expansion of an existing business"; amending s. 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 applicant for an exemption for a disabled veteran or for a surviving spouse to apply for the exemption before receiving certain documentation from the Federal Government; amending s. 196.082, F.S.; authorizing an applicant for a discount available to disabled veterans to apply for the discount before receiving certain documentation from the Federal Government; amending s. 196.091, F.S.; authorizing an applicant applying for an exemption for disabled veterans confined to a wheelchair to apply for the exemption

before receiving certain documentation from the Federal Government; amending s. 196.101, F.S.; authorizing an applicant applying for an exemption for totally and permanently disabled persons to apply for the exemption before receiving certain documentation from the Federal Government; amending s. 196.121, F.S.; authorizing the Department of Revenue to provide certain forms electronically; amending s. 196.1995, F.S.; authorizing the board of county commissioners of a charter county to call and hold a referendum to determine whether to grant economic development ad valorem tax exemptions; revising the language of ballot questions relating to the authority to grant economic development tax exemptions; providing for application of a provision limiting the calling of another referendum within a certain time; specifying additional information that must be included in a written application requesting adoption of an ordinance granting an economic development ad valorem tax exemption; specifying factors for a board of county commissioners or governing authority of a municipality to consider when deciding whether to approve or reject applications for economic development tax exemptions; providing legislative intent; limiting the allowable duration of an economic development tax exemption granted by a county or municipal ordinance; authorizing written tax exemption agreements consistent with the act upon approval of a tax exemption application; specifying that the written

tax agreement must require the applicant to report certain information at a specific time before expiration of the exemption; authorizing the board of county commissioners or the governing authority of the municipality to revoke, in whole or in part, the exemption under certain circumstances; amending s. 196.202, F.S.; authorizing an applicant applying for an exemption for widows, widowers, blind persons, or persons who are totally and permanently disabled to apply for the exemption before receiving certain documentation from the Federal Government; amending s. 196.24, F.S.; authorizing an applicant applying for an exemption for disabled ex-servicemembers or a surviving spouse to apply for the exemption before receiving certain documentation from the Federal 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. 197.253, 197.3041, and 197.3073, F.S., relating to certain tax deferrals; conforming cross-references; amending s. 200.065, F.S., relating to the method of fixing millage; clarifying provisions requiring publication of notice; conforming cross-references; 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; amending ss. 218.12 and 218.125, F.S.; providing for certain undistributed moneys to revert to the fund from which the appropriation was made if a fiscally constrained county fails to apply for its distribution; providing effective dates.

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

Section 1. Subsections (2) and (18) of section 192.001, Florida Statutes, are amended to read:

192.001 Definitions.—All definitions set out in chapters 1 and 200 that are applicable to this chapter are included herein. In addition, the following definitions shall apply in the imposition of ad valorem taxes:

(2) "Assessed value of property" means an annual determination of the just or fair market value of an item or property, or the value of ~~the homestead~~ property as limited pursuant to ~~s. 4(d),~~ Art. VII of the State Constitution, or, if a property is assessed solely on the basis of character or use or at a specified percentage of its value~~,~~ pursuant to ~~s. 4(a) or 4(c),~~ Art. VII of the State Constitution, its classified use value or fractional value.

(18) "Complete submission of the rolls" includes, but is not ~~necessarily~~ limited to, accurate tabular summaries of valuations as prescribed by department rule; a computer tape copy of the real property assessment roll including for each parcel total value of improvements, land value, the ~~two most recently~~ recorded selling prices and other transfer data

required by s. 193.114, the value of any improvement made to the parcel in the 12 months preceding the valuation date, the type and amount of any exemption granted, and such other information as may be required by department rule; an accurate tabular summary by property class of any adjustments made to recorded selling prices or fair market value in arriving at assessed value, as prescribed by department rule; a computer tape copy of the tangible personal property assessment roll, including for each entry a unique account number and such other information as may be required by department rule; and an accurate tabular summary of per-acre land valuations used for each class of agricultural property in preparing the assessment roll, as prescribed by department rule.

Section 2. Section 192.117, Florida Statutes, is repealed.

Section 3. Paragraphs (n) and (p) of subsection (2) 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~~.

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 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.

Section 5. Effective July 1, 2011, paragraph (j) of subsection (8) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(8) Property assessed under this section shall be assessed at less than just value when the person who establishes a new homestead has received a homestead exemption as of January 1 of either of the 2 immediately preceding years. A person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007, and only if this subsection applies retroactive to January 1, 2008. For purposes of this subsection, a husband and wife who owned and both permanently resided on a previous homestead shall each be considered to have received the homestead exemption even though only the husband or the wife applied for the homestead exemption on the previous homestead. The assessed value of the newly established homestead shall be determined as provided in this subsection.

(j) Any person who is qualified to have his or her property assessed under this subsection and who fails to timely file an application for <u>such assessment</u> ~~his or her new homestead in the first year following eligibility~~ may file in a subsequent year.

The assessment reduction, calculated as if the application for assessment under this subsection had been timely filed, shall be applied to assessed value in the year such assessment ~~the transfer~~ is first approved, and refunds of tax may not be made for previous years.

Section 6. Subsections (2), (3), and (7) of section 193.1554, Florida Statutes, are amended to read:

193.1554 Assessment of nonhomestead residential property.—

(2) For all levies other than school district levies, nonhomestead residential property shall be assessed at just value as of January 1, 2008. Property that becomes eligible for assessment pursuant to this section ~~placed on the tax roll~~ after January 1, 2008, shall be assessed at just value as of January 1 of the year in which the property becomes eligible ~~is placed on the tax roll~~.

(3) Beginning in 2009, or the year following the year the property becomes eligible for assessment pursuant to this section ~~is placed on the tax roll~~, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.

(7) Any increase in the value of property assessed under this section which is attributable to combining or dividing parcels shall be assessed at just value, and the just value shall be apportioned among the parcels created. A parcel that is created by combining or dividing a parcel that is eligible for assessment pursuant to this section retains such eligibility and shall be assessed as provided in this subsection. A parcel that is combined or divided after January 1 and that is included as a

combined or divided parcel on the tax notice shall not be considered to be a combined or divided parcel for purposes of this section until the January 1 that it is first assessed as a combined or divided parcel.

Section 7. Subsections (2), (3), and (7) of section 193.1555, Florida Statutes, are amended to read:

193.1555 Assessment of certain residential and nonresidential real property.—

(2) For all levies other than school district levies, nonresidential or nonhomestead real property shall be assessed at just value as of January 1, 2008. Property that becomes eligible for assessment pursuant to this section ~~placed on the tax roll~~ after January 1, 2008, shall be assessed at just value as of January 1 of the year in which the property becomes eligible for assessment pursuant to this section ~~is placed on the tax roll~~.

(3) Beginning in 2009, or the year following the year the property becomes eligible for assessment pursuant to this section ~~is placed on the tax roll~~, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.

(7) Any increase in the value of property assessed under this section which is attributable to combining or dividing parcels shall be assessed at just value, and the just value shall be apportioned among the parcels created. A parcel that is created by combining or dividing a parcel that is eligible for assessment pursuant to this section retains such eligibility and shall be assessed as provided in this subsection. A parcel that

is combined or divided after January 1 and that is included as a combined or divided parcel on the tax notice shall not be considered to be a combined or divided parcel for purposes of this section until the January 1 that it is first assessed as a combined or divided parcel.

Section 8. Subsection (7) of section 193.501, Florida Statutes, is amended to read:

193.501 Assessment of lands subject to a conservation easement, environmentally endangered lands, or lands used for outdoor recreational or park purposes when land development rights have been conveyed or conservation restrictions have been covenanted.—

(7)~~(a)~~ The property appraiser shall report to the department showing the just value and the classified use value of property that is subject to a conservation easement under s. 704.06, property assessed as environmentally endangered land pursuant to this section, and property assessed as outdoor recreational or park land.

~~(b) The tax collector shall annually report to the department the amount of deferred tax liability collected pursuant to this section.~~

Section 9. Paragraph (d) of subsection (9) of section 193.503, Florida Statutes, is amended to read:

193.503 Classification and assessment of historic property used for commercial or certain nonprofit purposes.—

(9)

~~(d) The tax collector shall annually report to the department the amount of deferred tax liability collected pursuant to this section.~~

Section 10. Paragraph (c) of subsection (9) of section 193.505, Florida Statutes, is amended to read:

193.505 Assessment of historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted.—

(9)

~~(c) The tax collector shall annually report to the department the amount of deferred tax liability collected pursuant to this section.~~

Section 11. Effective July 1, 2011, and applying to assessments beginning with the 2011 tax year, paragraph (d) of subsection (3) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. A petition to the value adjustment board shall describe the property by parcel number and shall be filed as follows:

(d) The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser as provided in subsection (1). With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be

filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser under s. 193.461, s. 193.503, s. 193.625, or s. 196.193 or notice by the tax collector under s. 197.253, s. 197.3041, or s. 197.3073.

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:


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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 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.

(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.

Section 15. Effective July 1, 2011, and applying to assessments beginning with the 2011 tax year, subsection (1) of section 194.037, Florida Statutes, is amended to read:

194.037 Disclosure of tax impact.—

(1) After hearing all petitions, complaints, appeals, and disputes, the clerk shall make public notice of the findings and results of the board in at least a quarter-page size advertisement of a standard size or tabloid size newspaper, and the headline shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county. The newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter, pursuant to chapter 50. The headline shall read: TAX IMPACT OF VALUE ADJUSTMENT BOARD. The public notice shall list the members of the value adjustment board and the taxing authorities to which they are elected. The form shall show, in columnar form, for each of the property classes listed under subsection (2), the following information, with appropriate column totals:

(a) In the first column, the number of parcels for which the board granted exemptions that had been denied or that had not been acted upon by the property appraiser.

(b) In the second column, the number of parcels for which petitions were filed concerning a property tax exemption.

(c) In the third column, the number of parcels for which exemption petitions were filed but were not considered by the board because such petitions were withdrawn or settled prior to

the board's consideration.

(d) ~~(c)~~ In the fourth ~~third~~ column, the number of parcels for which the board considered the petition and reduced the assessment from that made by the property appraiser on the initial assessment roll.

~~(d) In the fourth column, the number of parcels for which petitions were filed but not considered by the board because such petitions were withdrawn or settled prior to the board's consideration.~~

(e) In the fifth column, the number of parcels for which petitions were filed requesting a change in just or assessed value, including requested changes in assessment classification.

(f) In the sixth column, the number of parcels for which value petitions were filed but were not considered by the board because such petitions were withdrawn or settled prior to the board's consideration.

(g) ~~(f)~~ In the seventh ~~sixth~~ column, the net change in county taxable value from the assessor's initial roll which results from board decisions.

(h) ~~(g)~~ In the eighth ~~seventh~~ column, the net shift in taxes to parcels not granted relief by the board. The shift shall be computed as the amount shown in column 6 multiplied by the applicable millage rates adopted by the taxing authorities in hearings held pursuant to s. 200.065(2)(d) or adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution, but without adjustment as authorized pursuant to s. 200.065(6). If for any taxing authority the hearing has not been completed at the time the notice required herein is prepared, the millage rate used shall be that adopted in the

hearing held pursuant to s. 200.065(2)(c).

Section 16. Effective July 1, 2011, and applying to assessments beginning with the 2011 tax year, subsection (2) of section 194.171, Florida Statutes, is amended to read:

194.171 Circuit court to have original jurisdiction in tax cases.—

(2) No action shall be brought to contest a tax assessment 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 assessment by the value adjustment board if a petition contesting the assessment had not received final action by the value adjustment board prior to extension of the roll under s. 197.323. For purposes of this subsection, the term "rendered" means a decision issued by the value adjustment board and sent by first-class mail to the petitioner as provided in s. 194.034(2).

Section 17. Effective July 1, 2011, paragraph (f) of subsection (2) and subsection (3) of section 195.096, Florida Statutes, are amended to read:

195.096 Review of assessment rolls.—

(2) The department shall conduct, no less frequently than once every 2 years, an in-depth review of the assessment rolls of each county. The department need not individually study every use-class of property set forth in s. 195.073, but shall at a minimum study the level of assessment in relation to just value of each classification specified in subsection (3). Such in-depth review may include proceedings of the value adjustment board and the audit or review of procedures used by the counties to appraise property.

(f) Within 120 days following the receipt of a county assessment roll by the executive director of the department pursuant to s. 193.1142(1), or within 10 days after approval of the assessment roll, whichever is later, the department shall complete the review for that county and develop ~~forward its~~ findings, including a statement of the confidence interval for the median and such other measures as may be appropriate for each classification or subclassification studied and for the roll as a whole, employing a 95 percent ~~95-percent~~ level of confidence, and related statistical and analytical details ~~to the Senate and the House of Representatives committees with oversight responsibilities for taxation, and the appropriate property appraiser~~. ~~Upon releasing its findings, the department shall notify the chairperson of the appropriate county commission or the corresponding official under a consolidated charter that the department's findings are available upon request. The department shall, within 90 days after receiving a written request from the chairperson of the appropriate county commission or the corresponding official under a consolidated charter, forward a copy of its findings, including the confidence interval for the median and such other measures of each classification or subclassification studied and for all the roll as a whole, and related statistical and analytical details, to the requesting party.~~

(3)(a) Upon completion of review pursuant to paragraph (2)(f), the department shall publish the results of reviews conducted under this section. The results must include all statistical and analytical measures computed under this section for the real property assessment roll as a whole, the personal

property assessment roll as a whole, and independently for the following real property classes whenever the classes constituted 5 percent or more of the total assessed value of real property in a county on the previous tax roll:

1. Residential property that consists of one primary living unit, including, but not limited to, single-family residences, condominiums, cooperatives, and mobile homes.

