

**CS/SB 1178 by EP, Hays;** (Similar to CS/H 7045) Permits for Alternative Water Supplies

938864 A S RCS CA, Bennett btw L.68 - 69: 02/06 12:19 PM

**SB 770 by Hays;** (Identical to H 0361) Exemptions from Local Business Taxes

**CS/SB 1060 by CU, Bogdanoff (CO-INTRODUCERS) Lynn;** (Similar to CS/H 0809) Communications Services Taxes

768148 D S RCS CA, Ring Delete everything after 02/06 12:19 PM

**SJR 1064 by Detert (CO-INTRODUCERS) Gardiner;** (Compare to H 1003) Tangible Personal Property

127370 A S FAV CA, Richter Delete L.10 - 11: 02/06 12:19 PM

**SB 1062 by Detert (CO-INTRODUCERS) Gardiner;** (Compare to CS/H 1005) Tangible Personal Property Taxes

**CS/SJR 1056 by MS, Norman;** (Similar to CS/H 0093) Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder

**CS/SB 1058 by MS, Norman;** (Similar to CS/H 0095) Homestead Property Tax Exemptions

**SB 1180 by Bennett;** (Compare to CS/H 0979) Developments of Regional Impact

788434 D S RCS CA, Bennett Delete everything after 02/06 12:19 PM

413270 AA S RCS CA, Bennett After L.330: 02/06 12:19 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**COMMUNITY AFFAIRS**  
**Senator Bennett, Chair**  
**Senator Norman, Vice Chair**

**MEETING DATE:** Monday, February 6, 2012  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 1178</b> Environmental Preservation and Conservation / Hays (Similar CS/H 7045)	Permits for Alternative Water Supplies; Specifying conditions of issuance; requiring that certain permits approved for the development of alternative water supplies by certain entities be granted for at least 30 years; requiring that such permits be extended under specified conditions; providing for a reduction in permitted water quantities during compliance reviews under certain circumstances; excluding from application of the act a permit for nonbrackish groundwater or nonalternative water supplies; providing an option for the duration of an alternative water supply permit to a county, special district, regional water supply authority, multijurisdictional water supply entity, or publicly or privately owned utility, etc.  EP 01/30/2012 Fav/CS CA 02/06/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
2	<b>SB 770</b> Hays (Identical H 361)	Exemptions from Local Business Taxes; Specifying that an individual licensed and operating as a broker associate or sales associate is not required to apply for an exemption from a local business tax or take certain actions relating to a local business tax; prohibiting a local governing authority from holding such exempt individual liable for the failure of a principal or employer to comply with certain obligations related to a local business tax or from requiring the exempt individual to take certain actions related to a local business tax; prohibiting a local governing authority from requiring a principal or employer to provide personal or contact information for such exempt individuals in order to obtain a local business tax receipt, etc.  CA 02/06/2012 Favorable RI BC	Favorable Yeas 7 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Community Affairs

Monday, February 6, 2012, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>CS/SB 1060</b> Communications, Energy, and Public Utilities / Bogdanoff (Similar CS/H 809)	Communications Services Taxes; Clarifying provisions exempting from the public records law certain proprietary confidential business information held by a local governmental entity for the purpose of assessing the local communications services tax; revising provisions relating to a communications services dealer's liability for tax underpayments that result from the incorrect assignment of service addresses to local taxing jurisdictions and providing requirements and conditions with respect thereto; requiring the Department of Revenue to aggregate monthly and make available to the public on a jurisdiction-by-jurisdiction basis certain sales and net tax information, etc.  CU 01/30/2012 Fav/CS CA 02/06/2012 Fav/CS BC	Fav/CS Yeas 8 Nays 0
4	<b>SJR 1064</b> Detert (Compare HJR 1003, Link S 1062, S 1352)	Tangible Personal Property; Proposing an amendment to the State Constitution to authorize the Legislature to have more flexibility in providing for the assessment and exemption of tangible personal property from ad valorem taxation, etc.  CA 02/06/2012 Fav/1 Amendment BC	Fav/1 Amendment (127370) Yeas 8 Nays 0
5	<b>SB 1062</b> Detert (Compare CS/H 1005, Link SJR 1064)	Tangible Personal Property Taxes; Revising the conditions for a waiver of the requirements to file a tangible personal property tax return; providing for application, etc.  CA 02/06/2012 Favorable BC	Favorable Yeas 8 Nays 0
6	<b>CS/SJR 1056</b> Military Affairs, Space, and Domestic Security / Norman (Similar CS/HJR 93, Compare CS/H 95, Link CS/S 1058)	Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder; Proposing an amendment to the State Constitution to allow the Legislature by general law to provide ad valorem homestead property tax relief to the surviving spouse of a military veteran who died from service-connected causes while on active duty or a surviving spouse of a first responder who died in the line of duty, provide definitions with respect thereto, and provide an effective date, etc.  MS 01/26/2012 Fav/CS CA 02/06/2012 Favorable JU BC	Favorable Yeas 7 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Community Affairs

Monday, February 6, 2012, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>CS/SB 1058</b> Military Affairs, Space, and Domestic Security / Norman (Similar CS/H 95, Compare CS/HJR 93, Link CS/SJR 1056)	Homestead Property Tax Exemptions; Citing this act as the "Fallen Heroes Family Tax Relief Act"; exempting from taxation the homestead property of the surviving spouse of a first responder who dies in the line of duty; providing definitions for "first responder" and "line of duty"; providing construction with respect to the applicable tax roll and the date of death, etc.  MS 01/26/2012 Fav/CS CA 02/06/2012 Favorable JU BC	Favorable Yeas 7 Nays 0
8	<b>SB 1180</b> Bennett (Compare CS/H 979)	Developments of Regional Impact; Requiring that plan amendments proposing a development that is exempt from review as a development of regional impact follow the state coordinated review process; requiring that reviewing agencies make only recommendations and comments regarding a proposed development which are consistent with statutes, rules, or adopted local ordinances that are applicable to all developments in the jurisdiction where the proposed development is located; providing legislative intent regarding the issues that may be considered during the development-of-regional-impact review process; requiring that a local government having jurisdiction rescind a development-of-regional-impact development order, upon request, and upon a showing that all required mitigation related to the amount of development that existed on the date of rescission will be completed under a permit or other authorization issued by a governmental agency, etc.  CA 02/06/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: CS/CS/SB 1178

INTRODUCER: Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senator Hays

SUBJECT: Water Supply

DATE: February 7, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Yeatman</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Uchino</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

The CS directs that alternative water supply (AWS) development projects are eligible for consumptive use permits (CUPs) of at least 30 years. The permits are subject to compliance reports and water management district (WMD) water shortage orders. The CS provides AWS permits may be reduced to prevent unanticipated harm to water resources or existing legal uses. The CS also specifies a CUP may not be issued for nonbrackish groundwater supplies or nonalternative water supplies. The CS clarifies entities have the option to apply for at least 20-year permits or at least 30-year permits. Lastly, the CS creates the Study Commission on Investor-Owned Water and Wastewater Utility Systems with associated requirements.

This CS substantially amends s. 373.236 of the Florida Statutes and creates an unnumbered section of law.

## **II. Present Situation:**

### **Consumptive Use Permitting**

Section 373.236(5), F.S., authorizes CUPs for the development of AWS projects. A WMD or the DEP may impose reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of the issuing WMD or the DEP and is not harmful to the water resources of the area.<sup>1</sup>

A CUP establishes the duration and type of water use as well as the maximum amount that may be withdrawn. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the DEP and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use must:

- be a “reasonable-beneficial use” as defined in s. 373.019(16), F.S.;
- not interfere with any presently existing legal use of water; and
- be consistent with the public interest.

### **The Three-Prong Test**

“Reasonable-beneficial use” is defined as “the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.”<sup>2</sup> The Legislature has declared water a public resource belonging to the public, therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other users.

To that end, the DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and on water management needs.<sup>3</sup> These criteria include consideration of the quantity of water requested; the need, purpose, and value of the use; and the suitability of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources.<sup>4</sup>

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.<sup>5</sup> New CUPs cannot be issued if they would conflict with an existing

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<sup>1</sup> See s. 373.219, F.S.

<sup>2</sup> Section 373.019(16), F.S.

<sup>3</sup> See generally rule 62-40, F.A.C.

<sup>4</sup> *Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001) (upholding the WMD’s use of criteria for implementing the reasonable-beneficial use standard).

<sup>5</sup> Section 373.223(1)(b), F.S.

legal use. This criterion is only protective of water users that actually withdraw water, not passive users of water resources.<sup>6</sup>

The final element of the three-prong test requires water use to be consistent with the “public interest.” While the DEP’s Water Resource Implementation Rule provides criteria for determining the “public interest,” determination of a public interest is made on a case-by-case basis during the permitting process.<sup>7</sup> However, the WMDs and the DEP have broad authority to determine which uses best serve the public interest if there are not sufficient resources to fulfill all applicants’ CUPs. In the event that two or more competing applications are deemed to be equally in the public interest, the WMDs or the DEP gives preference to renewal applications.<sup>8</sup>

### **Duration of Permits and Compliance Reviews**

Pursuant to s. 373.236(1), F.S., CUPs must be granted for 20 years if requested by the applicant and there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The WMDs and the DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, the type of use, or both.

Pursuant to s. 373.236(4), F.S., when necessary to maintain “reasonable assurance” that initial conditions for issuance of a 20-year CUP can continue to be met, a WMD or the DEP may require a permittee to produce a compliance report every 10 years.<sup>9</sup> A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met, including original demand projections. After reviewing a compliance report, a WMD or the DEP may modify the permit, including reductions or changes in the initial allocations of water, to ensure the water use comports with initial conditions for issuance of the CUP. Permit modifications made by a WMD or the DEP during a compliance review cannot be subject to competing applications for water use if the permittee is not seeking additional water allocations or changes in water sources.

### **Consumptive Use Permits for the Development of Alternative Water Supplies**

Section 373.019(5), F.S., defines “alternative water supplies” as:

[S]alt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or

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<sup>6</sup> See *Harloff v. City of Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991) (holding a municipal wellfield was an existing legal user and should be afforded protection). In contrast, see *West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, Aug. 30, 1989) (holding a farmer who passively relied on a higher water table to grow nonirrigated crops and standing surface water bodies to water cattle was not an existing legal user).

<sup>7</sup> *Supra* note 3.

<sup>8</sup> See s. 373.233, F.S.

<sup>9</sup> In limited instances, the statute authorizes more frequent “look backs”. For example, the Suwannee River WMD may require a compliance report every five years through July 1, 2015, after which the “look-back” period returns to 10 years.

agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan.

CUPs issued pursuant to s. 373.236(5), F.S., for the development of AWS must be issued for at least 20 years. If the permittee issues bonds to finance construction of the AWS project, the permit must be extended to expire upon retirement of the bonds if the permittee requests an extension during the term of the permit and the issuing WMD's governing board determines the use will continue to meet the CUP's conditions. Compliance reports may also be required every 10 years for CUPs issued for AWS projects. WMDs generally issue CUPS with a maximum term of 20 years for the development of AWS, although some 30-year CUPs for AWS projects have been issued.

### **Investor-Owned Water and Wastewater Utilities**

The specific regulatory entities that set rates and service in the state vary. For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.<sup>10</sup> The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 36 of the 67 counties in Florida. Regardless of whether the county has opted to regulate privately-owned utilities, the PSC has jurisdiction over all water or wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.<sup>11</sup> Systems owned, operated, managed, or controlled by governmental authorities are not subject to PSC regulation.<sup>12</sup>

For regulatory purposes, the PSC classifies utilities into one of three categories based on annual operating revenues:<sup>13</sup>

- Class A – Operating revenues greater than \$1,000,000.
- Class B – Operating revenues greater than \$200,000 but less than \$1,000,000.
- Class C – Operating revenues less than \$200,000.

Currently, there are 15 Class A utilities, 33 Class B utilities, and 96 Class C utilities under the PSC's jurisdiction. These utilities serve approximately 3 to 4 percent of Florida's population. The remaining population is served either by private utilities in non-jurisdictional counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), or by wells and septic tanks. The 15 Class A utilities serve approximately 50 percent of the customers for all classes. In general, filing requirements, fees, penalties, and regulatory treatment are eased for Class B and C utilities.

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<sup>10</sup> Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this choice only after 10 continuous years of PSC regulation.

<sup>11</sup> *Id.*

<sup>12</sup> Section 367.022(2), F.S.

<sup>13</sup> Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.



In September 2011, the PSC conducted an informal staff workshop in Orlando to address challenges facing the water and wastewater industry. The PSC invited the industry stakeholders to this workshop and indicated that the workshop would provide an open forum to look at probable solutions to the challenges facing utilities.<sup>14</sup> The PSC invited input and discussion concerning currently available options as well as solutions that may require regulatory or statutory changes.

Following the informal staff workshop, the PSC conducted a formal agency workshop in Tallahassee on November 3, 2011, to discuss solutions to increase efficiencies in the water and wastewater industry to minimize the effects of rates on consumers.<sup>15</sup> The main purpose of the workshop was to hear and address ideas to help alleviate financial strains on small water and wastewater utilities.<sup>16</sup>

The PSC heard discussion on several potential mechanisms to address these issues, including the creation of a legislative commission comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.<sup>17</sup> This proposal, drafted by the PSC's staff, provided that the commission would be staffed by the PSC staff and have use of the PSC's facilities. The proposal required that the commission meet at least four times, with two of those meetings held in areas where utility customers had been impacted by recent rate increases. The proposal required that the commission submit a report, including specific findings and legislative recommendations, to the Governor and the Legislature by December 31, 2012. The commission would terminate on June 30, 2012.

### III. Effect of Proposed Changes:

**Section 1** amends s. 373.236, F.S., clarifying that AWS permits issued for at least 20 years are subject to the reasonable assurance provisions currently required by the DEP and WMDs. It directs the DEP or the WMDs to issue permits for the development of AWS projects for at least 30 years for permits issued on or after July 1, 2012, if the proper reasonable assurance is provided. If the permittee issues bonds to finance the project, completes the project and requests an extension of the CUP duration, the CUP must be extended for a maximum of seven years. This will allow the entity that develops the AWS project to operate the AWS project for 30 years after construction in order to repay 30-year bonds. The seven-year extension may be retroactively applied to any 30-year AWS permit issued between June 1, 2011, and July 1, 2012.

CUPs issued pursuant to this CS are subject to compliance reports; however, the quantity of alternative water allocated under the permit cannot be reduced during the compliance review if bonds that financed the project are outstanding. This provision does not apply to adopted

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<sup>14</sup> PSC, *Re: Staff Workshop on Challenges Facing the Water and Wastewater Industry*, available at [http://www.psc.state.fl.us/common/controls/workshop09\\_29\\_11.pdf](http://www.psc.state.fl.us/common/controls/workshop09_29_11.pdf) (last visited Feb. 7, 2012).

<sup>15</sup> PSC, *Notice of Commission Workshop*, available at <http://www.psc.state.fl.us/library/filings/11/07437-11/07437-11.pdf> (last visited Feb. 7, 2012).

<sup>16</sup> PSC, *Workshop Transcript (2-3)*, available at <http://www.psc.state.fl.us/library/filings/11/08324-11/08324-11.pdf> (last visited Feb. 7, 2012).

<sup>17</sup> PSC, *Workshop Materials*, available at <http://www.psc.state.fl.us/agendas/workshops/Materials.11.03.2011.pdf> (last visited Feb. 7, 2012).

districtwide water shortage orders or when an AWS permit results in unanticipated harm to water resources or existing legal uses.

The CS clarifies that CUPs cannot be issued for AWS projects for nonbrackish groundwater supplies (i.e., fresh water) or nonalternative water supplies. It also clarifies that entities may apply for an AWS permit under either s. 373.236(5)(a) or (b), F.S.

**Section 2** creates an unnumbered section of law that creates the Study Commission on Investor-Owned Water and Wastewater Utility Systems (committee). The committee will consist of 17 members, 13 of which are voting members. The voting members consist of:

- Two Senators appointed by the President of the Senate, one of whom will be appointed as the chair of the study committee;
- Two Representatives appointed by the Speaker of the House of Representatives;
- A representative of a WMD, appointed by the Governor;
- A representative of a water or wastewater system owned or operated by a municipal government, appointed by the Governor;
- A representative of a water or wastewater system owned or operated by a county government, appointed by the Governor;
- A representative of the Florida Rural Water Association, appointed by the Governor;
- A representative of a small investor-owned water or wastewater utility, appointed by the Governor;
- A representative of a large investor-owned water or wastewater utility, appointed by the Governor;
- The Public Counsel or his or her designee;
- A customer of a Class C water or wastewater utility, appointed by the Governor; and
- A representative of a government authority that was created pursuant to chapter 367, Florida Statutes, appointed by the Governor.