2. Residential property that consists of two or more primary living units.

3. Agricultural, high-water recharge, historic property used for commercial or certain nonprofit purposes, and other use-valued property.

4. Vacant lots.

5. Nonagricultural acreage and other undeveloped parcels.

6. Improved commercial and industrial property.

7. Taxable institutional or governmental, utility, locally assessed railroad, oil, gas and mineral land, subsurface rights, and other real property.

When one of the above classes constituted less than 5 percent of the total assessed value of all real property in a county on the previous assessment roll, the department may combine it with one or more other classes of real property for purposes of assessment ratio studies or use the weighted average of the other classes for purposes of calculating the level of assessment for all real property in a county. The department shall also publish such results for any subclassifications of the classes or assessment rolls it may have chosen to study.

(b) When necessary for compliance with s. 1011.62, and for

those counties not being studied in the current year, the department shall project value-weighted mean levels of assessment for each county. The department shall make its projection based upon the best information available, utilizing professionally accepted methodology, and shall separately allocate changes in total assessed value to:

1. New construction, additions, and deletions.

2. Changes in the value of the dollar.

3. Changes in the market value of property other than those attributable to changes in the value of the dollar.

4. Changes in the level of assessment.

In lieu of the statistical and analytical measures published pursuant to paragraph (2)(f) ~~(a)~~, the department shall publish details concerning the computation of estimated assessment levels and the allocation of changes in assessed value for those counties not subject to an in-depth review.

(c) Upon publication of data and findings as required by this subsection, the department shall notify the committees of the Senate and of the House of Representatives having oversight responsibility for taxation and the appropriate property appraiser and county commission chairperson or corresponding official under a consolidated charter. Copies of the data and findings shall be provided upon request.

Section 18. Section 195.0985, Florida Statutes, is repealed.

Section 19. Section 195.099, Florida Statutes, is amended to read:

195.099 Periodic review.—

(1)(a) The department may ~~shall periodically~~ review the assessments of new, rebuilt, and expanded business reported according to s. 193.077(3), to ensure parity of level of assessment with other classifications of property.

(b) This subsection shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(2) The department may ~~shall~~ review the assessments of new and expanded businesses granted an exemption pursuant to s. 196.1995 to ensure parity of level of assessment with other classifications of property.

Section 20. Effective July 1, 2011, subsections (15) and (16) of section 196.012, Florida Statutes, are amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(15) "New business" means:

(a)~~1.~~ A business or nonprofit organization starting operations in the state which will create new, full-time jobs that the board of county commissioners or the governing authority of a municipality has determined are jobs for which the board or governing authority wishes to provide incentives through ad valorem tax exemptions granted in accordance with the requirements of s. 196.1995; ~~establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant;~~

~~2. A business establishing 25 or more jobs to employ 25 or~~


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~~more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; or~~

~~3. An office space in this state owned and used by a corporation newly domiciled in this state; provided such office space houses 50 or more full-time employees of such corporation; provided that such business or office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.~~

(b) Any business located in an enterprise zone or brownfield area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business; or~~.~~

(c) A business that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an economic development ad valorem tax exemption from the county under s. 196.1995.

(16) "Expansion of an existing business" means:

(a) The expansion of an existing business or nonprofit organization, other than its relocation to another community, which results in a net increase of new, full-time jobs for which the board or governing authority wishes to provide incentives through ad valorem tax exemptions granted pursuant to s. 196.1995; or

~~1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of~~

~~tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or~~

~~2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site colocated with a commercial or industrial operation owned by the same business, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.~~

(b) Any business that is located in an enterprise zone or brownfield area and that increases operations on a site collocated ~~colocated~~ with a commercial or industrial operation owned by the same business.

Section 21. Subsection (7) of section 196.031, Florida Statutes, is amended to read:

196.031 Exemption of homesteads.—

(7) Unless the homestead property is totally exempt, the exemptions provided in paragraphs (1)(a) and (b) and other 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),~~

~~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.~~

Section 22. Subsection (5) is added to section 196.081, Florida Statutes, to read:

196.081 Exemption for certain permanently and totally disabled veterans and for surviving spouses of veterans.—

(5) An applicant for the exemption under this section may apply for the exemption before receiving the necessary documentation from the United States Government or United States Department of Veterans Affairs or its predecessor. Upon receipt of the documentation, the exemption shall be granted as of the date of the original 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).

Section 23. Subsection (6) is added to section 196.082, Florida Statutes, to read:

196.082 Discounts for disabled veterans.—

(6) An applicant for the discount under this section may apply for the discount before receiving the necessary documentation from the United States Department of Veterans

Affairs. Upon receipt of the documentation, the discount shall be granted as of the date of the original 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).

Section 24. Subsection (4) is added to section 196.091, Florida Statutes, to read:

196.091 Exemption for disabled veterans confined to wheelchairs.—

(4) An applicant for the exemption under this section may apply for the exemption before receiving the necessary documentation from the United States Government or United States Department of Veterans Affairs or its predecessor. Upon receipt of the documentation, the exemption shall be granted as of the date of the original 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).

Section 25. Subsection (8) is added to section 196.101, Florida Statutes, to read:

196.101 Exemption for totally and permanently disabled persons.—

(8) An applicant for the exemption under this section may apply for the exemption before receiving the necessary documentation from the United States Department of Veterans Affairs or its predecessor. Upon receipt of the documentation, the exemption shall be granted as of the date of the original 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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Section 26. Subsection (1) of section 196.121, Florida Statutes, is amended to read:

196.121 Homestead exemptions; forms.—

(1) The Department of Revenue shall provide, by electronic means or other methods designated by the department, ~~furnish to the property appraiser of each county a sufficient number of printed~~ forms to be filed by taxpayers claiming to be entitled to said exemption and shall prescribe the content of such forms by rule.

Section 27. Effective July 1, 2011, section 196.1995, Florida Statutes, is amended to read:

196.1995 Economic development ad valorem tax exemption.—

(1) The board of county commissioners of any county or the governing authority of any municipality shall call a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions under s. 3, Art. VII of the State Constitution if:

(a) The board of county commissioners of the county or the governing authority of the municipality votes to hold such referendum; ~~or~~

(b) The board of county commissioners of the county or the governing authority of the municipality receives a petition signed by 10 percent of the registered electors of its respective jurisdiction, which petition calls for the holding of such referendum; or

(c) The board of county commissioners of a charter county receives a petition or initiative signed by the required percentage of registered electors in accordance with the

procedures established in the county's charter for the enactment of ordinances or for approval of amendments of the charter, including a county that has a charter requiring signatures from fewer than 10 percent of its registered electors, which petition or initiative calls for the holding of such referendum.

(2) The ballot question in such referendum shall be in substantially the following form:

Shall the board of county commissioners of this county (or the governing authority of this municipality, or both) be authorized to grant, pursuant to s. 3, Art. VII of the State Constitution, property tax exemptions to new businesses and expansions of existing businesses that are expected to create new, full-time jobs and have been evaluated as being of economic interest to the community?

.... Yes—For authority to grant exemptions.

.... No—Against authority to grant exemptions.

(3) The board of county commissioners or the governing authority of the municipality that calls a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions may vote to limit the effect of the referendum to authority to grant economic development tax exemptions for new businesses and expansions of existing businesses located in an enterprise zone or a brownfield area, as defined in s. 376.79(4). If an area nominated to be an enterprise zone pursuant to s. 290.0055 has not yet been designated pursuant to

s. 290.0065, the board of county commissioners or the governing authority of the municipality may call such referendum prior to such designation; however, the authority to grant economic development ad valorem tax exemptions does not apply until such area is designated pursuant to s. 290.0065. The ballot question in such referendum shall be in substantially the following form and shall be used in lieu of the ballot question prescribed in subsection (2):

Shall the board of county commissioners of this county (or the governing authority of this municipality, or both) be authorized to grant, pursuant to s. 3, Art. VII of the State Constitution, property tax exemptions for new businesses and expansions of existing businesses that ~~which~~ are located in an enterprise zone or a brownfield area, are expected to create new, full-time jobs, and have been evaluated as being of economic interest to the community?

.... Yes—For authority to grant exemptions.
.... No—Against authority to grant exemptions.

(4) A referendum pursuant to this section may be called only once in any 12-month period. If a referendum is called or held on or before the effective date of any amendment to this section, the board of county commissioners does not need to call or hold another referendum.

(5) Upon a majority vote in favor of such authority, the board of county commissioners or the governing authority of the municipality, at its discretion, by ordinance may exempt from ad

valorem taxation up to 100 percent of the assessed value of all improvements to real property made by or for the use of a new business and of all tangible personal property of such new business, or up to 100 percent of the assessed value of all added improvements to real property made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business, provided that the improvements to real property are made or the tangible personal property is added or increased on or after the day the ordinance is adopted. However, if the authority to grant exemptions is approved in a referendum in which the ballot question contained in subsection (3) appears on the ballot, the authority of the board of county commissioners or the governing authority of the municipality to grant exemptions is limited solely to new businesses and expansions of existing businesses that are located in an enterprise zone or brownfield area. Property acquired to replace existing property shall not be considered to facilitate a business expansion. The exemption applies only to taxes levied by the respective unit of government granting the exemption. The exemption does not apply, however, to taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution. Any such exemption shall remain in effect for up to 10 years with respect to any particular facility, regardless of any change in the authority of the county or municipality to grant such exemptions. The exemption shall not be prolonged or extended by granting exemptions from additional taxes or by virtue of any reorganization or sale of the business receiving

the exemption.

(6) With respect to a new business as defined by s. 196.012(15)(b)~~(c)~~, the municipality annexing the property on which the business is situated may grant an economic development ad valorem tax exemption under this section to that business for a period that will expire upon the expiration of the exemption granted by the county. If the county renews the exemption under subsection (7), the municipality may also extend its exemption. A municipal economic development ad valorem tax exemption granted under this subsection may not extend beyond the duration of the county exemption.

(7) The authority to grant exemptions under this section expires 10 years after the date such authority was approved in an election, but such authority may be renewed for subsequent 10-year periods if each 10-year renewal is approved in a referendum called and held pursuant to this section.

(8) Any person, firm, or corporation which desires an economic development ad valorem tax exemption shall, in the year the exemption is desired to take effect, file a written application on a form prescribed by the department with the board of county commissioners or the governing authority of the municipality, or both. The application shall request the adoption of an ordinance granting the applicant an exemption pursuant to this section and shall include the following information:

(a) The name and location of the new business or the expansion of an existing business;

(b) A description of the improvements to real property for which an exemption is requested and the date of commencement of

construction of such improvements;

(c) A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;

(d) Proof, to the satisfaction of the board of county commissioners or the governing authority of the municipality, that the applicant is a new business or an expansion of an existing business, as defined in s. 196.012(15) or (16);

(e) The number of jobs the applicant expects to create along with the average and median wage of the jobs and whether the jobs are full-time or part-time;

(f) The expected time schedule for job creation; and

(g) ~~(e)~~ Other information deemed necessary by the department.

(9) Before it takes action on the application, the board of county commissioners or the governing authority of the municipality shall deliver a copy of the application to the property appraiser of the county. After careful consideration, the property appraiser shall report the following information to the board of county commissioners or the governing authority of the municipality:

(a) The total revenue available to the county or municipality for the current fiscal year from ad valorem tax sources, or an estimate of such revenue if the actual total revenue available cannot be determined;

(b) Any revenue lost to the county or municipality for the current fiscal year by virtue of exemptions previously granted under this section, or an estimate of such revenue if the actual revenue lost cannot be determined;

(c) An estimate of the revenue which would be lost to the county or municipality during the current fiscal year if the exemption applied for were granted had the property for which the exemption is requested otherwise been subject to taxation; and

(d) A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in s. 196.012(15) or (16), or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser, the department shall provide to him or her such information as it may have available to assist in making such determination.

(10) The board of county commissioners or the governing authority of the municipality may consider any economically related characteristics or criteria deemed necessary or appropriate when exercising its discretion whether to approve or reject an application for an exemption but, at a minimum, must consider the following:

(a) The total number of new jobs to be created by the applicant.

(b) The average wage and median wage of the new jobs.

(c) The capital investment to be made by the applicant.

(d) Whether the business or operation qualifies as an industry that the board of county commissioners or the governing authority of the municipality may target.

(e) The environmental impact of the proposed business or operation.

(f) The extent to which the applicant intends to source its


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supplies and materials within the applicable jurisdiction.

The Legislature intends to vest counties and municipalities with as much discretion as legally permissible to determine the new jobs for which incentives should be provided through the granting of ad valorem tax exemptions under this section.

(11)~~(10)~~ An ordinance granting an exemption under this section shall be adopted in the same manner as any other ordinance of the county or municipality and shall include the following:

(a) The name and address of the new business or expansion of an existing business to which the exemption is granted;

(b) The total amount of revenue available to the county or municipality from ad valorem tax sources for the current fiscal year, the total amount of revenue lost to the county or municipality for the current fiscal year by virtue of economic development ad valorem tax exemptions currently in effect, and the estimated revenue loss to the county or municipality for the current fiscal year attributable to the exemption of the business named in the ordinance;

(c) The period of time, not to exceed 10 years, for which the exemption will remain in effect and the expiration date of the exemption; and

(d) A finding that the business named in the ordinance meets the requirements of s. 196.012(15) or (16).