The four nonvoting members are:

- The Secretary of Environmental Protection, or his or her designee;
- The chair of the PSC, or his or her designee;
- The chair of a county commission that regulates investor-owned water or wastewater utility systems; and
- A representative of a county health department, appointed by the Governor.

The CS requires members to serve until the committee work is complete and the committee is terminated. A member that no longer serves in the representative position required for the appointment will be replaced by the individual who serves in the position. The members will not be compensated but are entitled to reimbursement for reasonable expenses to carry out their duties. Additionally, the appointing authority may remove or suspend a member appointed by it for cause, including failure to attend two or more committee meetings.

The CS directs the PSC to provide staff, information, assistance and facilities for the committee, as necessary. The CS specifies that funding for the committee will come from the Florida Public Service Regulatory Trust Fund.

The CS specifies the committee must identify issues facing investor-owned water and wastewater utility systems, particularly small systems, and their customers, and research possible solutions. In addition, the CS requires the committee to consider:

- The ability of a small investor-owned water and wastewater utility to achieve economies of scale when purchasing equipment, commodities or services.
- The availability of low-interest loans to a small, privately-owned water or wastewater utility.
- Tax incentives or exemptions available to a small water or wastewater utility.
- The impact on customer rates if a utility purchases an existing water or wastewater utility system.
- The impact on customer rates of a utility providing service through a reseller.
- Other issues that the committee identifies during its investigation.

The CS does not specify where meetings must occur but requires the committee meet a minimum of four times; however, at least two meetings must be held in an area “centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates.” The CS directs that the public must be given the opportunity to speak at these meetings.

The CS requires the committee to prepare and submit a report to the Governor and Legislature by December 31, 2012. The report must detail the committee’s findings and make specific legislative recommendations. The CS provides that this unnumbered section of law expires and the committee terminates on June 30, 2013.

**Section 3** provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

Most bonds issued to fund the capital construction costs of an AWS project are 30-year bonds; however, most AWS CUPs are only issued for 20 years. This discrepancy may affect the interest rate the AWS developer has to pay to launch the bonds. The impact of this is indeterminate but may be significant if the uncertainty in renewing a 20-year CUP for a 30-year bond has significant weight in the rating agencies' models. For example, an A-rated \$100 million bond may cost \$7-10 million more over the life of the bond as compared to an AAA-rated bond. Also, by allowing an up to seven-year extension under certain circumstances, AWS developers will be able to operate the AWS project without having to reapply for a CUP at the end of the initial 30-year duration. This will ensure operation of the AWS project for a full 30-year term.

**C. Government Sector Impact:**

The CS may have a negative but indeterminate effect on permit revenues for the DEP or the WMDs; however, any impacts are expected to be met by existing staff and resources.

The CS requires the PSC to provide staff, information, assistance and facilities to support the committee. In addition, expenses will be incurred by the committee for its operations and reimbursement for members' reasonable expenses. Although the costs cannot be determined, they will be paid from the Florida Public Service Regulatory Trust Fund.

**VI. Technical Deficiencies:**

On lines 104-105, no individual is designated as the appointer of the member representing the chair of a county commission that regulates investor-owned water or wastewater utility systems.

**VII. Related Issues:**

By the Legislature's amending this section to explicitly require reasonable assurance for a variety of CUPs, a court may find that the Legislature implicitly excluded the necessity to provide reasonable assurance for a 50-year permit for certain public or government works. It would be the only permit category left out of reasonable assurance requirements of s. 373.236, F.S. Currently the WMDs require reasonable assurance for the up to 50-year permit.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Community Affairs on February 6, 2012:**

The CS creates the Study Commission on Investor-Owned Water and Wastewater Utility Systems with associated requirements.

**CS by Environmental Preservation and Conservation on January 30, 2012:**

- Clarifies reasonable assurance must be provided for the at least 20-year permit;
- Deletes the list of entities that may apply for an extended AWS permit;

- Applies the seven-year extension retroactively to AWS permits issued between June 1, 2011, and July 1, 2012; and
- Provides for necessary permit allotment reductions if the permit results in unanticipated harm to the resource or existing legal uses.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2012	.	
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The Committee on Community Affairs (Bennett) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 68 and 69  
insert:

Section 2. Study Committee on Investor-Owned Water and Wastewater Utility Systems.-

(1) There is created a Study Committee on Investor-Owned Water and Wastewater Utility Systems, which shall be composed of 17 members designated and appointed as follows:

(a) Two Senators appointed by the President of the Senate, one of whom shall be appointed as chair by the President of the Senate.



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13        (b) Two Representatives appointed by the Speaker of the  
14 House of Representatives.

15        (c) The Secretary of Environmental Protection or his or her  
16 designee, who shall be a nonvoting member of the committee.

17        (d) The chair of the Public Service Commission or his or  
18 her designee, who shall be a nonvoting member of the committee.

19        (e) A representative of a water management district  
20 appointed by the Governor.

21        (f) A representative of a water or wastewater system owned  
22 or operated by a municipal government appointed by the Governor.

23        (g) A representative of a water or wastewater system owned  
24 or operated by a county government appointed by the Governor.

25        (h) The chair of a county commission that regulates  
26 inventor-owned water or wastewater utility systems, who shall be  
27 a nonvoting member of the committee.

28        (i) A representative of a county health department  
29 appointed by the Governor, who shall be a nonvoting member of  
30 the committee.

31        (j) A representative of the Florida Rural Water Association  
32 appointed by the Governor.

33        (k) A representative of a small investor-owned water or  
34 wastewater utility appointed by the Governor.

35        (l) A representative of a large investor-owned water or  
36 wastewater utility appointed by the Governor.

37        (m) The Public Counsel or his or her designee.

38        (n) A customer of a Class C water or wastewater utility  
39 appointed by the Governor.

40        (o) A representative of a government authority that was  
41 created pursuant to chapter 367, Florida Statutes, appointed by



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the Governor.

(2) The members shall serve until the work of the committee is complete and the committee is terminated, except that if a member no longer serves in the position required for appointment, the member shall be replaced by the individual who serves in such position.

(3) Members of the committee shall serve without compensation, but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses, in the performance of their duties as provided in s. 112.061, Florida Statutes.

(4) The appointing authority may remove or suspend a member appointed by it for cause, including, but not limited to, failure to attend two or more meetings of the committee.

(5) The Public Service Commission shall provide the staff, information, assistance, and facilities as are deemed necessary for the committee to carry out its duties under this section. Funding for the committee shall be paid from the Florida Public Service Regulatory Trust Fund.

(6) The committee shall identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions. In addition, the committee shall consider:

(a) The ability of a small investor-owned water and wastewater utility to achieve economies of scale when purchasing equipment, commodities, or services.

(b) The availability of low interest loans to a small, privately owned water or wastewater utility.

(c) Any tax incentives or exemptions, temporary or





938864

permanent, which are available to a small water or wastewater utility.

(d) The impact on customer rates if a utility purchases an existing water or wastewater utility system.

(e) The impact on customer rates of a utility providing service through the use of a reseller.

(f) Other issues that the committee identifies during its investigation.

(7) The committee shall meet at the time and location as the chair determines, except that the committee shall meet a minimum of four times. At least two meetings must be held in an area that is centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates. The public shall be given the opportunity to speak at the meeting.

(8) By December 31, 2012, the committee shall prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report detailing its findings pursuant to subsection (6) and making specific legislative recommendations.

(9) This section expires and the committee terminates June 30, 2013.

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

And the title is amended as follows:

Delete lines 2 - 3  
and insert:



938864

100       An act relating to water supply; amending s. 373.236;  
101       specifying  
102       Delete line 17  
103   and insert:  
104       utility; creating the Study Committee on Investor-  
105       Owned Water and Wastewater Utility Systems; providing  
106       for membership and terms of service; prohibiting  
107       compensation of the members; providing for  
108       reimbursement of the members for certain expenses;  
109       providing for removal or suspension of members by the  
110       appointing authority; requiring the Public Service  
111       Commission to provide staff, information, assistance,  
112       and facilities that are deemed necessary for the  
113       committee to perform its duties; providing for funding  
114       from the Florida Public Service Regulatory Trust Fund;  
115       providing duties for the committee; providing for  
116       public meetings; requiring the committee to report to  
117       the Governor and Legislature its findings and make  
118       recommendation for legislative changes; providing for  
119       future termination of the committee; providing an  
120       effective date.

By the Committee on Environmental Preservation and Conservation;  
and Senator Hays

592-02641-12

20121178c1

A bill to be entitled

An act relating to permits for alternative water supplies; amending s. 373.236, F.S.; specifying conditions of issuance; requiring that certain permits approved for the development of alternative water supplies by certain entities be granted for at least 30 years; requiring that such permits be extended under specified conditions; providing for a reduction in permitted water quantities during compliance reviews under certain circumstances; excluding from application of the act a permit for nonbrackish groundwater or nonalternative water supplies; providing an option for the duration of an alternative water supply permit to a county, special district, regional water supply authority, multijurisdictional water supply entity, or publicly or privately owned utility; providing an effective date.

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

Section 1. Subsection (5) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(5) (a) Permits approved for the development of alternative water supplies shall be granted for a term of at least 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. However, if the permittee issues bonds for the construction of the project, upon request of the permittee

592-02641-12

20121178c1

~~before~~ ~~prior to~~ the expiration of the permit, ~~the~~ ~~that~~ permit shall be extended for such additional time as is required for the retirement of bonds, not including any refunding or refinancing of such bonds, ~~if provided that~~ the governing board determines that the use will continue to meet the conditions for the issuance of the permit. Such a permit is subject to compliance reports under subsection (4).

(b)1. Permits approved on or after July 1, 2012, for the development of alternative water supplies shall be granted for a term of at least 30 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If, within 7 years after a permit is granted, the permittee issues bonds to finance the project, completes construction of the project, and requests an extension of the permit duration, the permit shall be extended to expire upon the retirement of such bonds or 30 years after the date construction of the project is complete, whichever occurs later. However, a permit's duration may not be extended by more than 7 years beyond the permit's original expiration date. A 7-year permit extension, as described in this subparagraph, shall be applicable to any 30-year permit for the development of alternative water supplies granted between June 1, 2011, and July 1, 2012.

2. Permits issued under this paragraph are subject to compliance reports under subsection (4). However, if the permittee demonstrates that bonds issued to finance the project are outstanding, the quantity of alternative water allocated in the permit may not be reduced during a compliance report review unless a reduction is needed to address unanticipated harm to

592-02641-12 20121178c1

59 water resources or to existing legal uses present when the  
60 permit was issued. A reduction required by an applicable water  
61 shortage order shall apply to permits issued under this  
62 paragraph.

63 3. Permits issued under this paragraph may not authorize  
64 the use of nonbrackish groundwater supplies or nonalternative  
65 water supplies.

66 (c) Entities that wish to develop alternative water  
67 supplies may apply for a permit under paragraph (a) or paragraph  
68 (b).

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Budget - Subcommittee on General Government  
Appropriations, *Chair*  
Agriculture  
Banking and Insurance  
Budget  
Budget - Subcommittee on Higher Education  
Appropriations  
Criminal Justice  
Reapportionment

**JOINT COMMITTEE:**  
Administrative Procedures

**SENATOR D. ALAN HAYS**

20th District

January 30, 2012

Senator Michael S. "Mike" Bennett, Chair  
Community Affairs Committee  
302 Senate Office Building  
315 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

RE: SB 1178 Relating to Permits for Alternative Water Supplies

Dear Chair Bennett:

I respectfully request my above bill be heard before your committee. I believe the citizens of this state will benefit from this legislation.

Thank you in advance for your consideration, and please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD  
State Senator  
District 20

rec'd 1/30/12  
afw

CC: **Tom Yeatman**, *Staff Director*  
**Ann Whittaker**, *Committee Administrative Assistant*

**REPLY TO:**

- ☐ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- ☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**MIKE HARIDOPOLOS**  
President of the Senate

**MICHAEL S. "MIKE" BENNETT**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/6/12

Meeting Date

Topic AWS

Name Stephen James

Job Title \_\_\_\_\_

Address 100 S. Monroe

Street

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Fla. ASSOC. of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

Bill Number 1178  
(if applicable)

Amendment Barcode \_\_\_\_\_  
(if applicable)

Phone 922-4300

E-mail \_\_\_\_\_

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-6-2012

Meeting Date

Topic 30 yr. Cup's

Bill Number SB 1178  
(if applicable)

Name Doug MANN

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 310 W. College Ave.  
Street

Phone 222-7535

Tallahassee FL 32301  
City State Zip

E-mail doug.littlejohnmann@car

Speaking: ☒ For ☐ Against ☐ Information

Representing Am. WATER Works Ass.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/2/12  
Meeting Date

Topic Consumptive Use Permitting

Bill Number 1178  
(if applicable)

Name Jon Steverson

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Special Counsel on Policy and Legislative Affairs

Address 3900 Commonwealth Blvd  
Street

Phone (850) 245-2140

Tallahassee FL 32399  
City State Zip

E-mail jon.steverson@DEP.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

Representing Department of Environmental Protection

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12

*Meeting Date*

Topic PERMITS FOR ALTERNATIVE WATER SUPPLIES

Bill Number SB 1178  
*(if applicable)*

Name KEYNA CORY

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title SENIOR LOBBYIST

Address 110 E. COLLEGE AVE

Phone 850 681-1065

*Street*

TAUAHASSEE FL 32301

*City*

*State*

*Zip*

E-mail Kynacory@pacconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

Representing ASSOCIATED INDUSTRIES OF FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/14/12

Meeting Date

Topic CUP's for Alternative Water Supplies

Bill Number 1178  
(if applicable)

Name Ryan Matthews

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Leg. Advocate

Address PO Box 1757

Phone 850-277-9684

Tallahassee FL 32302  
City State Zip

E-mail rmattthews@flcities.com

Speaking: ☒ For ☐ Against ☐ Information

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2/6/2012

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

Meeting Date

Topic Permits for Alternative Water Supply Bill Number CS/SB 1178  
Name Karen Peterson Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 310 West College Ave.  
Street  
Tall FL 32301  
City State Zip

Phone 850/212-7485  
E-mail karen@billpushes.com

Speaking: ☒ For ☐ Against ☐ Information

Representing TOHO Water Authority

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

2-6-12

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

*Meeting Date*

Topic Alt. Water Supply Bill Number 1178  
Name Diane Salz (if applicable)  
Job Title Lobbyist Amendment Barcode \_\_\_\_\_ (if applicable)  
Address 2529 Goose Pond Ct. Phone 850.339.8550  
*Street* Talla FL 32308 E-mail disalz@yahoo.com  
*City State Zip*  
Speaking: ☒ For ☐ Against ☐ Information  
Representing Peace River Manasota Regl Authy  
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-6-12

Meeting Date

Topic Permits for Alternative Water Supplies

Bill Number SB 1178  
(if applicable)

Name LEE KILLINGER

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 324 E. Virginia St  
Street  
Tallahassee FL 32308  
City State Zip

Phone 850-322-8907

E-mail lec@anfieldflorida.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Polls Co.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12  
Meeting Date

Topic \_\_\_\_\_

Bill Number 1178  
(if applicable)

Name Leticia M Adams

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Director of Infrastructure Policy

Address 136 S. Bronough St.  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850 544-6866

E-mail ladams@flchamber.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 770

INTRODUCER: Senator Hays

SUBJECT: Exemptions from Local Business Tax

DATE: February 1, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	<b>Favorable</b>
2.			RI	
3.			BC	
4.				
5.				
6.				

---

**I. Summary:**

This bill specifies that an individual licensed and operating as a broker associate or sales associate is not required to apply for an exemption from a local business tax or take certain actions relating to a local business tax. The bill prohibits a local governing authority from holding such exempt individual liable for the failure of a principal or employer to comply with certain obligations related to a local business tax. The bill also prohibits a local governing authority from requiring a principal or employer to provide personal or contact information for such exempt individuals in order to obtain a local business tax receipt.

This bill creates s. 205.067, F.S., and substantially amends s. 205.066, F.S.

**II. Present Situation:**

**Local Business Tax**

The local business tax, authorized in ch. 205, F.S., represents the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. Counties and municipalities may levy a business tax, and the tax proceeds are considered general revenue for the local government.<sup>1</sup> This tax does not refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.<sup>2</sup>

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<sup>1</sup> Sections 205.033 and 205.042, F.S.

<sup>2</sup> Section 205.022(5), F.S.