(12) Upon approval of an application for a tax exemption under this section, the board of county commissioners or the governing authority of the municipality and the applicant may enter into a written tax exemption agreement, which may include

performance criteria and must be consistent with the requirements of this section or other applicable laws. The agreement must require the applicant to report at a specific time before the expiration of the exemption the actual number of new, full-time jobs created and their actual average and median wage. The agreement may provide the board of county commissioners or the governing authority of the municipality with authority to revoke, in whole or in part, the exemption if the applicant fails to meet the expectations and representations described in subsection (8).

Section 28. Section 196.202, Florida Statutes, is amended to read:

196.202 Property of widows, widowers, blind persons, and persons totally and permanently disabled.—

(1) Property to the value of $500 of every widow, widower, blind person, or totally and permanently disabled person who is a bona fide resident of this state shall be exempt from taxation. As used in this section, the term “totally and permanently disabled person” means a person who is currently certified by a physician licensed in this state, by the United States Department of Veterans Affairs or its predecessor, or by the Social Security Administration to be totally and permanently disabled.

(2) An applicant for the exemption under this section may apply for the exemption before receiving the necessary documentation from the United States Department of Veterans Affairs or its predecessor or from the Social Security Administration. Upon receipt of the documentation, the exemption shall be granted as of the date of the original 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).

Section 29. Section 196.24, Florida Statutes, is amended to read:

196.24 Exemption for disabled ex-servicemember or surviving spouse; evidence of disability.—

(1) Any ex-servicemember, as defined in s. 196.012, who is a bona fide resident of the state, who was discharged under honorable conditions, and who has been disabled to a degree of 10 percent or more while serving during a period of wartime service as defined in s. 1.01(14), or by misfortune, is entitled to the exemption from taxation provided for in s. 3(b), Art. VII of the State Constitution as provided in this section. Property to the value of $5,000 of such a person is exempt from taxation. The production by him or her of a certificate of disability from the United States Government or the United States Department of Veterans Affairs or its predecessor before the property appraiser of the county wherein the ex-servicemember's property lies is prima facie evidence of the fact that he or she is entitled to the exemption. The unremarried surviving spouse of such a disabled ex-servicemember who, on the date of the disabled ex-servicemember's death, had been married to the disabled ex-servicemember for at least 5 years is also entitled to the exemption.

(2) An applicant for the exemption under this section may apply for the exemption before receiving the necessary documentation from the United States Department of Veterans Affairs or its predecessor. Upon receipt of the documentation,

the exemption shall be granted as of the date of the original 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).

Section 30. 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 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.

Section 31. Effective July 1, 2011, and applying to assessments beginning with the 2011 tax year, paragraph (b) of subsection (2) of section 197.253, Florida Statutes, is amended to read:

197.253 Homestead tax deferral; application.—

(2)

(b) Appeals of the decision of the tax collector to the value adjustment board shall be in writing on a form prescribed by the department and furnished by the tax collector. Such appeal shall be filed with the value adjustment board as

provided in s. 194.011 ~~within 20 days after the applicant's receipt of the notice of disapproval~~. The value adjustment board shall review the application and the evidence presented to the tax collector upon which the applicant based his or her claim for tax deferral and, at the election of the applicant, shall hear the applicant in person, or by agent on the applicant's behalf, on his or her right to homestead tax deferral. The value adjustment board shall reverse the decision of the tax collector and grant homestead tax deferral to the applicant, if in its judgment the applicant is entitled thereto, or affirm the decision of the tax collector. Such action of the value adjustment board shall be final unless the applicant or tax collector or other lienholder, within 15 days from the date of disapproval of the application by the board, files in the circuit court of the county in which the property is located, a proceeding for a declaratory judgment or other appropriate proceeding.

Section 32. Effective July 1, 2011, and applying to assessments beginning with the 2011 tax year, paragraph (b) of subsection (2) of section 197.3041, Florida Statutes, is amended to read:

197.3041 Tax deferral for recreational and commercial working waterfronts; application.—

(2)

(b) An appeal of the decision of the tax collector to the value adjustment board must be in writing on a form prescribed by the department and furnished by the tax collector. The appeal must be filed with the value adjustment board as provided in s. 194.011 ~~within 20 days after the applicant's receipt of the~~

~~notice of disapproval~~, and the board must approve or disapprove the appeal within 30 days after receipt. The value adjustment board shall review the application and the evidence presented to the tax collector upon which the applicant based his or her claim for tax deferral and, at the election of the applicant, shall hear the applicant in person, or by agent on the applicant's behalf, on his or her right to the tax deferral. The value adjustment board shall reverse the decision of the tax collector and grant a tax deferral to the applicant if, in its judgment, the applicant is entitled to the tax deferral or shall affirm the decision of the tax collector. Action by the value adjustment board is final unless the applicant or tax collector or other lienholder, within 15 days after the date of disapproval of the application by the board, files in the circuit court of the county in which the property is located a de novo proceeding for a declaratory judgment or other appropriate proceeding.

Section 33. Effective July 1, 2011, and applying to assessments beginning with the 2011 tax year, paragraph (b) of subsection (2) of section 197.3073, Florida Statutes, is amended to read:

197.3073 Deferral application.—

(2) The tax collector shall consider and render his or her findings, determinations, and decision on each annual application for a deferral for affordable rental housing within 45 days after the date the application is filed. The tax collector shall exercise reasonable discretion based upon applicable information available under this section. The determinations and findings of the tax collector are not quasi-

judicial and are subject exclusively to review by the value adjustment board as provided by this section. A tax collector who finds that a property owner is entitled to the deferral shall approve the application and file the application in the permanent records.

(b) An appeal by the property owner of the decision of the tax collector to deny the deferral must be submitted to the value adjustment board on a form prescribed by the department and furnished by the tax collector. The appeal must be filed with the value adjustment board as provided in s. 194.011 ~~within 20 days after the applicant's receipt of the notice of disapproval~~, and the board must approve or disapprove the appeal within 30 days after receipt of the appeal. The value adjustment board shall review the application and the evidence presented to the tax collector upon which the property owner based a claim for deferral and, at the election of the property owner, shall hear the property owner in person, or by agent on the property owner's behalf, concerning his or her right to the deferral. The value adjustment board shall reverse the decision of the tax collector and grant a deferral to the property owner if, in its judgment, the property owner is entitled to the deferral or shall affirm the decision of the tax collector. Action by the value adjustment board is final unless the property owner or tax collector or other lienholder, within 15 days after the date of disapproval of the application by the board, files for a de novo proceeding for a declaratory judgment or other appropriate proceeding in the circuit court of the county in which the property is located.

Section 34. Effective July 1, 2011, paragraph (a) of

subsection (5) and paragraph (a) of subsection (10) of section 200.065, Florida Statutes, are amended to read:

200.065 Method of fixing millage.—

(5) Beginning in the 2009-2010 fiscal year and in each year thereafter:

(a) The maximum millage rate that a county, municipality, special district dependent to a county or municipality, municipal service taxing unit, or independent special district may levy is a rolled-back rate based on the amount of taxes which would have been levied in the prior year if the maximum millage rate had been applied, adjusted for change in per capita Florida personal income, unless a higher rate was ~~is~~ adopted, in which case the maximum is the adopted rate. The maximum millage rate applicable to a county authorized to levy a county public hospital surtax under s. 212.055 and which did so in fiscal year 2007 shall exclude the revenues required to be contributed to the county public general hospital in the current fiscal year for the purposes of making the maximum millage rate calculation, but shall be added back to the maximum millage rate allowed after the roll back has been applied, the total of which shall be considered the maximum millage rate for such a county for purposes of this subsection. The revenue required to be contributed to the county public general hospital for the upcoming fiscal year shall be calculated as 11.873 percent times the millage rate levied for countywide purposes in fiscal year 2007 times 95 percent of the preliminary tax roll for the upcoming fiscal year. A higher rate may be adopted only under the following conditions:

1. A rate of not more than 110 percent of the rolled-back

rate based on the previous year's maximum millage rate, adjusted for change in per capita Florida personal income, may be adopted if approved by a two-thirds vote of the membership of the governing body of the county, municipality, or independent district; or

2. A rate in excess of 110 percent may be adopted if approved by a unanimous vote of the membership of the governing body of the county, municipality, or independent district or by a three-fourths vote of the membership of the governing body if the governing body has nine or more members, or if the rate is approved by a referendum.

Any unit of government operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the State Constitution of 1968, which is granted the authority in the State Constitution to exercise all the powers conferred now or hereafter by general law upon municipalities and which exercises such powers in the unincorporated area shall be recognized as a municipality under this subsection. For a downtown development authority established before the effective date of the 1968 State Constitution which has a millage that must be approved by a municipality, the governing body of that municipality shall be considered the governing body of the downtown development authority for purposes of this subsection.

(10)(a) In addition to the notice required in subsection (3), a district school board shall publish a second notice of intent to levy capital outlay and capital improvement ~~additional~~ taxes under s. 1011.71(2) and (3). Such notice shall specify the

projects or number of school buses anticipated to be funded by such capital outlay and capital improvement ~~additional~~ taxes and shall be published in the size, within the time periods, adjacent to, and in substantial conformity with the advertisement required under subsection (3). The projects shall be listed in priority within each category as follows: construction and remodeling; maintenance, renovation, and repair; motor vehicle purchases; new and replacement equipment; payments for educational facilities and sites due under a lease-purchase agreement; payments for renting and leasing educational facilities and sites; payments of loans approved pursuant to ss. 1011.14 and 1011.15; payment of costs of compliance with environmental statutes and regulations; payment of premiums for property and casualty insurance necessary to insure the educational and ancillary plants of the school district; payment of costs of leasing relocatable educational facilities; and payments to private entities to offset the cost of school buses pursuant to s. 1011.71(2)(i). The additional notice shall be in the following form, except that if the district school board is proposing to levy the same millage under s. 1011.71(2) and (3) which it levied in the prior year, the words "continue to" shall be inserted before the word "impose" in the first sentence, and except that the second sentence of the second paragraph shall be deleted if the district is advertising pursuant to paragraph (3)(e):

NOTICE OF TAX FOR SCHOOL
CAPITAL OUTLAY

The ...(name of school district)... will soon consider a measure to impose a ...(number)... mill property tax for the capital outlay projects listed herein.

This tax is in addition to the school board's proposed tax of ...(number)... mills for operating expenses and is proposed solely at the discretion of the school board. THE PROPOSED COMBINED SCHOOL BOARD TAX INCREASE FOR BOTH OPERATING EXPENSES AND CAPITAL OUTLAY IS SHOWN IN THE ADJACENT NOTICE.

The capital outlay tax will generate approximately $...(amount)..., to be used for the following projects:

...(list of capital outlay projects)...

All concerned citizens are invited to a public hearing to be held on ...(date and time)... at ...(meeting place)....

A DECISION on the proposed CAPITAL OUTLAY TAXES will be made at this hearing.

Section 35. 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 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 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.

Section 36. Effective July 1, 2011, subsection (2) of section 218.12, Florida Statutes, is amended to read:

218.12 Appropriations to offset reductions in ad valorem tax revenue in fiscally constrained counties.—

(2) On or before November 15 of each year, beginning in 2008, each fiscally constrained county shall apply to the Department of Revenue to participate in the distribution of the appropriation and provide documentation supporting the county's estimated reduction in ad valorem tax revenue in the form and manner prescribed by the Department of Revenue. The documentation must include an estimate of the reduction in taxable value directly attributable to revisions of Art. VII of the State Constitution for all county taxing jurisdictions within the county and shall be prepared by the property appraiser in each fiscally constrained county. The documentation must also include the county millage rates applicable in all such jurisdictions for both the current year and the prior year; rolled-back rates, determined as provided in s. 200.065(5) ~~200.065~~, for each county taxing jurisdiction; and maximum

millage rates that could have been levied by majority vote pursuant to s. 200.185. For purposes of this section, each fiscally constrained county's reduction in ad valorem tax revenue shall be calculated as 95 percent of the estimated reduction in taxable value times the lesser of the 2007 applicable millage rate or the applicable millage rate for each county taxing jurisdiction in the current ~~prior~~ year. If any fiscally constrained county fails to apply for the distribution, its share shall revert to the fund from which the appropriation was made.

Section 37. Effective July 1, 2011, subsection (2) of section 218.125, Florida Statutes, is amended to read:

218.125 Offset for tax loss associated with certain constitutional amendments affecting fiscally constrained counties.—

(2) On or before November 15 of each year, beginning in 2010, each fiscally constrained county shall apply to the Department of Revenue to participate in the distribution of the appropriation and provide documentation supporting the county's estimated reduction in ad valorem tax revenue in the form and manner prescribed by the Department of Revenue. The documentation must include an estimate of the reduction in taxable value directly attributable to revisions of Art. VII of the State Constitution for all county taxing jurisdictions within the county and shall be prepared by the property appraiser in each fiscally constrained county. The documentation must also include the county millage rates applicable in all such jurisdictions for the current year and the prior year, rolled-back rates determined as provided in s. 200.065 for each

county taxing jurisdiction, and maximum millage rates that could have been levied by majority vote pursuant to s. 200.065(5) ~~200.185~~. For purposes of this section, each fiscally constrained county's reduction in ad valorem tax revenue shall be calculated as 95 percent of the estimated reduction in taxable value multiplied by the lesser of the 2010 applicable millage rate or the applicable millage rate for each county taxing jurisdiction in the current ~~prior~~ year. If any fiscally constrained county fails to apply for the distribution, its share shall revert to the fund from which the appropriation was made.