Prior to 1972, the state imposed an occupational license tax and shared the revenues with the counties. Municipalities levied their own occupational license taxes pursuant to local ordinance or resolution. Counties had no authority to levy an occupational license tax until October 1, 1972, when Ch. 72-306, Laws of Florida, repealed the state tax and authorized both counties and cities to impose an occupational tax at the state or city rate then in effect. In 1980, the Legislature authorized counties and municipalities to increase rates by a specified percentage based upon the rates then in effect.<sup>3</sup> In 1986, the legislature authorized Miami-Dade, Broward, Monroe and Collier counties to increase their rates by an additional 50 percent, with the proceeds being dedicated to specified economic development activities.<sup>4</sup>

Effective January 1, 2007, the legislature changed the name of the Local Occupational License Tax to the Local Business Tax.<sup>5</sup> This was done in response to some individuals representing that the fact that they had obtained an “occupational license” under ch. 205, F.S., conferred upon them some type of official proof of their competency to perform various repairs and services. The name change was intended to clarify that the payments made under Ch. 205, F.S., were taxes and not some type of regulatory fee.

### **Administrative Procedures**

In order to levy a business tax, the governing body must first give at least 14 days of public notice between the first and last reading of the resolution or ordinance by publishing a notice in a newspaper of general circulation within its jurisdiction as defined by law.<sup>6</sup> The public notice must contain the proposed classifications and rates applicable to the business tax.<sup>7</sup> A number of other conditions for levy are imposed on counties and municipalities.<sup>8</sup>

For purposes of Ch. 205, F.S., the terms “business,” “profession,” and “occupation” do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in the state.<sup>9</sup> These institutions are more particularly defined and limited in statute.<sup>10</sup> The term “receipt” means the document that is issued by the local governing authority which bears the words “Local Business Tax Receipt” and evidences that the person in whose name the document is issued has complied with the provisions of Ch. 205, F.S., relating to the business tax.<sup>11</sup>

The governing body of a municipality that levies the tax may request that the county in which the municipality is located issue the municipal receipt and collect the tax.<sup>12</sup> The governing body of a county that levies the tax may request that municipalities within the county issue the county receipt and collect the tax.<sup>13</sup> However, before any local government issues any business receipts on behalf of another local government, appropriate agreements must be entered into by the

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<sup>3</sup> Chapter 80-274, L.O.F.

<sup>4</sup> Chapter 86-298, L.O.F.

<sup>5</sup> Chapter 2006-152, L.O.F.

<sup>6</sup> Sections 205.033 and 205.042, F.S.

<sup>7</sup> Id.

<sup>8</sup> Sections 205.033 and 205.043, F.S.

<sup>9</sup> Section 205.022(1), F.S.

<sup>10</sup> Id.

<sup>11</sup> Section 205.022(2), F.S.

<sup>12</sup> Section 205.045, F.S.

<sup>13</sup> Id.



affected local governments.<sup>14</sup> All business tax receipts are sold by the appropriate tax collector beginning July 1 of each year.<sup>15</sup> The taxes are due and payable on or before September 30 of each year, and the receipts expire on September 30 of the succeeding year.<sup>16</sup> In several situations, administrative penalties are also imposed.<sup>17</sup>

### **New Tax Levies**

A county or municipality that has not yet adopted a business tax ordinance or resolution may adopt a business tax ordinance pursuant to s. 205.0315, F.S. The tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances adopted by adjacent local governments that have implemented a local business tax.<sup>18</sup> If no adjacent local government has implemented a local business tax, or if the governing body of the county or municipality finds that the rate structures or classifications of adjacent local governments are unreasonable, then an alternative method is authorized. In such a case, the rate structure or classifications prescribed in the ordinance of the local government seeking to impose the tax may be based upon those prescribed in ordinances adopted by local governments that have implemented a local business tax, in counties or municipalities that have a comparable population.<sup>19</sup>

### **Tax Base/Rate Restructuring**

Currently, counties and municipalities with an existing local business tax may not reclassify businesses, professions, and occupations.<sup>20</sup> However, those counties and municipalities that underwent a reclassification and rate structure revision pursuant to s. 205.0535, F.S., prior to October 1, 1995, or during a window of time available from July 1, 2007, through October 1, 2008, for certain municipalities may, every other year, increase or decrease by ordinance the rates of business taxes by up to 5 percent.<sup>21</sup> However, an increase may not be enacted by less than a majority plus one vote of the governing body.<sup>22</sup> A county or municipality is not prohibited from decreasing or repealing any authorized local business tax.<sup>23</sup>

### **Exemptions**

Ch. 205, F.S., provides several exemptions and exclusions from local business taxes. Customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions are excluded from the definition of “business,” “profession,” and “occupation” and are thereby excluded from paying local business taxes.<sup>24</sup> There is an optional partial exemption for businesses located in enterprise zones.<sup>25</sup> The delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation

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<sup>14</sup> Id.

<sup>15</sup> Section 205.053, F.S.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Section 205.0315, F.S.

<sup>19</sup> Id.

<sup>20</sup> Section 205.0535, F.S.

<sup>21</sup> Section 205.0535(4), F.S.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Section 205.022(1), F.S.

<sup>25</sup> Section 205.054, F.S.

service.<sup>26</sup> There are also exemptions for persons engaged in specified farming activities,<sup>27</sup> certain nonresident persons regulated by the Department of Professional Regulation,<sup>28</sup> certain employees of businesses that are required to pay a local business tax,<sup>29</sup> certain disabled persons, the aged, and widows with minor dependents,<sup>30</sup> disabled veterans of any war or their unremarried spouses,<sup>31</sup> and certain mobile home setup operations.<sup>32</sup> Charitable, religious, fraternal, youth, civic, service, or other similar organization that make occasional sales or engage in fundraising projects that are performed exclusively by the members where the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic and service activities of the organization are also exempt.<sup>33</sup>

### **Exemptions for employees**

In 2011 the Florida Legislature passed HB 311, chapter 2011-78, Laws of Florida. This bill created an exemption from local business taxes for an individual who engages in or manages a business, profession, or occupation as an employee of another person. The bill provided that the exempt employee is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax.

Under current law, an individual licensed and operating as a broker associate or sales associate under ch. 475 is an employee. An individual acting in the capacity of an independent contractor is not an employee.<sup>34</sup>

### **Regulatory Provisions**

Section 205.194, F.S., provides that any person applying for or renewing a local business tax receipt to practice any profession or engage in or manage any business or occupation regulated by the Department of Business and Professional Regulation, the Florida Supreme Court, or any other state regulatory agency, including any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of the same, before such local receipt may be issued.

Sections 205.196, 205.1965, 205.1967, 205.1969, 205.1971, 205.1973 and 205.1975, F.S., provide similar requirements for production of evidence of appropriate licensure prior to issuance of a business tax receipt for pharmacies and pharmacists, assisted living facilities, pest control, health studios, sellers of travel and telemarketing businesses, respectively.

### **Distribution of Revenues**

The revenues derived from the business tax imposed by county governments, exclusive of the costs of collection and any credit given for municipal business taxes, are apportioned between the county's unincorporated area and the incorporated municipalities located within the county

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<sup>26</sup> Section 205.063, F.S.

<sup>27</sup> Section 205.064, F.S.

<sup>28</sup> Section 205.065, F.S.

<sup>29</sup> Section 205.066, F.S.

<sup>30</sup> Section 205.162, F.S.

<sup>31</sup> Section 205.171, F.S.

<sup>32</sup> Section 205.193, F.S.

<sup>33</sup> Section 205.192, F.S.

<sup>34</sup> Section 205.066, F.S.

by a ratio derived by dividing their respective populations by the county's total population.<sup>35</sup> Within 15 days following the month of receipt, the apportioned revenues are sent to each governing authority; however, this provision does not apply to counties that have established a new rate structure pursuant to s. 205.0535, F.S.<sup>36</sup>

#### **Authorized Uses of Revenues**

The tax proceeds are considered general revenue for the county or municipality. Additionally, the county business tax proceeds may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities and other sales and marketing techniques.<sup>37</sup> The proceeds of the additional county business tax imposed pursuant to s. 205.033(6), F.S., shall be distributed by the county's governing body to a designated organization or agency for the purpose of implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.<sup>38</sup>

#### **Total Revenues Collected**

According to a report published by the Office of Economic and Demographic Research (EDR), in fiscal year 2008-09 counties collected a total of \$32 million of local business tax revenue. In that same fiscal year, municipalities collected a total of \$120 million of local business tax revenue.<sup>39</sup>

#### **Real Estate Sales and Broker Associates**

Chapter 475, F.S., provides for the licensure of real estate brokers and sales associates. Section 475.01, F.S., defines "broker associate" as a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another. "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 205.067, F.S., which excludes any individual who is licensed and operating as a real estate broker associate or sales associate under ch. 475, F.S., from having to pay a local business tax or obtain a local business tax receipt. They are not required to apply for this exemption.

No local governing authority may hold the individual sales associate or broker associate liable for the failure of his employer to pay local business tax, obtain a local business tax receipt, or apply for an exemption from the local business tax. An employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide contact information to that authority for his or her sales associates and broker associates.

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<sup>35</sup> Section 205.033(4), F.S.

<sup>36</sup> Section 205.033(5), F.S.

<sup>37</sup> Section 205.033(7), F.S.

<sup>38</sup> Section 205.033(6)(b), F.S.

<sup>39</sup> Office of Economic and Demographic Research, 2012 Economic Development Financial Reference Manual (January 11, 2012) available at:

<http://edr.state.fl.us/Content/presentations/local-government/2012economicdevelopmentfinancialreferencemanual.pdf>.

**Section 2** amends s. 205.066, F.S., striking a portion of the employee exemption that the bill makes redundant.

**Section 3** provides an effective date of July 1, 2012.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

The county/municipality mandates provision of Art. VII, section 18 of the Florida Constitution, may apply because this bill eliminates the local businesses taxes authorized under Ch. 205, F.S. This bill does not appear to qualify under any exemption or exception. If the bill is determined to be a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Real estate sales and broker associates who are in a local governing authority that adopted a local business tax imposed upon employees prior to October 13, 2010, will no longer have to pay that tax.

**C. Government Sector Impact:**

The Revenue Estimating Conference estimates that this bill will have a negative recurring impact to local governments of \$3.8 million beginning in FY 2012-13. There is no state impact.

**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.

---

By Senator Hays

20-00665-12

2012770\_\_

1 A bill to be entitled  
 2 An act relating to exemptions from local business  
 3 taxes; creating s. 205.067, F.S.; specifying that an  
 4 individual licensed and operating as a broker  
 5 associate or sales associate is not required to apply  
 6 for an exemption from a local business tax or take  
 7 certain actions relating to a local business tax;  
 8 prohibiting a local governing authority from holding  
 9 such exempt individual liable for the failure of a  
 10 principal or employer to comply with certain  
 11 obligations related to a local business tax or from  
 12 requiring the exempt individual to take certain  
 13 actions related to a local business tax; prohibiting a  
 14 local governing authority from requiring a principal  
 15 or employer to provide personal or contact information  
 16 for such exempt individuals in order to obtain a local  
 17 business tax receipt; amending s. 205.066, F.S.;  
 18 conforming provisions; providing an effective date.  
 19  
 20 Be It Enacted by the Legislature of the State of Florida:  
 21  
 22 Section 1. Section 205.067, Florida Statutes, is created to  
 23 read:  
 24 205.067 Exemptions; broker associates and sales  
 25 associates.—  
 26 (1) An individual licensed and operating as a broker  
 27 associate or sales associate under chapter 475 is not required  
 28 to apply for an exemption from a local business tax, pay a local  
 29 business tax, or obtain a local business tax receipt.

Page 1 of 2

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

20-00665-12

2012770\_\_

30 (2) An individual exempt under this section may not be held  
 31 liable by any local governing authority for the failure of a  
 32 principal or employer to apply for an exemption from a local  
 33 business tax, pay a local business tax, or obtain a local  
 34 business tax receipt. An individual exempt under this section  
 35 may not be required by any local governing authority to apply  
 36 for an exemption from a local business tax, otherwise prove his  
 37 or her exempt status, or pay any tax or fee related to a local  
 38 business tax.  
 39 (3) A principal or employer who is required to obtain a  
 40 local business tax receipt may not be required by a local  
 41 governing authority to provide personal or contact information  
 42 for individuals exempt under this section in order to obtain a  
 43 local business tax receipt.  
 44 Section 2. Subsection (1) of section 205.066, Florida  
 45 Statutes, is amended to read:  
 46 205.066 Exemptions; employees.—  
 47 (1) An individual who engages in or manages a business,  
 48 profession, or occupation as an employee of another person is  
 49 not required to apply for an exemption from a local business  
 50 tax, pay a local business tax, or obtain a local business tax  
 51 receipt. ~~For purposes of this section, an individual licensed~~  
 52 ~~and operating as a broker associate or sales associate under~~  
 53 ~~chapter 475 is an employee.~~ An individual acting in the capacity  
 54 of an independent contractor is not an employee.  
 55 Section 3. This act shall take effect July 1, 2012.

Page 2 of 2

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12  
Meeting Date

Topic Local Business Taxes

Bill Number 770  
(if applicable)

Name Trey Price

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Public Policy Representative

Address 200 S. Monroe St  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850-224-1400

E-mail TreyP@floridarealtors.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2 / 6 / 2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 770  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727/897-9291

*Street*

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/2012  
Meeting Date

Topic Local Business Tax

Bill Number 770  
(if applicable)

Name Amber Hughes

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Legislative Advocate

Address PO Box 1756

Phone 701-3621

Tallahassee FL 32302  
City State Zip

E-mail ahughes@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12

Meeting Date

Topic \_\_\_\_\_

Bill Number 770  
(if applicable)

Name Frank Meiners

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address PO Box 1633  
Tall FL 32301  
City State Zip

Phone 850 591-0177

E-mail frank@chqmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Assoc. Incl. of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: CS/CS/SB 1060

INTRODUCER: Community Affairs Committee; Communications, Energy, and Public Utilities Committee; and Senator Bogdanoff

SUBJECT: Communications Services Taxes

DATE: February 6, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	<b>Fav/CS</b>
2.	Toman	Yeatman	CA	<b>Fav/CS</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

The bill:

- defines the terms “digital good” and “digital service” and provides that both are exempted from the communications services tax;
- defines the term “sales price” to allow additional nontaxable items to be billed together without the entire amount being taxable;
- provides that for a dealer in communications services who is obligated to collect and remit a local communications services tax to be liable for assigning a service address to an incorrect local taxing jurisdiction, the dealer’s failure to use one or more of the specified assignment methods must be the cause of a net aggregate underpayment of the local communications services taxes and the Department of Revenue (DOR) must determine the misallocations between jurisdictions for all taxes levied and collected by the dealer with respect to any tax period being examined;
- makes these changes retroactive and remedial;
- makes numerous conforming changes; and

- changes numerous references to cable service to references to video service to recognize that other traditional types of communications companies now offer video services, not just traditional cable companies.

The bill substantially amends the following sections of the Florida Statutes: 202.105, 202.11, 202.125, 202.16, 202.18, 202.195, 202.20, 202.22., 202.231, 202.24, 202.26, 203.01, 610.118, and 624.105.

The bill also creates an undesignated section of law.

## **II. Present Situation:**

Chapter 202, F.S., is the Communications Services Tax Simplification Law.

Section 202.22, F.S., provides for the determination of local tax situs. It provides that a dealer of communications services who is obligated to collect and remit a local communications services tax is held harmless from any liability, including tax, interest, and penalties, which would otherwise be due solely as a result of an assignment of a service address to an incorrect local taxing jurisdiction, if the dealer exercises due diligence in applying one or more of the following methods for determining the local taxing jurisdiction in which a service address is located:

- employing an electronic database provided by the department;
- employing a database developed by the dealer or supplied by a vendor which has been certified by the department;
- employing enhanced zip codes to assign each street address, address range, post office box, or post office box range in the dealer's service area to a specific local taxing jurisdiction; or
- if an enhanced zip code is unsatisfactory for stated reasons, the dealer of communications services or its database vendor must assign the affected service addresses to one specific local taxing jurisdiction within the zip code based on a reasonable methodology meeting one of the specified criteria.

The statute requires DOR to create and maintain an electronic database that designates for each street address, address range, post office box, or post office box range in the state, including any multiple postal street addresses applicable to one street location, the local taxing jurisdiction in which the street address, address range, post office box, or post office box range is located and the appropriate code for each such local taxing jurisdiction, identified by one nationwide standard numeric code.

If a dealer of communications services does not use one or more of the specified methods for determining the local taxing jurisdiction in which a service address is located, the dealer may be held liable for any tax, including interest and penalties, which is due as a result of assigning the service address to an incorrect local taxing jurisdiction.