Section 38. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

761308

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with directory and title amendments)

Between lines 210 and 211
insert:

(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

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

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete line 187

and insert:

Section 3. Paragraphs (n) and (p) of subsection (2) and subsection (4) of

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

Delete line 10

and insert:

defining the term "ownership transfer date"; providing that only the Department of Revenue may review changes in the assessed value of real property resulting from an informal conference with the taxpayer; amending

230360

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 232 - 264.

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

And the title is amended as follows:

Delete lines 13 - 16

and insert:

tax roll on the appraiser's website; amending

315320

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 849
and insert:
Section 27. Effective July 1, 2011, and applicable only to exemptions from ad valorem taxation granted pursuant to referenda held on or after July 1, 2011, under the provisions of subsection (1) of section 196.1995, Florida Statutes, section 196.1995,

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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 920 - 923

and insert:

only once in any 12-month period.

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

And the title is amended as follows:

Delete lines 99 - 101

and insert:

economic development tax exemptions; specifying

872616

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 1013 - 1026

and insert:

revenue lost cannot be determined; and

(c) An estimate of the revenue which would be lost to the county or municipality during the current fiscal year if the exemption applied for were granted had the property for which the exemption is requested otherwise been subject to taxation.~~;~~ ~~and~~

~~(d) A determination as to whether the property for which an exemption is requested is to be incorporated into a new business~~

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~~or the expansion of an existing business, as defined in s. 196.012(15) or (16), or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser, the department shall provide to him or her such information as it may have available to assist in making such determination.~~

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

And the title is amended as follows:

Delete line 105

and insert:

tax exemption; deleting a requirement that the property appraiser determine whether the property is to be incorporated into a new business or the expansion of an existing business, or neither; specifying factors for a board of

766148

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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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

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;


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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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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.;

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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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
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

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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.;

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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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
Comm: WD	.	
04/12/2011	.	
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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 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

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
Comm: WD	.	
04/12/2011	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 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.;

191694

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 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
Comm: WD	.	
04/12/2011	.	
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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).

185704

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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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).

538026

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
	.	
	.	
	.	

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
Comm: WD	.	
04/12/2011	.	
	.	
	.	
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The Committee on Budget Subcommittee on Finance and Tax (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 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.

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.

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

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:	PCS/SB 2042 (563296)
INTRODUCER:	Finance and Tax
SUBJECT:	Administration of Property Tax
DATE:	April 7, 2011 REVISED:

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

Please see Section VIII. for Additional Information:

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

I. Summary:

This proposed committee substitute (bill) clarifies ambiguous language and corrects drafting errors in the property tax statutes. It also standardizes statutory requirements for applying for tax deferral, 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, provides a procedure by which value adjustment boards may respond to complaints about special magistrates, and deletes obsolete statutory provisions. The bill also allows a county governing board to require the property appraiser to send additional information to taxpayers along with the notice of proposed taxes, and gives counties and municipalities additional latitude in granting economic development ad valorem tax exemptions, subject to approval by the voters.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 192.001, 192.117, 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, 196.012, 196.031, 196.081, 196.082, 196.091, 196.101, 196.121, 196.1995, 196.202, 196.24, 197.182, 197.253, 197.3041, 197.3073, 200.065, 200.069, 218.12, and 218.125.

II. Present Situation:

Property Tax Administrative Issues
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. Details of these changes are provided in the section-by-section analysis, below.

Notice of Proposed Property Taxes
Each property appraiser is required to prepare and deliver a notice of proposed property taxes and non-ad valorem assessments to each taxpayer listed on the current year's assessment roll.[1] This notice is commonly referred to as the Truth in Millage (TRIM) notice, which is generally the only acceptable means of providing notice to taxpayers, and is sent on behalf of all taxing authorities and local governing boards levying both ad valorem taxes and non-ad valorem assessments.

The specific elements and required content and format of the TRIM notice are prescribed by statute, and the department prescribes the forms. However, a county officer may use a different form provided that: (1) it is substantively similar to the one prescribed by the department; (2) his or her office pays the related expenses; and (3) he or she obtains prior written permission from the department's executive director.[2]

Economic Development Ad Valorem Tax Exemption
The State Constitution authorizes any county or municipality, for the purpose of its respective tax levy, to grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses.[3] Such an exemption must be granted by ordinance and approved by the voters. The amount or limits of the amount and time period for the exemption must be determined by general law, and authority to grant the exemption expires 10 years from the date of the approval by the voters and may be renewable by referendum.

[1] Section 200.065(2)(b), F.S.
[2] Section 200.069, F.S
[3] Article VII, sec. 3(c) of the State Constitution

This provision is codified in s. 196.1995, F.S., which limits the exemption to improvements to real property made by or for the use of a new business and of all tangible personal property of such new business, or to the assessed value of all added improvements to real property made to facilitate the expansion of an existing business and of the net increase in tangible personal property acquired to facilitate an expansion of an existing business

For purposes of this exemption, "new business" means:

(a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant;
2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; or
3. An office space in this state owned and used by a corporation newly domiciled in this state; provided such office space houses 50 or more full-time employees of such corporation; provided that such business or office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.

Expansion of an existing business means:

(a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or
2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site colocated with a commercial or industrial operation owned by the same business, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.[4]

The constitutional tax exemption for economic development is implemented by s. 196.1995, F.S., which requires a board of county commissioners or municipal governing body to call a referendum to determine whether to grant an economic development exemption if the commission or governing board votes to hold the referendum or it receives a petition signed by 10 percent of the registered electors calling for a referendum. Such a referendum may be called only once in any 12-month period. This section provides the specific ballot language for such a referendum. Upon approval by the voters, the governing board or commission may provide for the exemption by ordinance, and may exempt up to:

[4] Section 196.012(15)(a) and (16)(a),F.S.

- 100 percent of the assessed value from ad valorem taxation for all improvements to real property made by or for the use of a new business and for all tangible personal property of such new business, or
- 100 percent of the assessed value of all added improvements to real property that are made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business.

This section also provides for an application process, and requires the property appraiser to report to the commission or governing authority and estimate of the revenue which would be lost to the jurisdiction during the current fiscal year if the exemption were granted, and determination as to whether the exemption is for property of a new business or an existing business.

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, 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 (2) of s. 193.122, F.S., provides that within one week of certifying the tax rolls the property appraiser must publish a notice of the date of certification in a local newspaper and publicly display a notice of the date of certification in the property appraiser's office. This date is important because it begins the 60-day period during which a taxpayer may bring an action to contest a tax assessment in circuit court if no VAB petition has been filed[5]

Proposed change: Effective July 1, 2011 and applying to assessments beginning with the 2011 tax year, this subsection is amended to require the property appraiser to publish notice of certification on the appraiser's website..

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.[6] These sections also provide for assessment of combined or

[5] Section 194.171(2), F.S.

[6] 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

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.

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 not to exceed 4 hours."

Section 13

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.

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 reimbursement provisions are deleted from the statute. This bill 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. The legal counsel for the board must review the complaint, obtain necessary information about the complaint, and advise the board as to any action that should be taken. The board may remove a special magistrate from serving if he or she subsequently fails to comply with the board's action. All parties are given the opportunity to respond to the complaint, and all parties must be notified of any action taken by the board concerning the complaint.

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 provide the for purposes of this subsection, "rendered" means a decision is rendered by the value adjustment board and sent by first class mail to the petitioner as provided in s. 194.034(2), F.S.

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 196.012 provides definitions of terms for purposes of property tax exemptions. The terms "new business" and "expansion of an existing business" are defined in this section.

Proposed change: This section is amended to provide new definitions for these terms. Specific requirements for the number of jobs to be created and the increase in productive output are deleted from the definitions, and nonprofit organizations are made eligible for the exemption.

Section 21
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 to homestead property shall be applied in the order that results in the lowest taxable value.

Sections 22-25 and 28-29
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. The refund is limited to the previous 3 years, the same time period as other property tax refunds.[7]

Section 26
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.

Section 27
This section amends s. 196.1995, F.S., to amend the current statutory implementation of the economic development ad valorem tax exemption. It requires the board of county commissioners or governing body of a n municipality to call a referendum to determine whether to grant the exemption if it receives a petition signed by the required percentage of registered electors as provided in the procedures established in the county's charter for the enactment of ordinances or for approval of charter amendments, in addition to existing statutory methods of requiring a referendum.

This section amends the statutorily required ballot language the add that the exemption applies to new and expanding businesses that are expected to create new, full-time jobs and have been evaluated as being of economic interest to the community. The bill also provides that if a referendum is held on or before the effective date of any amendment to this section (of Florida Statutes) the board of county commissioners does not need to call or hold another referendum.

The bill revises the information that must be included in an application for an economic development tax exemption to include the number of jobs the applicant expects to create along with the average and median wage of the jobs and whether the jobs are full-time or pert-time, as well as the expected schedule for job creation. The bill also provides specific economic criteria that the board or governing authority must consider when deciding whether to grant an economic development tax exemption. The bill state that the Legislature intends to vest counties and municipalities with as much discretion as legally permissible to determine the new jobs for which incentives should be provided through the granting of ad valorem tax exemptions under this section., and allows the board or governing authority may enter into a written agreement with an applicant upon approval of an exemption application. The agreement may include performance criteria, and require the applicant to report the actual number of new, full-time jobs created and their average and median wage, at a specific time before the exemption expires. The written agreement may also grant the county or city the power to revoke the tax exemption if the applicant fails to meet its prior representations.

Section 30
Present situation: Section 197.182, F.S., requires the department to review most property tax refunds of $400 or more.

[7] Section 197.182(1)©, F.S.

Proposed change: Section 197.182, F.S., is amended to require the department to review refunds of $2500 or more.

Section 34
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".

Section 35
This section allows the board of county commissioners to require the property appraiser to send an additional form to taxpayers along with the trim notice. The cost of preparing and additional costs of mailing the form must be borne by the county, and the form may include information regarding the proposed budget for the county and inform taxpayers of the portion of the proposed nonvoted county millage which is attributable to each constitutional officer and the county commission.

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".[8] 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.

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.

Changes in the economic development property tax exemption statutes make this exemption available to non-profit organizations.

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

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.)

PCS (barcode#) by Budget Subcommittee on Finance and Tax
This proposed committee substitute makes the following changes to SB 2042:

- It requires the property appraiser to publish the notice of the date of roll certification on his or her website. It also deletes sections of the bill, which changed the timeframe for property appraiser appeals of VAB decisions and amended s. 193.155, relating to delayed filing for homestead exemption.
- It corrects an omission of certain mixed-use property in the provision that requires property to be assessed at just value when its use changes.
- It clarifies that a VAB petitioner shall not be required to wait more than 4 hours from the scheduled time. It also provides a procedure for the VAB to review complaints about special magistrates.
- It restores the current law schedule for the timetable to challenge an assessment in circuit court.
- It requires homestead assessments to be applied in the order that results in the lowest taxable value.
- It clarifies that tax refunds for exemptions for disabled veterans and other persons who must obtain a letter from the VA or Social Security Administration are subject to the same backward-looking limitation as other tax refunds.
- It limits the requirement that DOR approve property tax refunds to refunds of $2,500 or more.
- It allows the county to require the property appraiser to send a form to taxpayers along with the TRIM notice, saying how property tax revenue is used.
- It amends the economic development property tax exemption statutes.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate . House

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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
Comm: WD	.	
04/11/2011	.	
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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,

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

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:

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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

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
Comm: WD	.	
04/11/2011	.	
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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

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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.

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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~~

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~~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,

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.


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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.;

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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

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.

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

380476

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 518 - 547

and insert:

(2) MEMBERS.—Three of the members shall be appointed by the Governor. Two of the members shall be appointed by the President of the Senate. Two of the members shall be appointed by the Speaker of the House of Representatives. Each member shall be appointed to a 4-year term. However, for the purpose of providing staggered terms, of the initial appointments, the three members appointed by the Governor shall be appointed to 2-year terms and the remaining four members shall be appointed to

380476

4-year terms. Terms expire on June 30. Upon the expiration of the term of a commissioner, a successor shall be appointed in the same manner as the original appointment to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a replacement is appointed. If a vacancy on the commission occurs before the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(a)1. One member of the commission must be a certified public accountant licensed in this state who possesses at least 5 years of experience in general accounting. The member must also possess a comprehensive knowledge of the principles and practices of corporate finance or auditing, general finance, gaming, or economics.

2. One member of the commission must have experience in the fields of investigation or law enforcement.

3. Each district must be represented by at least one member of the commission who must reside in that district.

4. When making appointments to the commission, the Governor shall announce the district and classification by experience of the person appointed.