Section 202.231, F.S., requires the department to provide a monthly report to each jurisdiction imposing the local communications services tax. Each report must contain the following information for the jurisdiction which is receiving the report: the name and other information necessary to identify each dealer providing service in the jurisdiction, including each dealer's federal employer identification number; the gross taxable sales reported by each dealer; the

amount of the dealer's collection allowance; and any adjustments specified on the return, including audit assessments or refunds, and interest or penalties, affecting the net tax from each dealer which is being remitted to the jurisdiction. The report must total the net amount transferred to the jurisdiction, showing the net taxes remitted by dealers less the administrative fees deducted by the department. The monthly reports must be transmitted through a secure electronic mail system or by other suitable written or electronic means.

### III. Effect of Proposed Changes:

**Section 1** amends s. 202.105(1), F.S., which provides legislative findings and intent and includes language about the "convergence of service offerings that is now taking place among providers." The bill deletes this language and replaces it with the "multitude of providers offering functionally equivalent communications services in today's marketplace."

**Section 2** amends s. 202.11, F.S., which provides definitions. The bill:

- deletes the existing definition of "cable service,"
- deletes the term "cable services" from the definition of "communications services" and replaces it with "video services,"
- includes digital goods and digital services in the exclusions from the definition of "communications services,"
- defines "digital good" to mean any downloaded good or product that is delivered or transferred by means other than tangible storage media, including downloaded games, software, music, or other digital content, and not to include video service;
- defines "digital service" to mean any service, other than video service, which is provided electronically, including remotely provided access to or use of software or another digital good, and also includes the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services. If a digital service is bundled for sale with the transmission, conveyance, or routing of any information or signals, the bundled service is a digital service unless the tax imposed under this chapter and chapter 203 has not been paid with respect to such transmission, conveyance, or routing.;
- defines "Internet access service" to have the same meaning as ascribed to the term "Internet access" by s. 1105(5) of the Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by Pub. L. No. 110-108; and
- defines "video service" to mean the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.

**Section 3** amends s. 202.125, F.S., to change a reference to "cable services" to "video services."

**Section 4** amends s. 202.16, F.S., to change a reference to cable service to video service, and adds the “purchase of video programming” to charges that must comply with DOR rules.

**Section 5** amends s. 202.18, F.S., to remove the language “Notwithstanding the time period specified in s. 202.22(5),” as that time period is deleted in section 8 of bill.

**Section 6** amends s. 202.195, F.S. This section provides a public records exemption for proprietary confidential business information obtained from a telecommunications company or cable company for the purposes of imposing a fee for occupying the public rights-of-way, assessing the local communications services tax, or regulating the rights-of-way. The bill deletes all references to imposing a fee for occupying the rights-of-way. It also replaces references to cable companies with references to video service providers.

**Section 7** amends s. 202.20, F.S., to change a reference to cable service to video service.

**Section 8** amends s. 202.22, F.S., on determination of local tax situs. The statute currently provides that if a dealer of communications services who is obligated to collect and remit a local communications services tax assigns a service address to an incorrect local taxing jurisdiction, but has exercised due diligence in applying one or more of specified methods for determining the local taxing jurisdiction in which a service address is located, the dealer is held harmless from any liability, including tax, interest, and penalties, which would otherwise be due. If the dealer has not used one of these methods, the dealer is liable.

The bill provides that a dealer may be held liable for the net aggregate underpayment of the tax, and for interest and penalties attributable to the net aggregate underpayment of tax, which is due as a result of assigning one or more service addresses to an incorrect local taxing jurisdiction if the dealer failed to use one or more of the specified methods and if:

- the dealer’s failure to use one or more of such methods results in a net aggregate underpayment of the local communications services taxes with respect to one or more tax periods that are being examined by the department; and
- the department has determined the misallocations between jurisdictions for all taxes levied and collected by the dealer with respect to any tax period being examined by the department.

**Section 9** amends s. 202.231, F.S. This section requires the department to provide a monthly report to each jurisdiction imposing the local communications services tax. Each report must contain jurisdiction-specific information: identifying each dealer providing service in the jurisdiction; the gross taxable sales reported by each dealer; the amount of the dealer’s collection allowance; any adjustments specified on the return, including audit assessments or refunds, and interest or penalties, affecting the net tax from each dealer which is being remitted to the jurisdiction; and the net amount transferred to the jurisdiction, showing the net taxes remitted by dealers less the administrative fees deducted by the department.

The bill adds to this a requirement that the gross taxable sales and net tax information contained in the monthly reports be aggregated on a jurisdiction-by-jurisdiction basis, and the aggregate jurisdiction-by-jurisdiction information be made available by the department to the public through the department’s website for each fiscal year this chapter has been in effect.

**Section 10** amends s. 202.24, F.S., to delete references to cable services.

**Section 11** amends s. 202.26, F.S., to conform a cross-reference.

**Section 12** amends s. 203.01, F.S., to conform a cross-reference.

**Section 13** amends s. 610.118, F.S., to conform a cross-reference.

**Section 14** amends s. 624.105, F.S., to conform a cross-reference.

**Section 15** creates an undesignated section of law to provide for retroactive application of specified sections of the bill.

**Section 16** provides that the bill takes effect July 1, 2012.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The county/municipality mandates provision of Art. VII, section 18 of the Florida Constitution, may apply because this bill may reduce the revenues collected by local governments by revising the liability dealers of communications services have in cases of underpayment due to incorrectly assigned service addresses. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

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

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The 2012 Revenue Estimating Conference (REC) estimates the changes to dealer liability for incorrectly assigned service addresses will have a recurring negative impact to local governments of \$4.7 million.<sup>1</sup>

The conference also adopted indeterminate negative estimates related to:

- the “digital services” definition,<sup>2</sup>

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<sup>1</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Changes to Language Regarding Assignment of Current Local Taxing Jurisdictions* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page249-252.pdf>.

- the “digital goods” definition,<sup>3</sup>
- the unbundling and exclusion from sales price of any property except those specifically enumerated as part of the sales price,<sup>4</sup> and
- the remedial and retroactive application of the CS.<sup>5</sup>

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

See Tax/Fee Issues.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Community Affairs Committee on February 6, 2012:**

- removes an amended definition for “pre-paid calling arrangement.”

**CS by Communications, Energy, and Public Utilities Committee on January 30, 2012:**

- deletes provisions relating to prepaid calling arrangements; and
- revises the conditions under which a dealer of communications services who is obligated to collect and remit a local communications services tax may be held liable for taxes and associated interest for assigning a service address to an incorrect local taxing jurisdiction.

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<sup>2</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Exclusion of Digital Services/Digital Services Definition* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page242-244.pdf>.

<sup>3</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Exclusion of Digital Goods/Digital Goods Definition* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page239-241.pdf>.

<sup>4</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Unbundling and Exclusion from Sales Price of Any Property or Services Except Those Specifically Enumerated as Part of Sales* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page245-248.pdf>.

<sup>5</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Remedial and Retroactive* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page297-299.pdf>.



B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2012	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (1) of section 202.105, Florida  
Statutes, is amended to read:

202.105 Legislative findings and intent.—

(1) It is declared to be a specific legislative finding  
that the creation of this chapter fulfills important state  
interests by reforming the tax laws to provide a fair,  
efficient, and uniform method for taxing communications services  
sold in this state. This chapter is essential to the continued



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13 economic vitality of this increasingly important industry  
14 because it restructures state and local taxes and fees to  
15 account for the impact of federal legislation, industry  
16 deregulation, and the multitude of convergence of service  
17 offerings that is now taking place among providers offering  
18 functionally equivalent communications services in today's  
19 marketplace. This chapter promotes the increased competition  
20 that accompanies deregulation by embracing a competitively  
21 neutral tax policy that will free consumers to choose a provider  
22 based on tax-neutral considerations. This chapter further spurs  
23 new competition by simplifying an extremely complicated state  
24 and local tax and fee system. Simplification will lower the cost  
25 of collecting taxes and fees, increase service availability, and  
26 place downward pressure on price. Newfound administrative  
27 efficiency is demonstrated by a reduction in the number of  
28 returns that a provider must file each month. By restructuring  
29 separate taxes and fees into a revenue-neutral communications  
30 services tax centrally administered by the department, this  
31 chapter will ensure that the growth of the industry is  
32 unimpaired by excessive governmental regulation. The tax imposed  
33 pursuant to this chapter is a replacement for taxes and fees  
34 previously imposed and is not a new tax. The taxes imposed and  
35 administered pursuant to this chapter are of general application  
36 and are imposed in a uniform, consistent, and nondiscriminatory  
37 manner.

38 Section 2. Section 202.11, Florida Statutes, is amended to  
39 read:

40 202.11 Definitions.—As used in this chapter, the term:

41 ~~(1) "Cable service" means the transmission of video, audio,~~



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~~or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of any such programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more other dealers of communications services. The term includes point-to-point and point-to-multipoint distribution services by which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital, and music services.~~

(1)~~(2)~~ "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video ~~cable~~ services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(a) Information services.

(b) Installation or maintenance of wiring or equipment on a



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customer's premises.

(c) The sale or rental of tangible personal property.

(d) The sale of advertising, including, but not limited to, directory advertising.

(e) Bad check charges.

(f) Late payment charges.

(g) Billing and collection services.

(h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

(i) Digital goods.

(j) Digital services.

(2)~~(3)~~ "Dealer" means a person registered with the department as a provider of communications services in this state.

(3)~~(4)~~ "Department" means the Department of Revenue.

(4) "Digital good" means any downloaded good or product that is delivered or transferred by means other than tangible storage media, including downloaded games, software, music, or other digital content. The term does not include video service.

(5) "Digital service" means any service, other than video service, which is provided electronically, including remotely provided access to or use of software or another digital good, and also includes the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services. If a digital service is bundled for sale with the transmission, conveyance, or routing of any information or signals, the bundled service is a digital service



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unless the tax imposed under this chapter and chapter 203 has not been paid with respect to such transmission, conveyance, or routing.

(6)~~(5)~~ "Direct-to-home satellite service" has the meaning ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

(7)~~(6)~~ "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term does not include ~~any video, audio, or other programming service that uses point-to-multipoint distribution by which programming is delivered, transmitted, or broadcast by any means, including any interaction that may be necessary for selecting and using the service, regardless of whether the programming is delivered, transmitted, or broadcast over facilities owned or operated by the seller or another, or whether denominated as cable service or as basic, extended, premium, pay-per-view, digital, music, or two-way cable service.~~

(8) "Internet access service" has the same meaning as ascribed to the term "Internet access" by s. 1105(5) of the Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by Pub. L. No. 110-108.

(9)~~(7)~~ "Mobile communications service" means ~~commercial~~ mobile ~~radio~~ service, as defined in 47 C.F.R. s. 20.3 as in effect on June 1, 1999. The term does not include air-ground radiotelephone service as defined in 47 C.F.R. s. 22.99 as in effect on June 1, 1999.

(10)~~(8)~~ "Person" has the meaning ascribed in s. 212.02.



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129        (11)~~(9)~~ "Prepaid calling arrangement" means the separately  
130        stated retail sale by advance payment of communications services  
131        that consist exclusively of telephone calls originated by using  
132        an access number, authorization code, or other means that may be  
133        manually, electronically, or otherwise entered, and that are  
134        sold in predetermined units or dollars of which the number  
135        declines with use in a known amount.

136        (12)~~(10)~~ "Purchaser" means the person paying for or  
137        obligated to pay for communications services.

138        (13)~~(11)~~ "Retail sale" means the sale of communications  
139        services for any purpose other than for resale or for use as a  
140        component part of or for integration into communications  
141        services to be resold in the ordinary course of business.  
142        However, any sale for resale must comply with s. 202.16(2) and  
143        the rules adopted thereunder.

144        (14)~~(12)~~ "Sale" means the provision of communications  
145        services for a consideration.

146        (15)~~(13)~~ "Sales price" means the total amount charged in  
147        money or other consideration by a dealer for the sale of the  
148        right or privilege of using communications services in this  
149        state, including any property or other service, not described in  
150        paragraph (a), which is services that are part of the sale and  
151        for which the charge is not separately itemized on a customer's  
152        bill or separately allocated under subparagraph (b)8. The sales  
153        price of communications services may ~~shall~~ not be reduced by any  
154        separately identified components of the charge which ~~that~~  
155        constitute expenses of the dealer, including, but not limited  
156        to, sales taxes on goods or services purchased by the dealer,  
157        property taxes, taxes measured by net income, and universal-



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service fund fees.

(a) The sales price of communications services includes  
~~shall include~~, whether or not separately stated, charges for any  
of the following:

1. The connection, movement, change, or termination of communications services.
2. The detailed billing of communications services.
3. The sale of directory listings in connection with a communications service.
4. Central office and custom calling features.
5. Voice mail and other messaging service.
6. Directory assistance.
7. The service of sending or receiving a document commonly referred to as a facsimile or "fax," except when performed during the course of providing professional or advertising services.

(b) The sales price of communications services does not include charges for any of the following:

1. An ~~Any~~ excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service, including, but not limited to, a ~~any~~ tax imposed under this chapter or chapter 203 which is permitted or required to be added to the sales price of such service, if the tax is stated separately.

2. A ~~Any~~ fee or assessment levied by the United States or any state or local government, including, but not limited to, regulatory fees and emergency telephone surcharges, which must  
~~is required to~~ be added to the price of the ~~such~~ service if the





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fee or assessment is separately stated.

3. Communications services paid for by inserting coins into coin-operated communications devices available to the public.

4. The sale or recharge of a prepaid calling arrangement.

5. The provision of air-to-ground communications services, defined as a radio service provided to a purchaser ~~purchasers~~ while on board an aircraft.

6. A dealer's internal use of communications services in connection with its business of providing communications services.

7. Charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services.

8. ~~To the extent required by federal law,~~ Charges for goods and services that are exempt from tax under this chapter, including Internet access services but excluding any item described in paragraph (a), that ~~which~~ are not separately itemized on a customer's bill, but that ~~which~~ can be reasonably identified from the selling dealer's books and records kept in the regular course of business. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state.

~~(16)-(14)~~ "Service address" means:

(a) Except as otherwise provided in this section:

1. The location of the communications equipment from which communications services originate or at which communications services are received by the customer;

2. In the case of a communications service paid through a



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credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card, and in the case of third-number and calling-card calls, the term "service address" means the address of the central office, as determined by the area code and the first three digits of the seven-digit originating telephone number; or

3. If the location of the equipment described in subparagraph 1. is not known and subparagraph 2. is inapplicable, the term "service address" means the location of the customer's primary use of the communications service. For purposes of this subparagraph, the location of the customer's primary use of a communications service is the residential street address or the business street address of the customer.

(b) In the case of video ~~cable~~ services and direct-to-home satellite services, the location where the customer receives the services in this state.

(c) In the case of mobile communications services, the customer's place of primary use.

(17) ~~(15)~~ "Unbundled network element" means a network element, as defined in 47 U.S.C. s. 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. s. 251(c) (3) .

(18) ~~(16)~~ "Private communications service" means a communications service that entitles the subscriber or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that ~~which~~ are



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provided in connection with the use of such channel or channels.

(19)~~(17)~~ (a) "Customer" means:

1. The person or entity that contracts with the home service provider for mobile communications services; or

2. If the end user of mobile communications services is not the contracting party, the end user of the mobile communications service. This subparagraph only applies for the purpose of determining the place of primary use.

(b) "Customer" does not include:

1. A reseller of mobile communications services; or

2. A serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(20)~~(18)~~ "Enhanced zip code" means a United States postal zip code of 9 or more digits.

(21)~~(19)~~ "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile communications services.

(22)~~(20)~~ "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide mobile communications service to the customer.

(23)~~(21)~~ "Place of primary use" means the street address representative of where the customer's use of the mobile communications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.



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(24)~~(22)~~ (a) "Reseller" means a provider who purchases communications services from another communications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile communications service.

(b) The term ~~"Reseller"~~ does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(25)~~(23)~~ "Serving carrier" means a facilities-based carrier providing mobile communications service to a customer outside a home service provider's or reseller's licensed service area.

(26)~~(24)~~ "Video service" means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services ~~has the same meaning as that provided in s. 610.103.~~

Section 3. Subsection (1) of section 202.125, Florida Statutes, is amended to read:

202.125 Sales of communications services; specified



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exemptions.-

(1) The separately stated sales price of communications services sold to residential households is exempt from the tax imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does not apply to any residence that constitutes all or part of a transient public lodging establishment as defined in chapter 509, any mobile communications service, any video ~~cable~~ service, or any direct-to-home satellite service.

Section 4. Paragraph (a) of subsection (2) 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.

(2)(a) A sale of communications services that are used as a component part of or integrated into a communications service or prepaid calling arrangement for resale, including, but not limited to, carrier-access charges, interconnection charges paid by providers of mobile communication services or other communication services, charges paid by a video ~~cable~~ service provider ~~providers~~ for the purchase of video programming or the transmission of video or other programming by another dealer of communications services, charges for the sale of unbundled network elements, and any other intercompany charges for the use of facilities for providing communications services for resale,



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must be made in compliance with the rules of the department. A  
~~Any~~ person who makes a sale for resale which is not in  
compliance with these rules is liable for any tax, penalty, and  
interest due for failing to comply, to be calculated pursuant to  
s. 202.28(2)(a).

Section 5. Paragraph (c) of subsection (3) of section  
202.18, Florida Statutes, is amended to read:

202.18 Allocation and disposition of tax proceeds.—The  
proceeds of the communications services taxes remitted under  
this chapter shall be treated as follows:

(3)

(c)1. Except as otherwise provided in this paragraph,  
proceeds of the taxes levied pursuant to s. 202.19, less amounts  
deducted for costs of administration in accordance with  
paragraph (b), shall be distributed monthly to the appropriate  
jurisdictions. The proceeds of taxes imposed pursuant to s.  
202.19(5) shall be distributed in the same manner as  
discretionary surtaxes are distributed, in accordance with ss.  
212.054 and 212.055.

2. The department shall make any adjustments to the  
distributions pursuant to this section which are necessary to  
reflect the proper amounts due to individual jurisdictions or  
trust funds. In the event that the department adjusts amounts  
due to reflect a correction in the situsing of a customer, such  
adjustment shall be limited to the amount of tax actually  
collected from such customer by the dealer of communication  
services.

3.a. ~~Notwithstanding the time period specified in s.~~  
~~202.22(5),~~ Adjustments in distributions which are necessary to



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correct misallocations between jurisdictions shall be governed by this subparagraph. If the department determines that misallocations between jurisdictions occurred, it shall provide written notice of such determination to all affected jurisdictions. The notice shall include the amount of the misallocations, the basis upon which the determination was made, data supporting the determination, and the identity of each affected jurisdiction. The notice shall also inform all affected jurisdictions of their authority to enter into a written agreement establishing a method of adjustment as described in sub-subparagraph c.

b. An adjustment affecting a distribution to a jurisdiction which is less than 90 percent of the average monthly distribution to that jurisdiction for the 6 months immediately preceding the department's determination, as reported by all communications services dealers, shall be made in the month immediately following the department's determination that misallocations occurred.

c. If an adjustment affecting a distribution to a jurisdiction equals or exceeds 90 percent of the average monthly distribution to that jurisdiction for the 6 months immediately preceding the department's determination, as reported by all communications services dealers, the affected jurisdictions may enter into a written agreement establishing a method of adjustment. If the agreement establishing a method of adjustment provides for payments of local communications services tax monthly distributions, the amount of any such payment agreed to may not exceed the local communications services tax monthly distributions available to the jurisdiction that was allocated



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amounts in excess of those to which it was entitled. If affected jurisdictions execute a written agreement specifying a method of adjustment, a copy of the written agreement shall be provided to the department no later than the first day of the month following 90 days after the date the department transmits notice of the misallocation. If the department does not receive a copy of the written agreement within the specified time period, an adjustment affecting a distribution to a jurisdiction made pursuant to this sub-subparagraph shall be prorated over a time period that equals the time period over which the misallocations occurred.

Section 6. Subsections (1) and (3) of section 202.195, Florida Statutes, are amended to read:

202.195 Proprietary confidential business information; public records exemption.—

(1) Proprietary confidential business information obtained from a telecommunications company or from a franchised or certificated video service provider ~~cable company~~ for the purposes of ~~imposing fees for occupying the public rights-of-way,~~ assessing the local communications services tax pursuant to s. 202.19, or occupying or regulating the public rights-of-way, held by a local governmental entity, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such proprietary confidential business information held by a local governmental entity may be used only for the purposes of ~~imposing such fees,~~ assessing such tax, or regulating such rights-of-way, and may not be used for any other purposes, including, but not limited to, commercial or competitive purposes.





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(3) ~~Nothing in~~ This exemption does not expand ~~expands~~ the information or documentation that a local governmental entity may properly request under applicable law pursuant to ~~the imposition of fees for~~ occupying the rights-of-way, the local communication services tax, or the regulation of its public rights-of-way.

Section 7. Paragraph (b) of subsection (2) of section 202.20, Florida Statutes, is amended to read:

202.20 Local communications services tax conversion rates.—

(2)

(b) Except as otherwise provided in this subsection, the term “replaced revenue sources,” as used in this section, means the following taxes, charges, fees, or other impositions to the extent that the respective local taxing jurisdictions were authorized to impose them prior to July 1, 2000.

1. With respect to municipalities and charter counties and the taxes authorized by s. 202.19(1):

a. The public service tax on telecommunications authorized by former s. 166.231(9).

b. Franchise fees on video ~~cable~~ service providers as authorized by 47 U.S.C. s. 542.

c. The public service tax on prepaid calling arrangements.

d. Franchise fees on dealers of communications services which use the public roads or rights-of-way, up to the limit set forth in s. 337.401. For purposes of calculating rates under this section, it is the legislative intent that charter counties be treated as having had the same authority as municipalities to impose franchise fees on recurring local telecommunication service revenues before ~~prior to~~ July 1, 2000. However, the



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Legislature recognizes that the authority of charter counties to impose such fees is in dispute, and the treatment provided in this section is not an expression of legislative intent that charter counties actually do or do not possess such authority.

e. Actual permit fees relating to placing or maintaining facilities in or on public roads or rights-of-way, collected from providers of long-distance, cable, and mobile communications services for the fiscal year ending September 30, 1999; however, if a municipality or charter county elects the option to charge permit fees pursuant to s. 337.401(3)(c)1.a., such fees may ~~shall~~ not be included as a replaced revenue source.

2. With respect to all other counties and the taxes authorized in s. 202.19(1), franchise fees on video ~~cable~~ service providers as authorized by 47 U.S.C. s. 542.

Section 8. Subsections (5) and (6) of section 202.22, Florida Statutes, are amended to read:

202.22 Determination of local tax situs.—

(5) If a dealer of communications services does not use one or more of the methods specified in subsection (1) for determining the local taxing jurisdiction in which one or more service addresses are ~~a service address is~~ located and:

(a) The dealer's failure to use one or more of such methods results in a net aggregate underpayment of all taxes levied pursuant to s. 202.19 with respect to one or more tax periods that are being examined by the department; and

(b) The department has determined the misallocations between jurisdictions for all taxes levied pursuant to s. 202.19 and collected by the dealer with respect to any tax period being



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477 examined by the department; then,

478  
479 the dealer of communications services may be held liable to the  
480 department for the net aggregate underpayment of any tax, and  
481 for including interest and penalties attributable to the net  
482 aggregate underpayment of tax, which is due as a result of  
483 assigning one or more the service addresses ~~address~~ to an  
484 incorrect local taxing jurisdiction. However, the dealer of  
485 communications services is not liable for any tax, interest, or  
486 penalty under this subsection unless the department has  
487 determined the net aggregate underpayment of tax for any tax  
488 period that is being examined, taking into account all  
489 underpayments and overpayments for such period or periods ~~to the~~  
490 ~~extent that such amount was collected and remitted by the dealer~~  
491 ~~of communications services with respect to a tax imposed by~~  
492 ~~another local taxing jurisdiction. Upon determining that an~~  
493 ~~amount was collected and remitted by a dealer of communications~~  
494 ~~services with respect to a tax imposed by another local taxing~~  
495 ~~jurisdiction, the department shall adjust the respective amounts~~  
496 ~~of the proceeds paid to each such taxing jurisdiction under s.~~  
497 ~~202.18 in the month immediately following such determination.~~

498 (6)(a) Pursuant to rules adopted by the department, each  
499 dealer of communications services must notify the department of  
500 the methods it intends to employ for determining the local  
501 taxing jurisdiction in which service addresses are located.

502 (b) Notwithstanding s. 202.28, if a dealer of  
503 communications services:

504 1. Employs a method of assigning service addresses other  
505 than as set forth in paragraph (1)(a), paragraph (1)(b), or



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paragraph (1)(c), the deduction allowed to the dealer of communications services as compensation under s. 202.28 shall be 0.25 percent of that portion of the tax due and accounted for and remitted to the department which is attributable to such method of assigning service addresses other than as set forth in paragraph (1)(a), paragraph (1)(b), or paragraph (1)(c).

2. Employs a method of assigning service addresses as set forth in paragraph (1)(a), paragraph (1)(b), or paragraph (1)(c), the department may not deny the deduction allowed to the dealer of communications services as compensation allowed under s. 202.28 because the dealer assigned one or more service addresses to an incorrect local taxing jurisdiction.

Section 9. Subsection (3) is added to section 202.231, Florida Statutes, to read:

202.231 Provision of information to local taxing jurisdictions.—

(3) The gross taxable sales and net tax information contained in the monthly reports required by this section shall be aggregated on a jurisdiction-by-jurisdiction basis, and the aggregate jurisdiction-by-jurisdiction information shall be made available by the department to the public through the department's website for each fiscal year this chapter has been in effect.

Section 10. Paragraphs (a) and (c) of subsection (2) of section 202.24, Florida Statutes, are amended to read:

202.24 Limitations on local taxes and fees imposed on dealers of communications services.—

(2)(a) Except as provided in paragraph (c), each public body is prohibited from:



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1. Levying on or collecting from dealers or purchasers of communications services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of communications services.

2. Requiring any dealer of communications services to enter into or extend the term of a franchise or other agreement that requires the payment of a tax, charge, fee, or other imposition.

3. Adopting or enforcing any provision of any ordinance or agreement to the extent that such provision obligates a dealer of communications services to charge, collect, or pay to the public body a tax, charge, fee, or other imposition.

Municipalities and counties may not negotiate those terms and conditions related to franchise fees or the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees on providers of ~~cable or~~ video services.

(c) This subsection does not apply to:

1. Local communications services taxes levied under this chapter.

2. Ad valorem taxes levied pursuant to chapter 200.

3. Business taxes levied under chapter 205.

4. "911" service charges levied under chapter 365.

5. Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.

6. Permit fees of general applicability which are not



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related to placing or maintaining facilities in or on public roads or rights-of-way.

7. Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401.

8. Any in-kind requirements, institutional networks, or contributions for, or in support of, the use or construction of public, educational, or governmental access facilities allowed under federal law and imposed on providers of ~~cable or~~ video service pursuant to any existing ordinance or an existing franchise agreement granted by each municipality or county, under which ordinance or franchise agreement service is provided before ~~prior to~~ July 1, 2007, or as permitted under chapter 610. ~~Nothing in~~ This subparagraph does not shall prohibit ~~the ability of~~ providers of ~~cable or~~ video service from recovering the ~~to recover such~~ expenses as allowed under federal law.

9. Special assessments and impact fees.

10. Pole attachment fees that are charged by a local government for attachments to utility poles owned by the local government.

11. Utility service fees or other similar user fees for utility services.

12. Any other generally applicable tax, fee, charge, or imposition authorized by general law on July 1, 2000, which is not specifically prohibited by this subsection or included as a replaced revenue source in s. 202.20.

Section 11. Paragraph (j) of subsection (3) of section 202.26, Florida Statutes, is amended to read:

202.26 Department powers.—

(3) To administer the tax imposed by this chapter, the



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department may adopt rules relating to:

(j) The types of books and records kept in the regular course of business which must be available during an audit of a dealer's books and records when the dealer has made an allocation or attribution pursuant to the definition of sales prices in s. 202.11(15)(b)8. ~~202.11(13)(b)8.~~ and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. The ~~Such~~ records may be required to be made available to the department in an electronic format when so kept by the dealer. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state. During an audit, the department may reasonably require production of any additional books and records found necessary to assist in its determination.

Section 12. Paragraph (a) of subsection (1) of section 203.01, Florida Statutes, is amended to read:

203.01 Tax on gross receipts for utility and communications services.—

(1)(a)1. A tax is imposed on gross receipts from utility services that are delivered to a retail consumer in this state. The ~~Such~~ tax shall be levied as provided in paragraphs (b)-(j).

2. A tax is levied on communications services as defined in s. 202.11(1) ~~202.11(2)~~. The ~~Such~~ tax shall be applied to the same services and transactions as are subject to taxation under



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chapter 202, and to communications services that are subject to the exemption provided in s. 202.125(1). The ~~Such~~ tax shall be applied to the sales price of communications services when sold at retail, as the ~~such~~ terms are defined in s. 202.11, shall be due and payable at the same time as the taxes imposed pursuant to chapter 202, and shall be administered and collected pursuant to the provisions of chapter 202.

Section 13. Paragraph (a) of subsection (1) of section 610.118, Florida Statutes, is amended to read:

610.118 Impairment; court-ordered operations.—

(1) If an incumbent cable or video service provider is required to operate under its existing franchise and is legally prevented by a lawfully issued order of a court of competent jurisdiction from exercising its right to terminate its existing franchise pursuant to the terms of s. 610.105, any certificateholder providing cable service or video service in whole or in part within the service area that is the subject of the incumbent cable or video service provider's franchise shall, for as long as the court order remains in effect, comply with the following franchise terms and conditions as applicable to the incumbent cable or video service provider in the service area:

(a) The certificateholder shall pay to the municipality or county:

1. Any prospective lump-sum or recurring per-subscriber funding obligations to support public, educational, and governmental access channels or other prospective franchise-required monetary grants related to public, educational, or governmental access facilities equipment and capital costs.





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Prospective lump-sum payments shall be made on an equivalent per-subscriber basis calculated as follows: the amount of the prospective funding obligations divided by the number of subscribers being served by the incumbent cable service provider at the time of payment, divided by the number of months remaining in the incumbent cable or video service provider's franchise equals the monthly per subscriber amount to be paid by the certificateholder until the expiration or termination of the incumbent cable or video service provider's franchise; and

2. If the incumbent cable or video service provider is required to make payments for the funding of an institutional network, the certificateholder shall pay an amount equal to the incumbent's funding obligations but not to exceed 1 percent of the sales price, as defined in s. 202.11(15) ~~202.11(13)~~, for the taxable monthly retail sales of cable or video programming services the certificateholder received from subscribers in the affected municipality or county. All definitions and exemptions under chapter 202 apply in the determination of taxable monthly retail sales of cable or video programming services.

Section 14. Section 624.105, Florida Statutes, is amended to read:

624.105 Waiver of customer liability.—Any regulated company as defined in s. 350.111, any electric utility as defined in s. 366.02(2), any utility as defined in s. 367.021(12) or s. 367.022(2) and (7), and any provider of communications services as defined in s. 202.11(1) ~~202.11(2)~~ may charge for and include an optional waiver of liability provision in their customer contracts under which the entity agrees to waive all or a portion of the customer's liability for service from the entity



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for a defined period in the event of the customer's call to active military service, death, disability, involuntary unemployment, qualification for family leave, or similar qualifying event or condition. Such provisions may not be effective in the customer's contract with the entity unless affirmatively elected by the customer. No such provision shall constitute insurance so long as the provision is a contract between the entity and its customer.

Section 15. The following changes made in this act are intended to be remedial in nature and apply retroactively, but 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 before the general effective date of this act:

(1) The changes made in section 2 of this act to subsections renumbered as subsections (9) and (15) of s. 202.11, Florida Statutes.

(2) The changes made in section 8 of this act to s. 202.22, Florida Statutes.

Section 16. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to communications services taxes;  
amending s. 202.105, F.S.; revising legislative  
intent; amending s. 202.11, F.S.; modifying  
definitions; removing the definition of the term



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"cable service"; adding definitions for the terms  
"digital good," "digital service," and "Internet  
access service"; revising the definitions of the terms  
"communication services," "information service,"  
"mobile communication service," "sales price,"  
"service address," and "video service"; amending ss.  
202.125, 202.16, 202.20, and 202.24, F.S.; conforming  
provisions to changes in terminology; amending s.  
202.18, F.S.; removing a cross-reference to conform;  
amending s. 202.195, F.S.; clarifying provisions  
exempting from the public records law certain  
proprietary confidential business information held by  
a local governmental entity for the purpose of  
assessing the local communications services tax;  
amending s. 202.22, F.S.; revising provisions relating  
to a communications services dealer's liability for  
tax underpayments that result from the incorrect  
assignment of service addresses to local taxing  
jurisdictions and providing requirements and  
conditions with respect thereto; prohibiting the  
department from denying a dealer of communications  
services a deduction of a specified amount as a  
collection allowance under certain circumstances;  
amending s. 202.231, F.S.; requiring the Department of  
Revenue to aggregate monthly and make available to the  
public on a jurisdiction-by-jurisdiction basis certain  
sales and net tax information; amending s. 202.26,  
F.S.; conforming a cross-reference; amending ss.  
203.01, 610.118, and 624.105, F.S.; conforming cross-



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738 references; providing for certain retroactive effect;  
739 providing an effective date.