(b) A person may not be appointed to or serve as a member of the commission if the person:

1. Is an elected state or local official, or has served as an elected state or local official for any of the last 5 years prior to appointment;

 402648

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete line 1793

and insert:

training, and other equine activities, but specifically excluding any use related to the establishment, construction, or renovation of any racing or gaming facilities. The amounts provided

509316

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete line 2268

and insert:

section 17 of this act. The facility shall pay the same tax on gross

930074

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 1769 - 1804

and insert:

5. Two and 1/2 percent of the gross receipts tax collected shall be paid to the Florida Thoroughbred Breeders and Owners Association, Inc., for the payment of breeders, stallion, and special racing awards, including the administrative fee authorized in s. 550.2625(3), Florida Statutes, on live thoroughbred races conducted at licensed thoroughbred pari-mutuel facilities. These funds, to be governed by the board of directors of the Florida Thoroughbred Breeders and Owners

930074

Association, Inc., may provide for the rehabilitation or retirement of thoroughbred racehorses and equine research and education. These funds may not be used for any purpose related to the establishment, construction, or renovation of any racing or gaming facility.

6. Five percent of the gross receipts tax collected shall be provided to the permitholders conducting live greyhound, horse racing, or jai alai games to offset purse requirements pursuant to a contractual arrangement between each permitholder and the greyhound owners, the horse owners, and the jai alai players and shall be paid to such permitholders who are licensed to conduct slot machine gaming under s. 551.104, Florida Statutes, in amounts equal to each such permitholder's total purses paid on live racing or games divided by the total amount of purses paid by all such permitholders in the prior state fiscal year.

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

And the title is amended as follows:

Delete lines 145 - 149

and insert:

Transportation Disadvantaged Trust Fund, the Florida Thoroughbred Breeders and Owners Association, Inc., and the permitholders conducting live greyhound racing, horse racing, or jai alai games; providing for the proceeds of the

584618

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 2266 - 2268

and insert:

licensee. The facility shall pay the same tax on gross

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 2050
INTRODUCER:	Commerce and Tourism Committee and Senator Braynon
SUBJECT:	Destination Resorts
DATE:	April 7, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Fav/CS**
2.	Cote	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:

CS/SB 2050 creates the seven-member Destination Resort Commission (commission), with the responsibility to manage and regulate most categories of permitted gaming in Florida, including slot machines, pari-mutuels, cardrooms, the Seminole Indian Compact, and the proposed destination resorts.

The Division of Pari-Mutuel Wagering is transferred to the new commission, on July 1, 2013, by a type-two transfer, meaning all its statutory responsibilities, staff, rules, and unexpended balances will be merged into the new commission.

Much of CS/SB 2050, however, focuses on the creation of the commission and a process to license so-called "destination resorts" that will offer "limited gaming" as defined in the bill.

The commission will award licenses for destination resorts through an invitation-to-negotiate process. Although CS/SB 2050 delineates the state into five districts, the commission is not required to award five licenses. No more than one destination resort may operate in a district. CS/SB 2050 establishes a $1 million application fee, a $50 million initial license fee, and a $5 million annual license fee.

CS/SB 2050 also creates a graduated gross receipts tax rate that would be based upon the infrastructure investment in each destination resort. The tax rate ranges from 10 percent for investments of $2 billion or more, 15 percent for investments of between $1 billion to $2 billion, and 20 percent for investments under $1 billion.

Pari-mutuel facilities currently licensed to offer slot machine games and which would be located in the same county as a destination resort, will be able to offer the same types of gaming as the resort and pay the same gross receipts tax rate, without having to make a similar capital investment in facilities.

The commission will receive $5 million of these revenues to pay its operations; the rest would be allocated among the General Revenue Fund, Visit Florida's tourism marketing campaign, various pari-mutuel interests, school readiness programs, and transportation programs for disadvantaged persons.

CS/SB 2050 specifies extensive requirements for applicants for the resort licenses, including that they plan to train and hire Florida residents, as well as for suppliers for the resorts and resort employees.

A severability clause is included in the legislation.

CS/SB 2050 amends ss. 20.21, 120.80, 849.231, and 849.25, F.S.; and creates several unnumbered sections of law.

II. Present Situation:

Overview of Florida Gaming Laws and Regulations

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., governs the conduct of gambling in Florida. Section 849.15, F.S., prohibits the manufacture, sale, lease, play, or possession of slot machines[2] in Florida. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S. Florida's gambling prohibition includes prohibitions against keeping a gambling house,[3] and running a lottery.[4] Section 7, Art. X, of the Florida Constitution, prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.[5]

Gaming is permitted at licensed pari-mutuel wagering tracks and frontons,[6] by the state operated lottery,[7] which must operate "so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens,"[8] and by the Seminole Indian tribe.

[1] Section 849.08, F.S.
[2] Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S.
[3] Section 849.01, F.S.
[4] Section 849.09, F.S.
[5] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[6] *See* ch. 550, F.S., for the regulation of pari-mutuel activities.

Pari-mutuel wagering and Cardrooms

The pari-mutuel industry in Florida is made up of greyhound racing, different types of horseracing, and jai alai.[9] The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (department). Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. No-limit poker games are permitted.[10] The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. The games are played in a non-banking matter, i.e., the house [11] has no stake in the outcome of the game. Such activity is regulated by the department and must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.[12]

Slot Machine Gaming

Slot machine[13] gaming at licensed pari-mutuels is governed by ch. 551, F.S. Pari-mutuel facilities that operate slot machine gaming or engage in other casino-style gaming are generally known as "racinos." During the 2004 General Election, the electors approved Amendment 4 to the state 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. Currently, there are five pari-mutuels in those counties conducting slot machine gaming.

Slot machine licensees are required to pay a license fee of $2.5 million for fiscal year 2010-2011. The annual slot machine license fee is reduced in fiscal year 2011-2012 to $2 million.[14] In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.[15]

Seminole Indian Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a tribal-state compact under the Indian Gaming Regulatory Act of 1988[16] that authorizes the Tribe to conduct Class III gaming[17] at seven tribal facilities throughout the state. The compact was subsequently ratified by the Legislature.[18]

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[7] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., provides the legislative purpose and intent in regard to the lottery.

[8] *See* s. 24.104, F.S.

[9] "Jai alai" or "pelota" means a ball game of Spanish origin played on a court with three walls. *See* s. 550.002(18), F.S.

[10] Section 849.086(8)(b), F.S. Prior to the effective date of ch. 2010-29, L.O.F., the maximum bet was $5.

[11] Section 849.086(2)(j), F.S., defines "house" as "the cardroom operator and all employees of the cardroom operator.

[12] Section 849.086(13)(a), F.S.

[13] Section 551.102(8), F.S., defines "slot machine" as the term is used in ch. 551, F.S., for the regulation of slot machine gaming at the qualifying Miami-Dade and Broward county pari-mutuels.

[14] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was $3 million.

[15] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

[16] The Indian Gaming Regulatory Act of 1988 or "IGRA," Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 et seq.

[17] The Indian Gaming Regulatory Act of 1988 divides gaming into three classes:

The compact has a 20-year term. It permits the Tribe to offer slot machines, raffles and drawings, and any other new game authorized for any person for any purpose, at all seven of its tribal casinos.[19]

The compact permits the Tribe to conduct banked card games, including blackjack, chemin de fer, and baccarat, but the play of the banked card games is not allowed at the casinos at the Brighton or Big Cypress facilities. If these banked games are authorized for any other person for any other purpose, except if banked card games are authorized by a compact with the Miccosukee Indians, the Tribe would be authorized to offer banked cards at all seven of its facilities. The authority for banked card games terminates at the end of 5 years unless affirmatively extended by the Legislature or the Legislature authorizes any other person to offer banked card games.

In exchange for the Tribe's exclusive right to conduct slot machine gaming outside of Miami-Dade and Broward counties and the exclusive right to offer banked card games at the specified facilities (these grants of authority are known as the "exclusivity provision"), the compact provides for revenue sharing payments by the Tribe to the state as follows:

- During the initial period (first 24 months), the Tribe is required to pay $12.5 million per month ($150 million per year);
- After the initial period, the Tribe's guaranteed minimum revenue sharing payment is $233 million for year 3, $233 million for year 4, and $234 million for year 5;
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win[20] that range from 12 percent of net win up to $2 billion, to 25 percent of the amount of any net win greater than $4.5 billion;

- "Class I gaming" means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations.
- "Class II gaming" includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo. Class II gaming may also include certain non-banked card games if permitted by state law or not explicitly prohibited by the laws of the state but the card games must be played in conformity with the laws of the state. A tribe may conduct Class II gaming if:
  - the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity; and
  - the governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission.
- "Class III gaming" includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

[18] Chapter 2010-29, L.O.F.

[19] *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida,* approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. (hereinafter *Gaming Compact*) The Tribe has three gaming facilities located in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa).

[20] The compact defines "net win" as "the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe."

- After the first 5 years, the Tribe will continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment; and
- If the Legislature does not extend the authorization for banked card games after the first 5 years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

The compact provides for the expansion of gaming in Miami-Dade and Broward counties under the following limited circumstances:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuels located in Miami-Dade and Broward counties and if the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.
- If new games are authorized to any location in Miami-Dade and Broward counties within the first 5 years of the Compact, the guaranteed minimum payment would no longer apply to the Tribe's revenue sharing payments and the $1 billion guarantee would not be in effect. The Tribes payments would be based on the applicable percentage of net win.

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

Division of Pari-mutuel Wagering

As explained above, although gambling is generally illegal,[21] certain gaming activities are authorized. The Department of Business and Professional Regulation (DBPR) oversees the regulation of pari-mutuel wagering, cardrooms, and slot machine gaming. DBPR is also the state compliance agency charged with the oversight of the Seminole Indian Compact. The Department of Lottery conducts all legal lottery gaming. The Department of Agriculture and Consumer Services (DACS) registers and regulates certain game promotions. All other gaming activity is enforced by state attorneys and local law enforcement agencies.

Specifically within DBPR, the Division of Pari-mutuel Wagering (division) has the immediate oversight of gaming activities.[22] The division's primary responsibilities include:

- Ensuring that races and games are conducted fairly and accurately;
- Ensuring the safety and welfare of racing animals;

[21] Section 849.08, F.S.

[22] From 1932 to 1969 Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became the Division of Pari-mutuel Wagering (division) within the Department of Business Regulation (ch. 69-106, L.O.F.) In 1993, the Department of Business Regulation merged with the Department of Professional Regulation and became the Department of Business and Professional Regulation (ch. 93-220, L.O.F.)

- Collecting state revenue accurately and timely;
- Issuing occupational and permit-holder operating licenses;
- Regulating pari-mutuel, cardroom, and slot machine operations;
- Ensuring that permit-holders, 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 is funded by the Pari-mutuel Wagering Trust Fund and has a $13.8 million operating budget for fiscal year 2010-2011:

- $9.1 million for the regulation of pari-mutuel wagering and cardrooms; and,
- $4.7 million for the regulation of slot operations.[23]

The division has 118 full time positions:

- 66 full-time positions for the regulation of pari-mutuel wagering and cardrooms;
- 48 full-time positions for the regulation of slot machine gaming; and,
- Four full-time positions for the State Compliance Agency for the Gaming Compact.

The division is divided into six functional areas:

- The Director's Office provides general oversight and administration of the division and oversees the division's budget and safeguards state revenues;
- The Office of Auditing conducts audits of permit-holders to ensure integrity of wagering activity;
- The Office of Investigations examines possible rule, statute, or criminal violations and conducts criminal history and background checks on applicants;
- The Office of Operations issues operating licenses to permit-holders and issues occupational licenses to businesses and individuals as well as serves as the primary regulator of pari-mutuel operations at pari-mutuel facilities;
- The Office of Slot Operations serves as the primary regulator of slot machine operations at pari-mutuel wagering facilities; and
- State Compliance Agency ensures compliance with the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.

The division collects revenue from the following:

- Taxes and fees from the operation of pari-mutuel events;
- Occupational license fees from businesses and individuals associated with a facility;
- Cardroom license fee of $1,000 per table;
- 10 percent tax on cardroom gross receipts;
- $2.5 million annual slot machine operating license fee from each slot facility for fiscal year 2010-2011 ($2 million each fiscal year thereafter);
- 35 percent tax on net slot machine revenue; and,
- $250,000 compulsive and addictive gambling prevention program fee paid annually by each slot facility.

[23] Approximately $400,000 is transferred to the Florida Department of Law Enforcement.

The division provides oversight to:

- 35 permit-holders operating at 28 facilities:
  - 16 Greyhound;
  - 3 Thoroughbred;
  - 1 Harness;
  - 6 Jai-Alai;
  - 1 track offering limited inter-track wagering and horse sales; and,
  - 1 Quarter Horse;
- 23 Cardrooms operating at pari-mutuel facilities; and
- Six slot facilities located in Broward and Miami-Dade County pari-mutuel facilities.

Type-Two Transfers

Section 20.06(2), F.S., provides for a type-two transfer. As described in statute, a type-two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed or abolished.

In a type-two transfer, all of an agency's or department's statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, are transferred to another agency or department. The transfer of segregated funds must be made in such a manner that the relation between program and revenue source as provided by law is retained.

Unless otherwise provided by law, the head of the agency or department – to which an existing agency or department or a program, activity, or function is transferred – is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions, to the extent authorized in this chapter.

Unless otherwise provided by law, the administrative rules of any transferred agency or department that are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

Economic Impact of Casino-Oriented Destination Resorts

Thirteen states now have commercial casino operations, excluding those managed by Indian Tribes or at racetracks, and Massachusetts, Texas, New York, and Rhode Island are considering legislation this year to legalize casino gambling.[24] Data on how many casinos are stand-alone operations and how many are "destination resorts"[25] is not readily available.