By the Committee on Communications, Energy, and Public  
Utilities; and Senator Bogdanoff

579-02577-12

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1 A bill to be entitled  
2 An act relating to communications services taxes;  
3 amending s. 202.105, F.S.; revising legislative  
4 intent; amending s. 202.11, F.S.; modifying  
5 definitions; removing the definition of the term  
6 "cable service"; adding definitions for the terms  
7 "digital good," "digital service," "Internet access  
8 service," and "video service"; amending ss. 202.125,  
9 202.16, 202.20, and 202.24, F.S.; conforming  
10 provisions to changes in terminology; amending s.  
11 202.18, F.S.; removing a cross-reference to conform;  
12 amending s. 202.195, F.S.; clarifying provisions  
13 exempting from the public records law certain  
14 proprietary confidential business information held by  
15 a local governmental entity for the purpose of  
16 assessing the local communications services tax;  
17 amending s. 202.22, F.S.; revising provisions relating  
18 to a communications services dealer's liability for  
19 tax underpayments that result from the incorrect  
20 assignment of service addresses to local taxing  
21 jurisdictions and providing requirements and  
22 conditions with respect thereto; prohibiting the  
23 Department of Revenue from denying a dealer of  
24 communications services a deduction of a specified  
25 amount as a collection allowance under certain  
26 circumstances; amending s. 202.231, F.S.; requiring  
27 the Department of Revenue to aggregate monthly and  
28 make available to the public on a jurisdiction-by-  
29 jurisdiction basis certain sales and net tax

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30 information; amending s. 202.26, F.S.; conforming a  
31 cross-reference; amending s. 212.05, F.S.; revising  
32 the definition of the term "prepaid calling  
33 arrangement"; amending ss. 203.01, 610.118, and  
34 624.105, F.S.; conforming cross-references; providing  
35 for certain retroactive effect; providing an effective  
36 date.  
37  
38 Be It Enacted by the Legislature of the State of Florida:  
39  
40 Section 1. Subsection (1) of section 202.105, Florida  
41 Statutes, is amended to read:  
42 202.105 Legislative findings and intent.—  
43 (1) It is declared to be a specific legislative finding  
44 that the creation of this chapter fulfills important state  
45 interests by reforming the tax laws to provide a fair,  
46 efficient, and uniform method for taxing communications services  
47 sold in this state. This chapter is essential to the continued  
48 economic vitality of this increasingly important industry  
49 because it restructures state and local taxes and fees to  
50 account for the impact of federal legislation, industry  
51 deregulation, and the ~~multitude of convergence of service~~  
52 ~~offerings that is now taking place among providers offering~~  
53 functionally equivalent communications services in today's  
54 marketplace. This chapter promotes the increased competition  
55 that accompanies deregulation by embracing a competitively  
56 neutral tax policy that will free consumers to choose a provider  
57 based on tax-neutral considerations. This chapter further spurs  
58 new competition by simplifying an extremely complicated state

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and local tax and fee system. Simplification will lower the cost of collecting taxes and fees, increase service availability, and place downward pressure on price. Newfound administrative efficiency is demonstrated by a reduction in the number of returns that a provider must file each month. By restructuring separate taxes and fees into a revenue-neutral communications services tax centrally administered by the department, this chapter will ensure that the growth of the industry is unimpaired by excessive governmental regulation. The tax imposed pursuant to this chapter is a replacement for taxes and fees previously imposed and is not a new tax. The taxes imposed and administered pursuant to this chapter are of general application and are imposed in a uniform, consistent, and nondiscriminatory manner.

Section 2. Section 202.11, Florida Statutes, is amended to read:

202.11 Definitions.—As used in this chapter:

~~(1) "Cable service" means the transmission of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of any such programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more other dealers of communications services. The term includes point-to-point and point-to-multipoint distribution services by which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital, and music~~

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~~services.~~

(1)(2) "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- (a) Information services.
- (b) Installation or maintenance of wiring or equipment on a customer's premises.
- (c) The sale or rental of tangible personal property.
- (d) The sale of advertising, including, but not limited to, directory advertising.
- (e) Bad check charges.
- (f) Late payment charges.
- (g) Billing and collection services.
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.
- (i) Digital goods.

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(j) Digital services.

(2)(3) "Dealer" means a person registered with the department as a provider of communications services in this state.

(3)(4) "Department" means the Department of Revenue.

(4) "Digital good" means any downloaded good or product that is delivered or transferred by means other than tangible storage media, including downloaded games, software, music, or other digital content. The term does not include video service.

(5) "Digital service" means any service, other than video service, which is provided electronically, including remotely provided access to or use of software or another digital good, and also includes the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services. If a digital service is bundled for sale with the transmission, conveyance, or routing of any information or signals, the bundled service is a digital service unless the tax imposed under this chapter and chapter 203 has not been paid with respect to such transmission, conveyance, or routing.

(6)(5) "Direct-to-home satellite service" has the meaning ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

(7)(6) "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term does not include any video, audio, or

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~~other programming service that uses point-to-multipoint distribution by which programming is delivered, transmitted, or broadcast by any means, including any interaction that may be necessary for selecting and using the service, regardless of whether the programming is delivered, transmitted, or broadcast over facilities owned or operated by the seller or another, or whether denominated as cable service or as basic, extended, premium, pay-per-view, digital, music, or two-way cable service.~~

(8) "Internet access service" has the same meaning as ascribed to the term "Internet access" by s. 1105(5) of the Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by Pub. L. No. 110-108.

(9)(7) "Mobile communications service" means commercial mobile radio service, as defined in 47 C.F.R. s. 20.3 as in effect on June 1, 1999. The term does not include air-ground radiotelephone service as defined in 47 C.F.R. s. 22.99 as in effect on June 1, 1999.

(10)(8) "Person" has the meaning ascribed in s. 212.02.

(11)(9) "Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that must be paid for in advance; that may be used to place or receive consist exclusively of telephone calls originated; that are enabled by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered; and that are sold in predetermined units or dollars of which the number declines on a predetermined basis with use in a known amount.

(12)(10) "Purchaser" means the person paying for or obligated to pay for communications services.

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175 ~~(13)(11)~~ "Retail sale" means the sale of communications  
 176 services for any purpose other than for resale or for use as a  
 177 component part of or for integration into communications  
 178 services to be resold in the ordinary course of business.  
 179 However, any sale for resale must comply with s. 202.16(2) and  
 180 the rules adopted thereunder.

181 ~~(14)(12)~~ "Sale" means the provision of communications  
 182 services for a consideration.

183 ~~(15)(13)~~ "Sales price" means the total amount charged in  
 184 money or other consideration by a dealer for the sale of the  
 185 right or privilege of using communications services in this  
 186 state, including any property or other service, not described in  
 187 paragraph (a), which is services that are part of the sale and  
 188 for which the charge is not separately itemized on a customer's  
 189 bill or separately allocated under subparagraph (b)8. The sales  
 190 price of communications services may ~~shall~~ not be reduced by any  
 191 separately identified components of the charge which that  
 192 constitute expenses of the dealer, including, but not limited  
 193 to, sales taxes on goods or services purchased by the dealer,  
 194 property taxes, taxes measured by net income, and universal-  
 195 service fund fees.

196 (a) The sales price of communications services includes  
 197 ~~shall include~~, whether or not separately stated, charges for any  
 198 of the following:

- 199 1. The connection, movement, change, or termination of
- 200 communications services.
- 201 2. The detailed billing of communications services.
- 202 3. The sale of directory listings in connection with a
- 203 communications service.

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204 4. Central office and custom calling features.  
 205 5. Voice mail and other messaging service.  
 206 6. Directory assistance.  
 207 7. The service of sending or receiving a document commonly  
 208 referred to as a facsimile or "fax," except when performed  
 209 during the course of providing professional or advertising  
 210 services.

211 (b) The sales price of communications services does not  
 212 include charges for any of the following:

- 213 1. An ~~Any~~ excise tax, sales tax, or similar tax levied by  
 214 the United States or any state or local government on the  
 215 purchase, sale, use, or consumption of any communications  
 216 service, including, but not limited to, a ~~any~~ tax imposed under  
 217 this chapter or chapter 203 which is permitted or required to be  
 218 added to the sales price of such service, if the tax is stated  
 219 separately.
- 220 2. A ~~Any~~ fee or assessment levied by the United States or  
 221 any state or local government, including, but not limited to,  
 222 regulatory fees and emergency telephone surcharges, which must  
 223 ~~is required to~~ be added to the price of the such service if the  
 224 fee or assessment is separately stated.
- 225 3. Communications services paid for by inserting coins into  
 226 coin-operated communications devices available to the public.
- 227 4. The sale or recharge of a prepaid calling arrangement.
- 228 5. The provision of air-to-ground communications services,  
 229 defined as a radio service provided to a purchaser ~~purchasers~~  
 230 while on board an aircraft.
- 231 6. A dealer's internal use of communications services in  
 232 connection with its business of providing communications



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233 services.

234 7. Charges for property or other services that are not part  
235 of the sale of communications services, if such charges are  
236 stated separately from the charges for communications services.

237 8. ~~To the extent required by federal law,~~ Charges for goods  
238 and services that are exempt from tax under this chapter,  
239 including Internet access services but excluding any item  
240 described in paragraph (a), that ~~which~~ are not separately  
241 itemized on a customer's bill, but that ~~which~~ can be reasonably  
242 identified from the selling dealer's books and records kept in  
243 the regular course of business. The dealer may support the  
244 allocation of charges with books and records kept in the regular  
245 course of business covering the dealer's entire service area,  
246 including territories outside this state.

247 ~~(16)-(14)~~ "Service address" means:

248 (a) Except as otherwise provided in this section:

249 1. The location of the communications equipment from which  
250 communications services originate or at which communications  
251 services are received by the customer;

252 2. In the case of a communications service paid through a  
253 credit or payment mechanism that does not relate to a service  
254 address, such as a bank, travel, debit, or credit card, and in  
255 the case of third-number and calling-card calls, the term  
256 "service address" means the address of the central office, as  
257 determined by the area code and the first three digits of the  
258 seven-digit originating telephone number; or

259 3. If the location of the equipment described in  
260 subparagraph 1. is not known and subparagraph 2. is  
261 inapplicable, the term "service address" means the location of

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262 the customer's primary use of the communications service. For  
263 purposes of this subparagraph, the location of the customer's  
264 primary use of a communications service is the residential  
265 street address or the business street address of the customer.

266 (b) In the case of video ~~cable~~ services and direct-to-home  
267 satellite services, the location where the customer receives the  
268 services in this state.

269 (c) In the case of mobile communications services, the  
270 customer's place of primary use.

271 ~~(17)-(15)~~ "Unbundled network element" means a network  
272 element, as defined in 47 U.S.C. s. 153(29), to which access is  
273 provided on an unbundled basis pursuant to 47 U.S.C. s.  
274 251(c)(3).

275 ~~(18)-(16)~~ "Private communications service" means a  
276 communications service that entitles the subscriber or user to  
277 exclusive or priority use of a communications channel or group  
278 of channels between or among channel termination points,  
279 regardless of the manner in which such channel or channels are  
280 connected, and includes switching capacity, extension lines,  
281 stations, and any other associated services that ~~which~~ are  
282 provided in connection with the use of such channel or channels.

283 ~~(19)-(17)~~ (a) "Customer" means:

284 1. The person or entity that contracts with the home  
285 service provider for mobile communications services; or

286 2. If the end user of mobile communications services is not  
287 the contracting party, the end user of the mobile communications  
288 service. This subparagraph ~~only~~ applies only for the purpose of  
289 determining the place of primary use.

290 (b) The term ~~"Customer"~~ does not include:

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291 1. A reseller of mobile communications services; or  
 292 2. A serving carrier under an agreement to serve the  
 293 customer outside the home service provider's licensed service  
 294 area.  
 295 (20)~~(18)~~ "Enhanced zip code" means a United States postal  
 296 zip code of 9 or more digits.  
 297 (21)~~(19)~~ "Home service provider" means the facilities-based  
 298 carrier or reseller with which the customer contracts for the  
 299 provision of mobile communications services.  
 300 (22)~~(20)~~ "Licensed service area" means the geographic area  
 301 in which the home service provider is authorized by law or  
 302 contract to provide mobile communications service to the  
 303 customer.  
 304 (23)~~(21)~~ "Place of primary use" means the street address  
 305 representative of where the customer's use of the mobile  
 306 communications service primarily occurs, which must be:  
 307 (a) The residential street address or the primary business  
 308 street address of the customer; and  
 309 (b) Within the licensed service area of the home service  
 310 provider.  
 311 (24)~~(22)~~ (a) "Reseller" means a provider who purchases  
 312 communications services from another communications service  
 313 provider and then resells, uses as a component part of, or  
 314 integrates the purchased services into a mobile communications  
 315 service.  
 316 (b) The term "Reseller" does not include a serving carrier  
 317 with which a home service provider arranges for the services to  
 318 its customers outside the home service provider's licensed  
 319 service area.

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320 (25)~~(23)~~ "Serving carrier" means a facilities-based carrier  
 321 providing mobile communications service to a customer outside a  
 322 home service provider's or reseller's licensed service area.  
 323 (26)~~(24)~~ "Video service" means the transmission of video,  
 324 audio, or other programming service to a purchaser, and the  
 325 purchaser interaction, if any, required for the selection or use  
 326 of a programming service, regardless of whether the programming  
 327 is transmitted over facilities owned or operated by the video  
 328 service provider or over facilities owned or operated by another  
 329 dealer of communications services. The term includes point-to-  
 330 point and point-to-multipoint distribution services through  
 331 which programming is transmitted or broadcast by microwave or  
 332 other equipment directly to the purchaser's premises, but does  
 333 not include direct-to-home satellite service. The term includes  
 334 basic, extended, premium, pay-per-view, digital video, two-way  
 335 cable, and music services ~~has the same meaning as that provided~~  
 336 ~~in s. 610.103.~~  
 337 Section 3. Subsection (1) of section 202.125, Florida  
 338 Statutes, is amended to read:  
 339 202.125 Sales of communications services; specified  
 340 exemptions.—  
 341 (1) The separately stated sales price of communications  
 342 services sold to residential households is exempt from the tax  
 343 imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does  
 344 not apply to any residence that constitutes all or part of a  
 345 transient public lodging establishment as defined in chapter  
 346 509, any mobile communications service, any video cable service,  
 347 or any direct-to-home satellite service.  
 348 Section 4. Paragraph (a) of subsection (2) of section

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349 202.16, Florida Statutes, is amended to read:

350 202.16 Payment.—The taxes imposed or administered under  
 351 this chapter and chapter 203 shall be collected from all dealers  
 352 of taxable communications services on the sale at retail in this  
 353 state of communications services taxable under this chapter and  
 354 chapter 203. The full amount of the taxes on a credit sale,  
 355 installment sale, or sale made on any kind of deferred payment  
 356 plan is due at the moment of the transaction in the same manner  
 357 as a cash sale.

358 (2)(a) A sale of communications services that are used as a  
 359 component part of or integrated into a communications service or  
 360 prepaid calling arrangement for resale, including, but not  
 361 limited to, carrier-access charges, interconnection charges paid  
 362 by providers of mobile communication services or other  
 363 communication services, charges paid by a video cable service  
 364 provider ~~providers~~ for the purchase of video programming or the  
 365 transmission of video or other programming by another dealer of  
 366 communications services, charges for the sale of unbundled  
 367 network elements, and any other intercompany charges for the use  
 368 of facilities for providing communications services for resale,  
 369 must be made in compliance with the rules of the department. A  
 370 ~~Any~~ person who makes a sale for resale which is not in  
 371 compliance with these rules is liable for any tax, penalty, and  
 372 interest due for failing to comply, to be calculated pursuant to  
 373 s. 202.28(2)(a).

374 Section 5. Paragraph (c) of subsection (3) of section  
 375 202.18, Florida Statutes, is amended to read:

376 202.18 Allocation and disposition of tax proceeds.—The  
 377 proceeds of the communications services taxes remitted under

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378 this chapter shall be treated as follows:

379 (3)

380 (c)1. Except as otherwise provided in this paragraph,  
 381 proceeds of the taxes levied pursuant to s. 202.19, less amounts  
 382 deducted for costs of administration in accordance with  
 383 paragraph (b), shall be distributed monthly to the appropriate  
 384 jurisdictions. The proceeds of taxes imposed pursuant to s.  
 385 202.19(5) shall be distributed in the same manner as  
 386 discretionary surtaxes are distributed, in accordance with ss.  
 387 212.054 and 212.055.