[24] Interim Report 2011-133: Review of Expansion of Casino Gaming in Other States. Prepared by Senate Committee on Regulated Industries. Published in October 2010. Available at http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-133ri.pdf.

[25] "Destination resorts" or "destination resort casinos" are generally defined as mega-centers that feature shopping, conference facilities, restaurants, and live entertainment in addition to casino gaming. Most new casinos are being built in this format.

In the most recent numbers available, the American Gaming Association reported in 2008[26] that the commercial casino industry employed more than 375,000 people earning more than $13 billion in total wages. The report also described casinos as significant contributors to the nation's economy, with gross gaming revenues totaling more than $32.5 billion in 2008.

The impact of casinos on the local economy could be positive (by increasing tourism and creating jobs), neutral (no increase or decrease in spending at other entertainment facilities in Florida), or negative (by diverting customers from Florida's restaurants, movie theatres, amusement parks or other entertainment venues).[27]

Destination resorts are popular internationally among tourists and are touted to boost tourism.[28] What is purported to be the largest destination resort east of Las Vegas is under construction in the Bahamas.[29] The new Baha Mar resort is expected to contribute an additional 10 percent growth in the Bahamian GDP by creating 12,000 jobs paying in the aggregate more than $305 million in annual wages. According to projections, Baha Mar will help raise the average annual income for a Bahamian family from $29,000 to $33,500, and in its first year of operations will contribute almost $1 billion to the local economy.

Executive Branch Structure

Article IV of the Florida Constitution, limits executive departments to 25 in number, excluding those authorized or created in that document. There are five constitutionally created or authorized departmental entities: State Board of Administration; Department of Veterans' Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and the Parole Commission.

There are 21 departments authorized by statute: Department of State; Department of Legal Affairs; Department of Financial Services; Department of Agriculture and Consumer Services; Department of Education; Department of Business and Professional Regulation, Department of Community Affairs; Department of Children & Family Services; Florida Department of Law Enforcement; Department of Revenue; Department of Management Services; Department of Transportation; Department of Highway Safety and Motor Vehicles; Department of Environmental Protection; Department of Military Affairs; Department of Citrus; Department of Corrections; Department of Juvenile Justice; Department of the Lottery; Agency for Health Care Administration; and the Department of Health.

The Executive Office of the Governor may be considered the functional equivalent of a department.

In summary, there appears to be 22 state entities that are executive departments, so Florida has three available slots for any new agencies the Legislature may in the future consider creating.

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[26] http://www.americangaming.org/Industry/factsheets/general_info_detail.cfv?id=39.

[27] Memorandum regarding the Economic impact of casino development, prepared by the Federal Reserve Bank of Boston, Published September 2006, Available at: http://www.bos.frb.org/economic/neppc/memos/2006/brome091406.pdf.

[28] An example of websites advertising international casinos and destination resorts is http://www.worldcasinodirectory.com. Last visited March 19, 2011.

[29] Information posted at http://starglobaltribune.com/2011/destination-resorts-a-new-generation-of-tourists-destinations-opened-5954. Last visited March 8, 2011.

III. Effect of Proposed Changes:

CS/SB 2050 creates several undesignated sections of law and amends four sections of existing law to establish the Destination Resort Commission (commission), which will select and regulate any destination resort operations that open in Florida.

Section 1: Amends s. 20.21, F.S., to create the commission within the Department of Revenue (DOR).

Section 2: Amends s. 120.80, F.S., to exempt the commission from certain provisions of the Florida Administrative Procedures Act, in ch. 120, F.S., specifically:

- The notice and hearing requirements of ss. 120.569 and 120.57(1)(a), F.S., for proceedings related to the issuance, denial, renewal, or amendment of a destination resort license;
- The process and deadlines in s. 120.60, F.S., for granting licenses does not apply to applications for a destination resort license; and
- The process for petitioning for, or granting, a waiver or variance, or granting a waiver or variance, pursuant to s. 120.542, F.S.

Section 3: Specifies that sections 3-36 of CS/SB 2050 may be cited as the "Destination Resort Act" or "Resort Act."

Section 4: Creates definitions for 27 terms used in this act. Key definitions are:

- Destination resort or resort means a freestanding, land-based structure in which limited gaming may be conducted. A destination resort is a mixed-use development consisting of a combination of various tourism amenities and facilities, including, but not limited to, hotels, villas, restaurants, limited gaming facilities, convention facilities, attractions, entertainment facilities, service centers, and shopping centers.
- District means any of the five following districts:
    - District One: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Jackson, Washington, Bay, Calhoun, Gulf, Franklin, Liberty, Gadsden, Leon, Wakulla, Jefferson, Madison, Hamilton, Taylor, Lafayette, Suwannee, Columbia, Baker, Union, Bradford, Alachua, Gilchrist, Dixie, and Levy counties;
    - District Two: Nassau, Duval, Clay, Putnam, St. Johns, Flagler, Marion, Volusia, and Hernando counties;
    - District Three: Citrus, Sumter, Pasco, Pinellas, Hillsborough, Manatee, Hardee, DeSoto, Sarasota, Charlotte, Lee, Collier, Monroe, Highlands, Okeechobee, Glades, and Hendry counties;
    - District Four: Brevard, Indian River, St. Lucie, Martin, and Palm Beach counties; and
    - District Five: Broward and Miami-Dade counties.
- Gross receipts means the total of cash or cash equivalents received or retained as winnings by a resort licensee and the compensation received for conducting any game in which the resort licensee is not party to a wager, less any cash taken in fraudulent acts perpetrated against the resort licensee for which the resort licensee is not reimbursed. The term does not include tokens, foreign currency that cannot be converted into U.S.

currency, promotional credits or "free plays," or the amount of extended credit until collected from the customer.

- Licensee means, as the context requires, a resort licensee, supplier licensee, or occupational licensee.
- Limited gaming, game, or gaming means the games authorized pursuant to the Resort Act in a limited gaming facility, including, but not limited to, those commonly known as baccarat, twenty-one, poker, craps, slot machines, video gaming of chance, roulette wheels, Klondike tables, punch-board, faro layout, numbers ticket, push car, jar ticket, pull tab, or their common variants, or any other game of chance or wagering device that is authorized by the commission.
- Qualifier means an affiliate, affiliated company, officer, director, or managerial employee of an applicant for a resort license, or a person who holds a direct or indirect equity interest in the applicant. The term may include an institutional investor. As used in this subsection, the terms "affiliate," "affiliated company," and "a person who holds a direct or indirect equity interest in the applicant" do not include a partnership, a joint venture relationship, a shareholder of a corporation, a member of a limited liability company, or a partner in a limited liability partnership that has a direct or indirect equity interest in the applicant for a resort license of 5 percent or less and is not involved in the gaming operations as defined by the rules of the commission.

Section 5: Creates the Destination Resort Commission and specifies its governance. This section specifies that the commission is created in DOR for administrative purposes only, and it is a separate budget entity not subject to control, supervision, or direction by DOR in any manner.

The commission is exempt from the provisions of s. 20.052, F.S., which creates a public-purpose evaluation of all advisory councils, boards and commissions before they are statutorily created.

The commission will consist of seven full-time members appointed by the Governor and confirmed by the Senate in the legislative session following the appointments. To create staggered terms, four of the initial appointees shall serve 4-year terms and the other three appointees shall serve 2-year terms; thereafter, all appointees shall serve 4-year terms. Terms expire on June 30 of the applicable year. Any commissioner whose term has expired shall continue serving until a replacement is appointed. Vacancies are filled in the same manner as initial appointments.

CS/SB 2050 specifies that the commissioners must be Florida residents and experienced in corporate finance, tourism, convention and resort management, gaming, investigation or law enforcement, business law, or related legal experience, except that:

- One member of the commission must be a Florida-licensed certified public accountant with at least 5 years of experience in general accounting; and
- One member must have experience in the fields of investigation or law enforcement.

A quorum consists of 4 members.

CS/SB 2050 prohibits the appointment to the commission of:

- Elected officials;

- Persons with a direct or indirect financial interest in applicants for a resort license or resort licensees;
- Persons who are related within the "second degree of consanguinity"[30] or affinity to any person licensed by the commission; and
- Persons who have been indicted for, convicted of, pled guilty or nolo contendere to, or forfeited bail for any felony or misdemeanor crime involving gambling or fraud, in any of the 50 states, within the 10 years preceding their appointment.

The Governor will appoint one member of the commission to serve as the chair. The chair will be the administrative head of the commission and would be responsible for setting the agenda for commission meetings and approving all notices, vouchers, subpoenas, and reports required by the act. The bill also provides for a vice chair to be elected by his or her fellow members during the commission's first meeting.

Other governance issues include:

- The commission headquarters will be in Tallahassee;
- The initial meeting of the commission must be held by October 1, 2011;
- The commission must meet at least monthly;
- The chair or 4 commissioners can call a meeting, upon 72 hours' notice; and
- The commission *in toto* sits as the agency head for purposes of ch. 120, F.S., except that the commission's executive director is the agency head for purposes of final agency action under ch. 120, F.S., for all regulatory issues delegated to the executive director.

Section 6: Specifies the commission's powers and duties. The commission will have jurisdiction over and shall supervise all destination resort gaming activity governed by this act, including the power to:

- Authorize limited gaming at five destination resorts;
- Conduct investigations as necessary to fulfill its responsibilities;
- Use an invitation-to-negotiate process for applicants based on minimum requirements established by this legislation;
- Investigate each applicant for a resort license and determine eligibility, among competing applicants, based on which ones best serve the interest of the residents of Florida based on the:
    - Potential for economic development presented by the applicant's proposed investment in infrastructure, such as hotels and other nongaming entertainment facilities; and the
    - Applicant's ability to maximize revenue for the state.
- Grant licenses;
- Establish and collect fees for conducting background checks on all applicants for licenses and persons who are contracted to perform services at the resorts;
- Issue subpoenas;
- Require a person to file a statement in writing and under oath in response to the commission's investigation;
- Keep accurate and complete records of its proceedings;

[30] Legally defined as grandparents, siblings, grandchildren, aunts and uncles, nieces and nephews, and first cousins.

- Apply to the courts for injunctive relief to enforce the act and any rules adopted by the commission;
- Establish field offices, as necessary; and
- Suspend or revoke the license of any person found to no longer be qualified. The commission also can deny, revoke, suspend, or place conditions on a licensee who violates any provision of the act, a rule adopted by the commission, or an order of the commission.

Additionally, the commission, the Florida Department of Law Enforcement (FDLE), and local law enforcement agencies have unrestricted access to inspect resort facilities and gaming devices at all times, and share concurrent authority to investigate criminal violations of this act and any other criminal activity that may be occurring at a resort.

Section 7: The commission is authorized to adopt all rules necessary, including emergency rules, to implement, administer, and regulate limited gaming. The bill provides a listing of specific areas in which the commission is authorized to adopt rules, these include the types of games, the time and place for the gaming, and the structures where limited gaming is authorized. The commission also can establish procedures to scientifically test slot machines and other authorized gaming equipment. The commission can adopt any rule necessary to accomplish the purposes of the act.

Section 8: The commission is authorized to employ sworn law enforcement officers, who must have arrest authority pursuant to s. 901.15, F.S., have full law enforcement powers, and be certified under s. 943.1395, F.S.

Section 9: The commission is authorized to appoint (and remove) a full-time executive director, who will perform all the duties assigned him by the commission, and employee staff and consultants as necessary.

This section also specifies the types of people who may not be hired, depending on their previous 3 years' work history.

Section 10: The commission must adopt a comprehensive code of ethics for its members and staff to follow. Generally, the code of ethics will prohibit commissioners, the executive director, and employees from having a direct or indirect financial interest in the entities they will regulate. It would also prohibit engaging in political activity, including using one's official position to influence the result of an election. Also, employees or agents of the commission will be prohibited from engaging in outside employment related to the activities or persons regulated by the commission, until 5 years after leaving employment or membership on the commission.

Section 11: The commissioners, the executive director, and each managerial employee must file annual financial disclosures. The bill also specifies the circumstances in which commissioners and staff must immediately file disclosures, including matters related to criminal arrests, negotiations for an interest in a licensee or applicant, and negotiations for employment with a licensee or applicant. These persons are also prohibited from engaging in activities that may constitute a conflict of interest; accepting gifts from licensees, applicants, or entities otherwise affiliated with licensees or applicants; and report any attempted bribes.

Section 12: Commissioners, licensees, applicants, or any affiliate or representative of an applicant or licensee are prohibited from engaging directly or indirectly in an *ex parte* communication with a member of the commission concerning a pending application, license, or enforcement action or concerning a matter that likely will be pending before the commission.

Any *ex parte* communication must immediately be reported in writing to the chair and placed on the record. Persons who make the *ex parte* communication must submit to the commission a written description of the communication which identifies the commissioner who received the communication. A commissioner who fails to disclose an *ex parte* communication with 10 days of the communication is subject to removal from office and a civil penalty not to exceed $5,000.

Any such violation will be investigated by the Commission on Ethics.

Section 13: A violation of the act by a commissioner may result in disqualification or constitute cause for removal by the Governor. The Governor may impose other disciplinary action as determined by the commissioner. Violations by employees may result in termination of employment. If the violation involves an unintentional financial interest in a licensee or applicant, the person would not have violated the act if they divested their financial interest with 30 days after the interest was acquired.