388 2. The department shall make any adjustments to the  
 389 distributions pursuant to this section which are necessary to  
 390 reflect the proper amounts due to individual jurisdictions or  
 391 trust funds. In the event that the department adjusts amounts  
 392 due to reflect a correction in the situsing of a customer, such  
 393 adjustment shall be limited to the amount of tax actually  
 394 collected from such customer by the dealer of communication  
 395 services.

396 3.a. ~~Notwithstanding the time period specified in s.~~  
 397 ~~202.22(5),~~ Adjustments in distributions which are necessary to  
 398 correct misallocations between jurisdictions shall be governed  
 399 by this subparagraph. If the department determines that  
 400 misallocations between jurisdictions occurred, it shall provide  
 401 written notice of such determination to all affected  
 402 jurisdictions. The notice shall include the amount of the  
 403 misallocations, the basis upon which the determination was made,  
 404 data supporting the determination, and the identity of each  
 405 affected jurisdiction. The notice shall also inform all affected  
 406 jurisdictions of their authority to enter into a written

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agreement establishing a method of adjustment as described in sub-subparagraph c.

b. An adjustment affecting a distribution to a jurisdiction which is less than 90 percent of the average monthly distribution to that jurisdiction for the 6 months immediately preceding the department's determination, as reported by all communications services dealers, shall be made in the month immediately following the department's determination that misallocations occurred.

c. If an adjustment affecting a distribution to a jurisdiction equals or exceeds 90 percent of the average monthly distribution to that jurisdiction for the 6 months immediately preceding the department's determination, as reported by all communications services dealers, the affected jurisdictions may enter into a written agreement establishing a method of adjustment. If the agreement establishing a method of adjustment provides for payments of local communications services tax monthly distributions, the amount of any such payment agreed to may not exceed the local communications services tax monthly distributions available to the jurisdiction that was allocated amounts in excess of those to which it was entitled. If affected jurisdictions execute a written agreement specifying a method of adjustment, a copy of the written agreement shall be provided to the department no later than the first day of the month following 90 days after the date the department transmits notice of the misallocation. If the department does not receive a copy of the written agreement within the specified time period, an adjustment affecting a distribution to a jurisdiction made pursuant to this sub-subparagraph shall be prorated over a time

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period that equals the time period over which the misallocations occurred.

Section 6. Subsections (1) and (3) of section 202.195, Florida Statutes, are amended to read:

202.195 Proprietary confidential business information; public records exemption.—

(1) Proprietary confidential business information obtained from a telecommunications company or from a franchised or certificated video service provider ~~eable company~~ for the purposes of ~~imposing fees for occupying the public rights-of-way,~~ assessing the local communications services tax pursuant to s. 202.19, or occupying or regulating the public rights-of-way, held by a local governmental entity, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such proprietary confidential business information held by a local governmental entity may be used only for the purposes of ~~imposing such fees,~~ assessing such tax, or regulating such rights-of-way, and may not be used for any other purposes, including, but not limited to, commercial or competitive purposes.

(3) ~~Nothing in~~ This exemption does not expand ~~expands~~ the information or documentation that a local governmental entity may properly request under applicable law pursuant to ~~the imposition of fees for~~ occupying the rights-of-way, the local communication services tax, or the regulation of its public rights-of-way.

Section 7. Paragraph (b) of subsection (2) of section 202.20, Florida Statutes, is amended to read:

202.20 Local communications services tax conversion rates.—

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(2)

(b) Except as otherwise provided in this subsection, the term "replaced revenue sources," as used in this section, means the following taxes, charges, fees, or other impositions to the extent that the respective local taxing jurisdictions were authorized to impose them prior to July 1, 2000.

1. With respect to municipalities and charter counties and the taxes authorized by s. 202.19(1):

a. The public service tax on telecommunications authorized by former s. 166.231(9).

b. Franchise fees on video cable service providers as authorized by 47 U.S.C. s. 542.

c. The public service tax on prepaid calling arrangements.

d. Franchise fees on dealers of communications services which use the public roads or rights-of-way, up to the limit set forth in s. 337.401. For purposes of calculating rates under this section, it is the legislative intent that charter counties be treated as having had the same authority as municipalities to impose franchise fees on recurring local telecommunication service revenues before ~~prior to~~ July 1, 2000. However, the Legislature recognizes that the authority of charter counties to impose such fees is in dispute, and the treatment provided in this section is not an expression of legislative intent that charter counties actually do or do not possess such authority.

e. Actual permit fees relating to placing or maintaining facilities in or on public roads or rights-of-way, collected from providers of long-distance, cable, and mobile communications services for the fiscal year ending September 30, 1999; however, if a municipality or charter county elects the

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option to charge permit fees pursuant to s. 337.401(3)(c)1.a., such fees may ~~shall~~ not be included as a replaced revenue source.

2. With respect to all other counties and the taxes authorized in s. 202.19(1), franchise fees on video cable service providers as authorized by 47 U.S.C. s. 542.

Section 8. Subsections (5) and (6) of section 202.22, Florida Statutes, are amended to read:

202.22 Determination of local tax situs.—

(5) If a dealer of communications services does not use one or more of the methods specified in subsection (1) for determining the local taxing jurisdiction in which one or more service addresses are ~~a service address is~~ located and:

(a) The dealer's failure to use one or more of such methods results in a net aggregate underpayment of all taxes levied pursuant to s. 202.19 with respect to one or more tax periods that are being examined by the department; and

(b) The department has determined the misallocations between jurisdictions for all taxes levied pursuant to s. 202.19 and collected by the dealer with respect to any tax period being examined by the department,

the dealer of communications services may be held liable to the department for the net aggregate underpayment of any tax, and for including interest and penalties attributable to the net aggregate underpayment of tax, which is due as a result of assigning one or more the service addresses ~~address~~ to an incorrect local taxing jurisdiction. However, the dealer of communications services is not liable for any tax, interest, or

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penalty under this subsection unless the department has determined the net aggregate underpayment of tax for any tax period that is being examined, taking into account all underpayments and overpayments for such period or periods to the extent that such amount was collected and remitted by the dealer of communications services with respect to a tax imposed by another local taxing jurisdiction. Upon determining that an amount was collected and remitted by a dealer of communications services with respect to a tax imposed by another local taxing jurisdiction, the department shall adjust the respective amounts of the proceeds paid to each such taxing jurisdiction under s. 202.18 in the month immediately following such determination.

(6) (a) Pursuant to rules adopted by the department, each dealer of communications services must notify the department of the methods it intends to employ for determining the local taxing jurisdiction in which service addresses are located.

(b) Notwithstanding s. 202.28, if a dealer of communications services:

1. Employs a method of assigning service addresses other than as set forth in paragraph (1) (a), paragraph (1) (b), or paragraph (1) (c), the deduction allowed to the dealer of communications services as compensation under s. 202.28 shall be 0.25 percent of that portion of the tax due and accounted for and remitted to the department which is attributable to such method of assigning service addresses other than as set forth in paragraph (1) (a), paragraph (1) (b), or paragraph (1) (c).

2. Employs a method of assigning service addresses as set forth in paragraph (1) (a), paragraph (1) (b), or paragraph (1) (c), the department may not deny the deduction allowed to the

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dealer of communications services as compensation allowed under s. 202.28 because the dealer assigned one or more service addresses to an incorrect local taxing jurisdiction.

Section 9. Subsection (3) is added to section 202.231, Florida Statutes, to read:

202.231 Provision of information to local taxing jurisdictions.—

(3) The gross taxable sales and net tax information contained in the monthly reports required by this section shall be aggregated on a jurisdiction-by-jurisdiction basis, and the aggregate jurisdiction-by-jurisdiction information shall be made available by the department to the public through the department's website for each fiscal year this chapter has been in effect.

Section 10. Paragraphs (a) and (c) of subsection (2) of section 202.24, Florida Statutes, are amended to read:

202.24 Limitations on local taxes and fees imposed on dealers of communications services.—

(2) (a) Except as provided in paragraph (c), each public body is prohibited from:

1. Levying on or collecting from dealers or purchasers of communications services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of communications services.

2. Requiring any dealer of communications services to enter into or extend the term of a franchise or other agreement that requires the payment of a tax, charge, fee, or other imposition.

3. Adopting or enforcing any provision of any ordinance or agreement to the extent that such provision obligates a dealer

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581 of communications services to charge, collect, or pay to the  
 582 public body a tax, charge, fee, or other imposition.  
 583  
 584 Municipalities and counties may not negotiate those terms and  
 585 conditions related to franchise fees or the definition of gross  
 586 revenues or other definitions or methodologies related to the  
 587 payment or assessment of franchise fees on providers of ~~cable or~~  
 588 video services.  
 589 (c) This subsection does not apply to:  
 590 1. Local communications services taxes levied under this  
 591 chapter.  
 592 2. Ad valorem taxes levied pursuant to chapter 200.  
 593 3. Business taxes levied under chapter 205.  
 594 4. "911" service charges levied under chapter 365.  
 595 5. Amounts charged for the rental or other use of property  
 596 owned by a public body which is not in the public rights-of-way  
 597 to a dealer of communications services for any purpose,  
 598 including, but not limited to, the placement or attachment of  
 599 equipment used in the provision of communications services.  
 600 6. Permit fees of general applicability which are not  
 601 related to placing or maintaining facilities in or on public  
 602 roads or rights-of-way.  
 603 7. Permit fees related to placing or maintaining facilities  
 604 in or on public roads or rights-of-way pursuant to s. 337.401.  
 605 8. Any in-kind requirements, institutional networks, or  
 606 contributions for, or in support of, the use or construction of  
 607 public, educational, or governmental access facilities allowed  
 608 under federal law and imposed on providers of ~~cable or~~ video  
 609 service pursuant to any existing ordinance or an existing

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610 franchise agreement granted by each municipality or county,  
 611 under which ordinance or franchise agreement service is provided  
 612 ~~before~~ prior to July 1, 2007, or as permitted under chapter 610.  
 613 ~~Nothing in~~ This subparagraph does not shall prohibit the ability  
 614 of providers of ~~cable or~~ video service from recovering the ~~to~~  
 615 ~~recover such~~ expenses as allowed under federal law.  
 616 9. Special assessments and impact fees.  
 617 10. Pole attachment fees that are charged by a local  
 618 government for attachments to utility poles owned by the local  
 619 government.  
 620 11. Utility service fees or other similar user fees for  
 621 utility services.  
 622 12. Any other generally applicable tax, fee, charge, or  
 623 imposition authorized by general law on July 1, 2000, which is  
 624 not specifically prohibited by this subsection or included as a  
 625 replaced revenue source in s. 202.20.  
 626 Section 11. Paragraph (j) of subsection (3) of section  
 627 202.26, Florida Statutes, is amended to read:  
 628 202.26 Department powers.—  
 629 (3) To administer the tax imposed by this chapter, the  
 630 department may adopt rules relating to:  
 631 (j) The types of books and records kept in the regular  
 632 course of business which must be available during an audit of a  
 633 dealer's books and records when the dealer has made an  
 634 allocation or attribution pursuant to the definition of sales  
 635 prices in s. 202.11(15)(b)8. ~~202.11(13)(b)8.~~ and examples of  
 636 methods for determining the reasonableness thereof. Books and  
 637 records kept in the regular course of business include, but are  
 638 not limited to, general ledgers, price lists, cost records,

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customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. ~~The Such~~ records may be required to be made available to the department in an electronic format when so kept by the dealer. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state. During an audit, the department may reasonably require production of any additional books and records found necessary to assist in its determination.

Section 12. Paragraph (a) of subsection (1) of section 203.01, Florida Statutes, is amended to read:

203.01 Tax on gross receipts for utility and communications services.—

(1)(a)1. A tax is imposed on gross receipts from utility services that are delivered to a retail consumer in this state. ~~The Such~~ tax shall be levied as provided in paragraphs (b)-(j).

2. A tax is levied on communications services as defined in s. 202.11(1) ~~202.11(2)~~. ~~The Such~~ tax shall be applied to the same services and transactions as are subject to taxation under chapter 202, and to communications services that are subject to the exemption provided in s. 202.125(1). ~~The Such~~ tax shall be applied to the sales price of communications services when sold at retail, as ~~the such~~ terms are defined in s. 202.11, shall be due and payable at the same time as the taxes imposed pursuant to chapter 202, and shall be administered and collected pursuant to the provisions of chapter 202.

Section 13. Paragraph (e) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

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212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(e)1. At the rate of 6 percent on charges for:

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" means the separately stated retail sale ~~by advance payment~~ of communications services that must be paid for in advance; that may be used to place or receive ~~consist exclusively of telephone calls; that are enabled~~ ~~originated~~ by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered; and that are sold in predetermined units or dollars whose number declines on a predetermined basis ~~with use~~ in a known amount.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to take place at the customer's shipping address or, if no item is shipped, at the customer's



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address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, whether or not a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

b. The installation of telecommunication and telegraphic equipment.

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 7 percent.

2. The provisions of s. 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, shall be equally applicable to any tax paid under the provisions of this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. The word "charges" in this paragraph does not include any excise or similar tax levied by the Federal Government, any political subdivision of the state, or any municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

Section 14. Paragraph (a) of subsection (1) of section 610.118, Florida Statutes, is amended to read:

610.118 Impairment; court-ordered operations.—

(1) If an incumbent cable or video service provider is

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required to operate under its existing franchise and is legally prevented by a lawfully issued order of a court of competent jurisdiction from exercising its right to terminate its existing franchise pursuant to the terms of s. 610.105, any certificateholder providing cable service or video service in whole or in part within the service area that is the subject of the incumbent cable or video service provider's franchise shall, for as long as the court order remains in effect, comply with the following franchise terms and conditions as applicable to the incumbent cable or video service provider in the service area:

(a) The certificateholder shall pay to the municipality or county:

1. Any prospective lump-sum or recurring per-subscriber funding obligations to support public, educational, and governmental access channels or other prospective franchise-required monetary grants related to public, educational, or governmental access facilities equipment and capital costs. Prospective lump-sum payments shall be made on an equivalent per-subscriber basis calculated as follows: the amount of the prospective funding obligations divided by the number of subscribers being served by the incumbent cable service provider at the time of payment, divided by the number of months remaining in the incumbent cable or video service provider's franchise equals the monthly per subscriber amount to be paid by the certificateholder until the expiration or termination of the incumbent cable or video service provider's franchise; and

2. If the incumbent cable or video service provider is required to make payments for the funding of an institutional

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network, the certificateholder shall pay an amount equal to the incumbent's funding obligations but not to exceed 1 percent of the sales price, as defined in s. ~~202.11(15)~~ ~~202.11(13)~~, for the taxable monthly retail sales of cable or video programming services the certificateholder received from subscribers in the affected municipality or county. All definitions and exemptions under chapter 202 apply in the determination of taxable monthly retail sales of cable or video programming services.

Section 15. Section 624.105, Florida Statutes, is amended to read:

624.105 Waiver of customer liability.—Any regulated company as defined in s. 350.111, any electric utility as defined in s. 366.02(2), any utility as defined in s. 367.021(12) or s. 367.022(2) and (7), and any provider of communications services as defined in s. 202.11(1) ~~202.11(2)~~ may charge for and include an optional waiver of liability provision in their customer contracts under which the entity agrees to waive all or a portion of the customer's liability for service from the entity for a defined period in the event of the customer's call to active military service, death, disability, involuntary unemployment, qualification for family leave, or similar qualifying event or condition. Such provisions may not be effective in the customer's contract with the entity unless affirmatively elected by the customer. No such provision shall constitute insurance so long as the provision is a contract between the entity and its customer.

Section 16. The following changes made in this act are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or

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create a right to a refund or credit of any tax paid before the general effective date of this act:

(1) The changes made in section 2 of this act to subsections renumbered as subsections (9), (11), and (15) of s. 202.11, Florida Statutes;

(2) The changes made in section 8 of this act to s. 202.22, Florida Statutes; and

(3) The changes made in section 13 of this act to paragraph (e) of subsection (1) of s. 212.05, Florida Statutes.