Section 14: Notwithstanding any law to the contrary, the commission may not award a resort destination license to any entity prior to the voters in the county where the resort would be located approving a referendum allowing limited gaming, including slot machines. Also, notwithstanding any law to the contrary, a person may lawfully participate in authorized gaming at a resort destination. *(Section 18, however, includes an exception to the referendum requirement in counties where a referendum previously was approved for slot-machine gaming.)*

Section 15: The regulation of gaming at destination resorts is pre-empted to the state, and no local government may enact any ordinance attempting to regulate such activities.

Section 16: CS/SB 2050 establishes a detailed process for awarding destination resort licenses. Licenses will be awarded through an invitation-to-negotiate (invitation) process in which applicants reply on forms provided by the commission in response to the invitation to bid. The commission may stagger its issuance of the invitations, although replies to the invitation to bid must be received by the commission within 6 months of the date the invitations were issued.

After reviewing the replies to the invitation, the commission may select one or more replies and commence negotiations after determining which replies are in the best interest of the state, based on the selection criteria. The commission must award a resort license within 12 months after the deadline for submission of the applications. The commission may not award more than five licenses statewide.

Section 17: CS/SB 2050 specifies a number of minimum criteria the commission must use when evaluating resort license applications. Key criteria include:

- Only one destination resort license will be awarded per district.

- No more than 10 percent of destination resort's square footage may be used for limited gaming.
- The applicant for a resort license must demonstrate that the resort will:
    - Increase tourism;
    - Generate jobs;
    - Provide revenue to the local economy; and
    - Provide revenue to the General Revenue Fund.
- Additionally, the applicant must demonstrate:
    - A history of, or a bona fide plan for, community involvement or investment in the community where the resort having a limited gaming facility will be located;
    - The financial ability to purchase and maintain an adequate surety bond;
    - Adequate capitalization to develop, construct, maintain, and operate the proposed resort and convention center in accordance with the act; and
    - The ability to implement a program to train and employ residents of this state for jobs that will be available at the destination resort, including its ability to implement a program for the training of low-income persons.
- The aesthetic appearance of the proposed resort, if the commission chooses to make this a consideration.
- The applicant must demonstrate how it will comply with state and federal affirmative action guidelines.
- The applicant must demonstrate the ability to generate substantial gross receipts.

This section of the bill also specifies that resort licenses will be issued "only to persons of good moral character who are at least 21 years of age.

A resort license will not be issued to any applicant, if such applicant, a qualifier, or an institutional investor:

- Has, within the last 10 years, filed for protection under the Federal Bankruptcy Code or had an involuntary bankruptcy petition filed against the applicant;
- Has, within the last 5 years, been adjudicated by a court or tribunal for failure to pay income, sales, or gross receipts tax due and payable under any federal, state, or local law, after exhaustion of all appeals or administrative remedies;
- Has been convicted of a felony under the laws of any state or the United States;
- Has been convicted of any violation under ch. 817, F.S., related to fraudulent practices, or under a substantially similar law of another jurisdiction;
- Knowingly submitted false information in the application for the license;
- Is a member or employee of the commission;
- Was licensed to own or operate gaming or pari-mutuel facilities in this state or another jurisdiction and that license was revoked; or
- Fails to meet any other criteria for licensure set forth in the Resort Act.

In this context, the "conviction" includes an adjudication of guilt on a plea of guilty or *nolo contendere* or the forfeiture of a bond when charged with a crime.

Section 18: CS/SB 2050 specifies the information that must be included in the application. The application must be sworn. Key required information includes:

- A description of the proposed resort, including a description of the anticipated economic benefit to the community, number of employees, a projection of attendance at the resort, a projection of gross receipts, and other information;
- Proof that the electors of the county where the resort is to be located have approved in a countywide referendum limited gaming. However, a referendum is not required in any county where slot machine gaming, as defined in s. 551.102(8), F.S., currently is being conducted.
- The time-frame for completing the resort;
- A plan for training Floridians for jobs at the resort;
- Identifying information about the applicant and all qualifiers, except those persons who specifically do not have to be identified, such as anyone with less than 5 percent interest in the resort project;
- Identification of elected officials, their spouses, and their children who, directly or indirectly, have any type of financial relationship with the applicant; and
- Fingerprints of the applicant, officers, qualifiers, and any person who will be responsible for operational controls.

The commission, however, is the sole arbiter on what information should be included in the application. It also may order criminal history checks based on the fingerprint data received with the application.

The applicant has a responsibility to file a supplemental report to the application if there is any material change in any circumstance relevant to the commission's review of the proposal.

Each application must be submitted along with a $1 million non-refundable application fee to defray the commission's costs of reviewing it. If the review costs exceed $1 million, the applicant must remit the additional amount necessary to the commission within 30 days after requested.

Additionally, a one-time licensing fee of $50 million must be submitted along with the application, but this fee is refundable to the applicant within 30 days if the commission denies the application. If the applicant withdraws, the commission only has to refund 80 percent of the licensing fee, also within 30 days.

Section 19: An incomplete application is grounds for denial of an application, under SB 2050. However, if the commission determines that an application is incomplete, the applicant may request an informal conference with the executive director or his designee. The executive director may grant a 30-day extension to complete an application. If the executive director still finds the application incomplete, the applicant may appeal to the commission – at which point, the issuance of licenses is stayed until the commission rules on the appeal.

Section 20: Provides a limited application process for institutional investors, generally defined as pension funds, public retirement funds, insurance companies, financial institutions, or trusts that hold less than 5 percent of the equity securities or 5 percent of the debt securities of an applicant or affiliate of the applicant, and are a publicly traded corporation. Institutional investors also must file a certified statement that they do not intend to influence or affect the

affairs of the applicant or its affiliate, and that the securities of the applicant or affiliate that it holds were purchased for investment purposes only. The commission may require that an institutional investor must be treated as a qualifier if it finds that such investor is in a position to exercise a substantial impact upon the controlling interests of a licensee.

Section 21: CS/SB 2050 exempts lenders and underwriters as qualifiers, meaning they are not required to be licensed.

Section 22: CS/SB 2050 establishes several conditions for obtaining a new or renewed resort license. The key conditions require that the licensee:

- Comply with the Resort Act and rules of the commission;
- Allow the commission and FDLE unlimited access to and the right of inspection for the areas of the resort where limited gaming activities occur;
- Complete the resort in accordance with the plans and timeframe submitted to the commission in the proposal, unless a waiver has been granted;
- Ensure that the facilities-based computer system is operational and that all accounting functions are structured to facilitate regulatory oversight, which shall require the systems to provide for real-time information to the commission and FDLE;
- Ensure that each game, machine, or device is protected from tampering or manipulation;
- Submit and comply at all times with a detailed security plan;
- Create and file with the commission a written policy for:
    - Creating opportunities to purchase from vendors from this state, including minority vendors;
    - Creating opportunities for employment of residents of this state, including minority residents;
    - Ensuring opportunities for hiring construction services from minority contractors;
    - Ensuring opportunities for employment are on an equal, nondiscriminatory basis;
    - Training employees on responsible gaming and work with a compulsive or addictive gambling prevention program;
    - Implementing a drug-testing program;
    - Using the Internet-based job-listing system of the Agency for Workforce Innovation in advertising employment opportunities; and
    - Ensuring that each slot machine pays out at least 85 percent.

In addition, the resort must keep and maintain permanent daily records of its gaming operations for not less than 5 years.

Section 23: Each destination resort licensee is required to maintain a surety bond, at its own cost and expense. The penal sum[31] of the bond is to be determined by the commission and payable to the Governor. The commission shall set the bond at the total amount of the license fees and taxes estimated to become due for the resort. In lieu of a bond, a licensee may instead pay a like amount of funds to the commission.

Section 24: Limited gaming may be conducted at a licensed resort, but only within a designated area of the resort as approved by the commission. Limited gaming activities may not begin until

[31] "Penal sum" is the stated limit of the bond which, in turn, is the limit of the insurer's liability under the bond.

the resort is completed in accordance with the plans submitted to the commission. The resort licensee may only accept wagers from persons at least 21 years of age who are present in the facility, and may set the amount of wagers. The facility may not accept wagers using money, except for slot machine gaming. Further, the gaming facility may be open 24 hours per day, 365 days per year.

Section 25: On each anniversary date of receipt of its resort license, the licensee must pay the commission a $5 million license fee. The license fee shall be deposited in the Destination Resort Trust Fund to be used by the commission and FDLE for investigations, regulation of resorts, and enforcement.

In addition, each resort licensee is required to pay a gross receipts tax on the gross receipts for limited gaming activities at the resort. Once the resort is complete, the licensee must submit all information, as required by the commission, to determine the infrastructure investment and to set the tax rate for the resort.

The gross receipts tax rate is calculated this way:

- If the total infrastructure investment is $2 billion or more, the gross receipts tax rate is 10 percent;
- If the total infrastructure investment is at least $1 billion but less than $2 billion, the gross receipts tax is 15 percent; and
- If the total infrastructure investment is less than $1 billion, the gross receipts tax is 20 percent.

This tax is in lieu of any other state tax on gross or adjusted gross receipts from a resort licensee.

Proceeds of the gross receipts tax will be deposited in the Destination Resort Trust Fund and shall be used to fund the commission's operating costs, pursuant to legislative appropriation.

However, on June 30 of each year, all unappropriated revenues in excess of $5 million must be deposited as follows:

- 87.5 percent of the money in the fund is deposited to the General Revenue Fund;
- 2.5 percent is deposited in the Tourism Promotional Trust Fund for use by the Florida Commission on Tourism;
- 1.25 percent is deposited into the Employment Security Administration Trust Fund for use by the school readiness program;
- 1.25 percent is deposited into the Transportation Disadvantaged Trust Fund for use by the Transportation Disadvantaged Commission, which oversees locally run programs to provide transportation services to the disabled, elderly, and underprivileged;
- 2.5 percent shall be paid to the thoroughbred permit-holders who are licensed to conduct slot machine gaming, pursuant to s. 551.104, F.S., in amounts equal to each permit-holders racing dates in 2011 divided by the total number of racing dates for all thoroughbred permit-holders;[32]

[32] Florida has three thoroughbred permit-holders: Calder/Tropical Park in Miami-Dade County, Gulfstream Park in Broward County, and Tampa Bay Downs in Hillsborough County. Calder and Gulfstream are authorized to have slot machines on their premises.

- 2.5 percent shall be paid to the Florida Thoroughbred Breeders and Owners Association, Inc., for the payment of racing awards, including the 10-percent administrative fee authorized in s. 550.2625(3), F.S., any capital expenditures, the retirement or rehabilitation of race horses, equine research, and other listed purposes; and
- 2.5 percent shall be paid to certain permit-holders conducting live greyhound races, harness racing, or jai alai games to offset purse requirements pursuant to agreements between the permit-holders and the owners of the greyhounds, owners of the standardbred horses, or the jai alai players. Eligible permit-holders are those who are licensed to offer slot machine games on their premises. The refunds shall be based on the purses paid by each eligible permit-holder for live races or games, divided by the total purses paid by all permit-holders where live greyhound and harness races are held or jai alai games are played.[33]

Section 26: **CS/**SB 2050 requires that FDLE implement the fingerprint requirements, and shall submit the results to the commission. The costs of the fingerprinting and background check shall be borne by the applicant.

Additionally, all the fingerprints must be entered into the statewide database, as authorized in s. 943.05(2)(b), F.S., and available for all specified purposes. The fingerprints also may be forwarded to the FBI.

Any applicant who is fingerprinted and who has been convicted or pleaded guilty or nolo contendere to a disqualifying offense must notify the commission within 48 hours.

Section 27: Each resort licensee is required to train employees on responsible gaming and to work with a program on responsible gambling to recognize problem gambling. The commission is required to contract for services related to the prevention of compulsive and addictive gambling. The contract for the services must require advertising of responsible gambling and the publication of a gambling telephone help line. Each resort licensee is required to fund the program with a $250,000 annual fee.

Section 28: Suppliers' licenses are required in order to furnish, on a regular or continuing basis, gaming equipment, supplies, devices, or goods or services relating to the realty, construction, or business of a resort licensee. This requirement includes, but is not limited to, manufacturers, distributers, food purveyors, construction companies, and junket enterprises. Each applicant and licensee must pay an annual license fee of $5,000. A person is not eligible for a suppliers' license if the person has committed a felony, knowingly submitted false information to the commission, the applicant is a member of the committee, the applicant is not a natural person, or the applicant has a resort license or pari-mutuel license in either this state or any other jurisdiction.

All applicants for suppliers' licenses must submit to background investigations and comply with the fingerprint requirements in the act.

[33] One harness-racing track (The Isle at Pompano Park in Broward County) and two dog tracks (Mardi Gras Gaming in Broward County) and Flagler Dog Track (in Miami-Dade County) are licensed to offer slot machine games to their customers. Florida has 16 dog tracks, one harness race track, and one quarter-horse race track.

The bill authorizes the commission to revoke a license for a violation of the act and commission rules.

Section 29: Any person who wishes to become a gaming employee must apply to the commission for an occupational license; no person may be employed by a resort licensee until that person has an occupational license. The application fee must be set by the commission, but an employee occupational license fee may not exceed $50. Occupational licensees must be at least 21 years old to perform gaming related functions and at least 18 to perform non-gaming related functions.

All applicants for occupational licenses must submit to background investigations and comply with the fingerprint requirements in the act. The bill authorized the commission to revoke a license for a violation of the act and commission rules. A person who has committed a felony or crime involving dishonesty or moral turpitude in any jurisdiction is not eligible for an occupational license.

Section 30: The commission's executive director may grant temporary suppliers and occupational licenses, under certain conditions. The temporary license expires after 90 days.

Section 31: CS/SB 2050 requires the commission to submit quarterly reports to the Governor, President of the Senate, and Speaker of the House of Representatives. The reports must include:

- A statement of receipts and disbursements related to limited gaming;
- A summary of disciplinary actions taken by the commission, and
- Any additional information or recommendations that the commission believes may improve the regulation of limited gaming or increase the economic benefits of limited gaming to this state.

Section 32: The chair of the commission may assign hearings to two or more members of the commission. Only the commissioners assigned to a hearing can participate in the final decision for the commission on that matter. If only two commissioners are assigned a matter and they cannot decide, the chair may cast the deciding vote. Any party to a proceeding before the commission may request the matter to be heard before the full commission; the full commission must convene within 15 days to hear the matter.

Section 33: If a dispute that involves alleged wins, losses, payments of cash, prizes, benefits, tickets, or other items, or a dispute that involves the manner in which a game, tournament, contest, drawing, promotion, race or similar activity was conducted, cannot be resolved between the licensee and the patron, the licensee must immediately notify the commission if the dispute involves at least $500.

If the dispute involves less than $500, the licensee must notify the patron of the patron's right to file a complaint with the commission.

The commission may investigate the matter and may require the licensee to pay restitution to the patron. Failure to notify the commission of a dispute or notifying a patron of his or her right to file a complaint constitutes grounds for disciplinary action against the resort licensee.

Section 34: CS/SB 2050 permits the use of credit instruments, instead of cash, by patrons. Resort licensees may accept incomplete credit instruments if they are signed by the patron and the amount is completed in numbers; the resort licensee may complete the incomplete instrument. The resort licensee also may accept a credit instrument payable to an affiliate of the licensee. In addition, the resort licensee may accept the credit instrument before, during, or after the patron has incurred the debt with the resort.

However, CS/SB 2050 also allows patrons to establish an account by a cash deposit, recognized traveler's check, or any other credit instrument that is equivalent to cash.

The bill also establishes that a patron's mental disorder is not a defense against paying the debt; nor does the failure of a resort to comply with all of the requirements of this section erase the debt.

The commission is authorized to adopt rules to address the credit instrument issues.

Section 35: CS/SB 2050 provides that a person may request to be excluded from all limited gaming facilities by completing a self-exclusion form and submitting it to the commission. The form requires the patron to include his or her name, date of birth, and other identifying information. The form also requires the individual to indicate how long he or she wishes to be excluded from the limited gaming facilities.

Section 36: Notwithstanding any law to the contrary, if a resort destination is licensed to operate in Broward or Miami-Dade county, then a pari-mutuel facility in the same county, which is licensed to offer slot machines, may conduct the same games as the resort, during the same hours of operation, and shall pay the same gross receipts tax rate.[34] The licensees of these eligible pari-mutuel facilities must meet all of the same background requirements as resort licensees.

Section 37: Amends s. 849.15, F.S., to reference the Destination Resort Act.

Section 38: Amends s. 849.231, F.S., to exempt the limited gaming at destination resorts and at currently licensed slot-machine licensees from the statutory prohibition against possession of gambling devices in Florida.

Section 39: Amends s. 849.25, F.S., to correct cross-references and to exempt the limited gaming at destination resorts from the statutory prohibition against bookmaking.

Section 40: Specifies that effective July 1, 2013, the Division of Pari-Mutuel Wagering at DBPR would be the subject of a type-two transfer to the commission.

Section 41: Provides a severability clause.

Section 42: Specifies that this act shall take effect July 1, 2011.

[34] See FNs 38 and 39.

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:

The Florida Constitution is silent on the subject of casino gaming. However, the Florida Constitution does not prohibit the Legislature from creating laws to authorize, regulate, or tax gaming in the state. With regard to gaming, the Florida Constitution only addresses the subjects of lotteries and slot machine gaming. The Florida Constitution prohibits lotteries, except pari-mutuel pools permitted by state law,[35] but specifically allow for state operated lotteries.[36]

Even though the Florida Constitution does not specifically prohibit any form of gaming other than lotteries that are not state operated, the provision that expanded the pari-mutuel locations that can offer slot machine gaming is being challenged as violating s. 23, Art. X, Florida Constitution. These lawsuits challenge the Legislature's authority to authorize slot machine gaming outside the pari-mutuel facilities enumerated in s. 23, Art. X, of the Florida Constitution, which references pari-mutuel facilities that were existing and had conducted live racing or games in that county during each of the last 2-calendar years before the effective date of the amendment (2004). The trial court upheld the constitutionality in Leon County.[37] That decision is on appeal to the First District Court of Appeals.[38]

[35] Section 7, Art. X, Florida Constitution.
[36] Section 15, Art. X, Florida Constitution.
[37] *See* Order on Plaintiff's Motion for Summary Judgment, consolidated cases, *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2257 and *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2132 (Fla. 2d Cir. Ct. December 14, 2010).
[38] *See 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).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Resort licensing fees – Applicants for a destination resort license would pay an application fee of $1 million dollars to defray the costs of investigating and reviewing the application.

The application also must include a one-time licensing fee of $50 million, which the commission must refund within 30 days of denying an application. If an applicant withdraws its application after the application deadline, the commission must refund 80 percent of the licensing fee within 30 days after the application is withdrawn.

Each resort licensee would be required to pay $5 million annually to the commission as a license fee. In addition, each resort licensee would pay a gross receipts tax. The tax rate would be dependent on the licensee's investment in infrastructure. Once the resort is complete, the licensee must submit all information, as required by the commission, to determine the infrastructure investment and to set the tax rate for the resort.

Gross receipts taxes – If the total infrastructure investment is $2.5 billion or more, the gross receipts tax rate is 10 percent. If the total infrastructure investment is at least $1 billion but less than $2.5 billion, the gross receipts tax is 15 percent. If the total infrastructure investment is less than $1 billion, the gross receipts tax is 20 percent.

Up to $5 million of the collections will be used by the commission to fund its operations, and the extra will be divided up six ways, per Section 25.

Other -- Suppliers' licensees would be required to pay the commission an annual license fee of $5,000, while the fee for an occupational licensee may not exceed $50.

If a destination resort is licensed to operate in Broward or Miami-Dade County, then a pari-mutuel facility in the same county, which is licensed to offer slot machines, may conduct the same games, during the same hours, and may pay the same gross receipts tax rate. This rate would be lower than the current tax rate of 35% on slot machine revenues.

The state's Revenue Estimating Conference has not met to estimate the revenue impact of SB 2050.

B. Private Sector Impact:

The construction and operation of five resorts, if authorized by the commission, could create additional jobs and attract out-of-market visitors to Florida.

C. Government Sector Impact:

CS/SB 2050 calls for the merger of the Division of Pari-Mutuel Wagering with the commission, via a type-two transfer. A type-two transfer assumes that the positions and

budget will be transferred and remain the same; however, with the new structuring and creation of a new agency, workload and positions may differ. This fiscal impact is indeterminate at this time, particularly since the transfer is not scheduled to occur until July 1, 2013.

For DBPR, the impact of removing the division on workload and staffing is indeterminate.

VI. Technical Deficiencies:

It is typical in statutes for appointed commissioners to be term-limited. CS/SB 2050 does not limit the Destination Resort commissioners to a specific number of terms.

Also, the provisions in Section 25 that distribute a total of 5 percent of the gross receipts tax revenues to various categories of permit-holders based on purses paid do not specify which entity is to make these refund calculations and remit the refunds: the commission, the Division of Pari-Mutuel Wagering, or DOR.

Finally, the provision, also in Section 25, that distributes 2.5 percent to the Florida Thoroughbred Breeders and Owners Association is unclear as to whether this distribution is in addition to the existing 10-percent administrative fee it receives from certain wagers.

VII. Related Issues:

State revenue-sharing with the Seminole Indian Compact relies on continued exclusivity of casino-style and Class III gaming. The authorization for full commercial casinos would constitute a casino style and Class III gaming expansion and would affect the revenue-sharing payments that the Tribe is required to make to the state under the compact. Any cessation or reduction of revenue sharing payments upon the expansion of casino gaming would depend on the location of the new casinos. It is important to stress that any cessation or reduction of revenue sharing payments would only occur when the first Class III or other casino-style game is played. The mere authorization of Class III gaming or other casino-style gaming would not affect the payments.

It is also important to note that the state's expansion of Class-III gaming or casino-style gaming would not mean that the state had violated its compact with the Tribe. The compact specifies the consequences, particularly the financial ramifications, if the state elects to expand gaming in this state, and does not expressly prohibit any such expansion.

If the Destination Resort Commission approves a destination resort with limited gaming in any location outside of Miami-Dade and Broward Counties, all of the Tribe's revenue-sharing payments would stop once the first game is played.[39] If the Destination Resort Commission approves a destination resort with limited gaming inside of Miami-Dade and Broward Counties, but the location is not at a pari-mutuel facility, the Tribe would continue to make revenue-sharing payments, but the Tribe would exclude the net win from their Broward facilities. According to the division, the net win from the Tribe's Broward facilities equals approximately

[39] *See* Part XII. A., *Gaming Compact, supra n. 29*.

47 percent of the Tribe's total net win. Therefore, if casino-style gaming were expanded and limited to Miami-Dade and Broward Counties, the Tribe's payments would be reduced by approximately 47 percent.

In addition, if the destination resort with limited gaming is authorized for any location in Miami-Dade or Broward counties within the first 5 years of the compact, the guaranteed minimum payment and the $1 billion guarantee for the first 5 years of the compact would no longer apply. The Tribe's payments would be based on the applicable percentage of net win.

Once the new gaming begins at licensed destination resorts, the Tribe may continue to offer the covered games authorized in the compact plus any additional games that are authorized for the destination resorts.[40] The Tribe will have to renegotiate a new Compact for Class III games when the Compact expires at the end of its 20-year term,[41] but it is not clear what reason the Tribe would have to renegotiate the revenue-sharing terms if casino-style gaming is authorized at destination resorts in the state. However, the Tribe would have to negotiate a new compact at the end of the current compact's term before it could continue to offer the covered games.[42]

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 Committee on Commerce and Tourism on April 5, 2011:
At its meeting the committee adopted a strike-everything amendment to the original bill, plus seven amendments to the amendment. The strike-everything amendment brought the original SB 2050 in conformity with another Destination Resorts bill (SB 1708), which:

- Defined five districts based on county grouping and limited the resorts to one per district;
- Made the commissioners all Governor appointees, and specified that each district must be represented by at least one commissioner;
- Required a local referendum approving limited gaming in a county before a destination resort could be licensed to operate in that county;
- Added requirements that each destination must have at least 1,000 hotel rooms and 500,000 square feet of meeting space; and
- Modified the gross-receipts tax rate tier for destination resorts as: 10 percent if the capital investment is $2 billion (rather than $2.5 billion) or more; 15 percent for capital investments between $1 billion and $2 billion (rather than $2.5 billion); and 20 percent if the capital is less than $1 billion.

The seven amendments to the amendment did the following:

- Removed Lake, Seminole, Orange, Polk, and Osceola counties from District Two. Because these counties are not included in any other district, they will not be authorized to have a Destination Resort located in their respective counties.

[40] *See* the definition of covered games at Part III.F.4., *Gaming compact, supra* at n. 29.
[41] *See* Part XVI.B., *Gaming Compact, supra* at n. 29.
[42] IGRA at 18 U.S.C. s. 2710(d)(1)(C).

- Removed the requirements that a destination resort have at least 1,000 hotel rooms and at least 500,000 square feet of convention and meeting space.
- Specified that no local referendum is required in counties where slot machines already are allowed, meaning Miami-Dade and Broward counties.
- Allowed pari-mutuels in Miami-Dade and Broward counties to offer slots and other gaming identified in the Destination Resort during the same hours and with the same waging limits as authorized for resort licenses – without having to make the same capital investment in infrastructure. The eligible pari-mutuel operators also must have a clean background, such as no fraud convictions and no bankruptcy filings in the last 10 years.
- Added pari-mutuels to an exception in s. 849.231, F.S., which generally bans slot machines and similar gambling devices in Florida. The strike-all amendment already exempts destination resorts from that ban.
- Authorized a type-two transfer of the Division of Pari-Mutuel Wagering from DBPR to the Destination Resort Commission, and added a severability clause.
- Modified the distribution of the excess gross receipts tax collections in excess of $5 million. The new distribution schedule is:
    - 87.5 percent to the General Revenue Fund (down from the original 95 percent);
    - 2.5 percent to Tourism Promotion Trust Fund;
    - 1.25 percent to the Employment Security Administration Trust Fund;
    - 1.25 percent to the Transportation Disadvantaged Trust Fund;
    - 2.5 percent to the licensed thoroughbred permit-holders who are licensed to conduct slot machines pursuant to s. 551.104, F.S.;
    - 2.5 percent to the Florida Thoroughbred Breeders and Owners Association; and
    - 2.5 percent to the permit-holders who conduct live greyhound races, harness races, or jai alai games.

B. Amendments:

None.

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