Section 17. This act shall take effect July 1, 2012.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12

Meeting Date

Topic Communications Services TAX

Bill Number 1060  
(if applicable)

Name Charles Dudley

Amendment Barcode 768148  
(if applicable)

Job Title General Counsel

Address 108 S. Monroe St. #200

Phone 681 0024

Tallahassee FL 32301  
City State Zip

E-mail CDudley@FlaPartners.com

Speaking: ☒ For ☐ Against ☒ Information

Representing FL Cable Telecommunications Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/6/12

Meeting Date

Topic

Comm. Services Tax

Bill Number

1060

(if applicable)

Name

Christina Johnson

Amendment Barcode

(if applicable)

Job Title

Director

Address

PO Box 1369

Phone

850-391-5040

Street

Tallahassee

FL

32301

City

State

Zip

E-mail

christina@on3pr.com

Speaking:

☒

For

☐

Against

☐

Information

Representing

Citizens for a Digital Future

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/6/12

Meeting Date

Topic \_\_\_\_\_

Bill Number 1060  
(if applicable)

Name Frank Meiners

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address PO Box 1633  
Street  
Tall FL 32301  
City State Zip

Phone (850) 591-0577

E-mail frank@chymail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing ATT

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1060  
*(if applicable)*

Name Leticia M Adams

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director of Infrastructure & Governance Policy

Address 136 South Bronough Street  
*Street*

Phone 850-544-6866

Tallahassee FL 32301  
*City State Zip*

E-mail ladams@flchamber.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-6-12

Meeting Date

Topic Communications Services Tax

Bill Number 1060  
(if applicable)

Name Melanie Becker

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Government Affairs

Address 315 S. Calham Suite 500  
Street  
Tallahassee 32301  
City State Zip

Phone 850 599-1073

E-mail Melanie.h.becker@centurylink.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Century Link

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

*Meeting Date* \_\_\_\_\_

Topic CST

Bill Number 1060  
*(if applicable)*

Name Woody Simmons

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title AVP-Gov. AFF.

Address 106 E. College Ave. Ste. 710

Phone 850/222-6304

*Street* Tall *City* FL *State* 32301 *Zip*

E-mail Woodrow.Simmons

Speaking: ☒ For ☐ Against ☐ Information NAIVE IN SUPPORT

@verizon.com

Representing Verizon

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/6/2012

Meeting Date

Topic \_\_\_\_\_

Bill Number 1060  
(if applicable)

Name JOSE C. GONZALEZ

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title VP GOVT. AFFAIRS

Address 516 N. ADAMS STREET  
Street  
TALLAHASSEE, FL 32301  
City State Zip

Phone 224-7173

E-mail jgonzalez@aif.com

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SJR 1064

INTRODUCER: Senator Detert

SUBJECT: Tangible Personal Property

DATE: February 1, 2012

REVISED: 02/06/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Fav/1 amendment</b>
2.			BC	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

This joint resolution proposes an amendment to Article VII, section 3 of the Florida Constitution, that would allow the Legislature to provide by general law that:

- Taxes on tangible personal property are not due unless the assessed value of the property exceeds a specified amount greater than twenty-five thousand dollars;
- Tangible personal property is subject to taxation at a specified percentage of its assessed value; or
- Tangible personal property is totally exempt from taxation.

For the proposed amendment to be placed on the ballot at the general election in November 2012, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.

The joint resolution proposes an amendment to Article VII, section 3 of the Florida Constitution.

## **II. Present Situation:**

### **Ad valorem Taxation**

The Florida Constitution grants exclusive authority to local governments to levy ad valorem taxes on real and tangible personal property,<sup>1</sup> and it establishes various requirements that the state legislature and local governments must follow when levying and administering ad valorem property taxes. It requires that all ad valorem taxation be at a uniform rate within each taxing district<sup>2</sup> and that property must be assessed at just value unless the Constitution provides for a different assessment standard.<sup>3</sup>

### **Tangible Personal Property<sup>4</sup>**

Tangible Personal Property, as defined in 192.001(11)(d), F.S., means all goods, chattels, and other articles of value (but does not include vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are expressly excluded from this definition.

Anyone owning tangible personal property on January 1, who has a proprietorship, partnership, corporation, is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.<sup>5</sup> Property owners who lease, lend or rent property must also file.

Sections 195.032 and 195.062(1), F.S., authorize the Department of Revenue (DOR) to prepare and maintain guidelines to assist the property appraisers. They are intended to assist in the assessment of property and are not construed to be the final authority or all inclusive in nature.

### **Constitutional Provisions for Tangible Personal Property**

Tangible personal property is singled out for special treatment by the following constitutional provisions of Article VII of the Florida Constitution:

- Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.<sup>6</sup>
- There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars . . .<sup>7</sup>
- Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.<sup>8</sup>

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<sup>1</sup> FLA. CONST., art. VII, s. 1(a) and s. 9(a).

<sup>2</sup> FLA. CONST., art. VII, s. 2.

<sup>3</sup> FLA. CONST., art. VII, s. 4.

<sup>4</sup> See the Florida Department of Revenue website for additional information about tangible personal property and appraiser guidelines <http://dor.myflorida.com/dor/property/tpp/>.

<sup>5</sup> See s. 193.062, F.S.

<sup>6</sup> FLA. CONST., art. VII, s. 1(b).

<sup>7</sup> FLA. CONST., art. VII, s. 3(b).

Tangible personal property not excluded by the above provisions is subject to ad valorem taxation.

Article VII, section 3(e) of the Florida Constitution, provides for a \$25,000 exemption from the assessed value of tangible personal property subject to ad valorem taxation.

### **Department of Revenue Data on Property Taxes**

The Florida Property Tax Data Portal on the DOR website provides reports and information on a number of property tax related issues including:

- Statewide Ad Valorem Tax Data;
- Property Tax Analysis, Millage, Levies and Collections;
- Tax Rolls;
- Assessment Roll Evaluation and Approval; and
- Property Listing and Assessing Resources.<sup>9</sup>

The Distribution of Taxes Levied by Property Type, County and Municipal Governments Table found on the website shows that, state-wide, tangible personal property taxes levied by counties represented 7.6% of the total county property taxes levied in FY 2011-12. State-wide tangible personal property taxes levied by municipalities represented 6.1% of the total municipal property taxes levied in FY 2011-12.<sup>10</sup>

Individual county and municipality distribution of taxes levied by property type are also available on the DOR website.<sup>11</sup>

### **III. Effect of Proposed Changes:**

This joint resolution proposes an amendment to Article VII, section 3 of the Florida Constitution, that would allow the Legislature to provide by general law that:

- Taxes on tangible personal property are not due unless the assessed value of the property exceeds a specified amount greater than twenty-five thousand dollars;
- Tangible personal property is subject to taxation at a specified percentage of its assessed value; or
- Tangible personal property is totally exempt from taxation.

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<sup>8</sup> FLA. CONST., art. VII, s. 4(c).

<sup>9</sup> Florida Department of Revenue, *Florida Property Tax Data Portal*, available at <http://dor.myflorida.com/dor/property/resources/data.html>.

<sup>10</sup> Florida Department of Revenue *Distribution of Taxes Levied by Property Type, County and Municipal Governments Table: Fiscal Year 2011-12* available at [ftp://sdrftp03.dor.state.fl.us/County\\_Municipal\\_Data/11table2/statewide\\_table2.pdf](ftp://sdrftp03.dor.state.fl.us/County_Municipal_Data/11table2/statewide_table2.pdf). (last visited Feb. 2, 2012).

<sup>11</sup> Florida Department of Revenue, *Distribution of Taxes Levied by Property Type - County and Municipal Governments* available at <http://dor.myflorida.com/dor/property/taxpayers/cmdata/table2.html>.

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

The mandate provisions in Article VII, section 18, of the Florida Constitution, do not apply to joint resolutions.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:****Constitutional Amendments**

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

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

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

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”<sup>12</sup>

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<sup>12</sup> *Roberts*, 43 So. 3d at 659, citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

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

The Revenue Estimating Conference (REC) discussed the impact of this joint resolution on January 5, 2012. The conference adopted an indeterminate negative estimate, due to the need for the electorate to approve the measure, and for the Legislature to pass implementing legislation. The constitutional change allows the Legislature to completely exempt tangible personal property from ad valorem taxation. The conference found that, based on the 2011 millage rate of 17.67, ad valorem taxes on the tangible personal property included on the 2011 tax roll are expected to amount to \$1.72 billion.<sup>13</sup>

**B. Private Sector Impact:**

If the proposed amendment is approved by the electorate and implemented by the Legislature, residents of Florida who pay tangible personal property taxes may realize a reduction or total elimination of these taxes. To the extent that local governments do not raise millage rates, taxpayers may experience a reduction in government and education services due to any reductions in ad valorem tax revenues.

**C. Government Sector Impact:**

If the proposed amendment is approved by the electorate and implemented by the Legislature, local governments may experience a reduction in revenues generated by tangible personal property taxes.

The Division of Elections within the Department of State estimated that the full publication costs for advertising a similar proposed amendment, HJR 1003, to be \$108,475.<sup>14</sup>

**VI. Technical Deficiencies:**

Amendment barcode 127370 does not include language in the title of the ballot summary indicating that Article XII, Section 32 of the State Constitution is part of the proposed amendment to the Constitution.

**VII. Related Issues:**

None.

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<sup>13</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis of HJR 1003 and SJR 1064: Tangible Personal Property* (Jan. 5, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page184-185.pdf>.

<sup>14</sup> Department of State, *House Joint Resolution 1003 (2012) Fiscal Analysis* (Dec.21, 2011) (On file with the Senate Committee on Community Affairs).

**VIII. Additional Information:**

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

None.

- B. **Amendments:**

**Barcode 127370 by Community Affairs on February 6, 2012:**

Creates section 32 of Article XII of the Florida Constitution stating that the amendment to Section 3 of Article VII providing the legislature with more flexibility in assessing and exempting tangible personal property from ad valorem taxation shall take effect upon approval by the electors and apply to assessments for tax years beginning January 1, 2013. (WITH TITLE AMENDMENT)



127370

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/06/2012	.	
	.	
	.	
	.	

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

**Senate Amendment (with ballot and title amendments)**

Delete lines 10 - 11  
and insert:

That the following amendment to Section 3 of Article VII  
and the creation of Section 32 of Article XII of the State  
Constitution are agreed to and shall be submitted to

Between lines 97 and 98  
insert:

ARTICLE XII  
SCHEDULE





127370

Section 32. Tangible personal property; ad valorem tax exemption.—The amendment to Section 3 of Article VII providing the legislature with more flexibility in assessing and exempting tangible personal property from ad valorem taxation shall take effect upon approval by the electors and apply to assessments for tax years beginning January 1, 2013.

===== B A L L O T   S T A T E M E N T   A M E N D M E N T =====

And the ballot statement is amended as follows:

Delete line 109

and insert:

For tax years beginning January 1, 2013, this proposed amendment to the State Constitution

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

And the title is amended as follows:

Delete lines 3 - 6

and insert:

of Article VII and the creation of Section 32 of Article XII of the State Constitution to provide the Legislature with more flexibility in the assessment and exemption of tangible personal property from ad valorem taxation, apply the amendment to assessments for tax years beginning January 1, 2013, and provide an effective date.

By Senator Detert

23-00812-12

20121064

Senate Joint Resolution

A joint resolution proposing an amendment to Section 3 of Article VII of the State Constitution to authorize the Legislature to have more flexibility in providing for the assessment and exemption of tangible personal property from ad valorem taxation.

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

That the following amendment to Section 3 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation.

(b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or

Page 1 of 5

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

23-00812-12

20121064

person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

(d) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This

Page 2 of 5

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

23-00812-12 20121064  
 59 exemption may be granted only by ordinance of the county or  
 60 municipality. The amount or limits of the amount of this  
 61 exemption and the requirements for eligible properties must be  
 62 specified by general law. The period of time for which this  
 63 exemption may be granted to a property owner shall be determined  
 64 by general law.

65 (e) By general law and subject to conditions specified  
 66 therein, the legislature shall exempt at least twenty-five  
 67 thousand dollars of the assessed value of property subject to  
 68 tangible personal property tax ~~shall be exempt~~ from ad valorem  
 69 taxation. Such law may also:

70 (1) Provide for the assessment of an item of tangible  
 71 personal property at a specified percentage of its value;

72 (2) Specify an item of tangible personal property that is  
 73 exempt from ad valorem taxation; or

74 (3) Exempt a person from paying a tangible personal  
 75 property tax if the amount of the tax otherwise due does not  
 76 substantially exceed the cost, as determined by the legislature,  
 77 to administer the tax.

78 (f) There shall be granted an ad valorem tax exemption for  
 79 real property dedicated in perpetuity for conservation purposes,  
 80 including real property encumbered by perpetual conservation  
 81 easements or by other perpetual conservation protections, as  
 82 defined by general law.

83 (g) By general law and subject to the conditions specified  
 84 therein, each person who receives a homestead exemption as  
 85 provided in section 6 of this article; who was a member of the  
 86 United States military or military reserves, the United States  
 87 Coast Guard or its reserves, or the Florida National Guard; and

23-00812-12 20121064  
 88 who was deployed during the preceding calendar year on active  
 89 duty outside the continental United States, Alaska, or Hawaii in  
 90 support of military operations designated by the legislature  
 91 shall receive an additional exemption equal to a percentage of  
 92 the taxable value of his or her homestead property. The  
 93 applicable percentage shall be calculated as the number of days  
 94 during the preceding calendar year the person was deployed on  
 95 active duty outside the continental United States, Alaska, or  
 96 Hawaii in support of military operations designated by the  
 97 legislature divided by the number of days in that year.

98 BE IT FURTHER RESOLVED that the following statement be  
 99 placed on the ballot:

100 CONSTITUTIONAL AMENDMENT

101 ARTICLE VII, SECTION 3

102 TANGIBLE PERSONAL PROPERTY TAXES.—The State Constitution  
 103 provides that counties, school districts, and municipalities,  
 104 shall, and special districts may, be authorized by the  
 105 Legislature to levy a tax on the value of tangible personal  
 106 property. The State Constitution further authorizes the  
 107 Legislature to exempt \$25,000 of the value of the tangible  
 108 personal property from the tax.

109 This proposed amendment to the State Constitution  
 110 authorizes the Legislature to:

111 (1) Increase the value of tangible personal property that  
 112 is exempt from tangible personal property taxes;

113 (2) Provide for the assessment of an item of tangible  
 114 personal property at a specified percentage of its value;

115 (3) Identify items of tangible personal property that are  
 116 exempt from taxation; and

23-00812-12

20121064\_\_

117       (4) Exempt a person from paying a tangible personal  
118 property tax if the amount of the tax otherwise due does not  
119 substantially exceed the cost, as determined by the Legislature,  
120 to administer the tax.



The Florida Senate  
**Committee Agenda Request**

**To:** Senator Michael S. "Mike" Bennett, Chair  
Committee on Community Affairs

**Subject:** Committee Agenda Request

**Date:** January 12, 2012

---

I respectfully request that **Senate Bill #1064**, relating to Tangible Personal Property, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, which appears to read "Nancy Detert". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

---

Senator Nancy C. Detert  
Florida Senate, District 23

*rec'd 1/12/12  
afw*

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2~  
Meeting Date

Topic \_\_\_\_\_

Name Chris Doolen

Job Title \_\_\_\_\_

Address 314 Cortez St

Street

City

State

Zip

Bill Number TPA

(if applicable)

Amendment Barcode \_\_\_\_\_

(if applicable)

Phone \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

Representing Small County Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2.6.12

*Meeting Date*

Topic Tangible Personal Property

Bill Number SJR 1064/SB 1062  
*(if applicable)*

Name Christian Weiss

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy Coordinator

Address 1702 Capitol  
*Street*

Phone 850.717.9392

TLH  
*City* *State* *Zip*

E-mail christian.weiss@myfloridaleg.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Gov's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/6/12

Meeting Date

Topic Tangible Personal Property Tax

Bill Number SB 1062 / SB 1064  
(if applicable)

Name Linda Cherry

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Leadership Council Member

Address 110 E. Jefferson St.

Phone 850-681-0416

Tallahassee FL 32301

City State Zip

E-mail linda@cherrycomm.com

Speaking: ☒ For ☐ Against ☐ Information

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2 / 6 / 2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1064  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
*Street*

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12

*Meeting Date*

Topic Ad Valorem Tax

Bill Number SJR 1064  
*(if applicable)*

Name Vicki Weber

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney, Hopping Green & Sams

Address 119 South Monroe Suite #300  
*Street*  
Tallahassee Florida 32301  
*City State Zip*

Phone 850-222-7500

E-mail vweber@hgslaw.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-6-12

Meeting Date

Topic TPP - Constitutional Amendment

Bill Number SJR 1064  
(if applicable)

Name DAVIN SUGGS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title SR Leg. Adv.

Address 100 S Monroe St  
Tallahassee FL 32301  
City State Zip

Phone 850.320.2635

E-mail dsuggs@fl-counties

Speaking: ☐ For ☐ Against ☒ Information

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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



2/6/2012

Meeting Date

Topic TPP - Constitutional Amendment Bill Number SJR 1064  
(if applicable)

Name Amber Hughes Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Legislative Advocate

Address PO Box 1756 Phone 701-3621  
Street

Tallahassee FL 32302 E-mail ahughes@flcities.com  
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida League of Cities

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

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

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

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 1062

INTRODUCER: Senator Detert

SUBJECT: Tangible Personal Property Taxes

DATE: February 2, 2012

REVISED: \_\_\_\_\_

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

## I. Summary:

This bill implements the proposed constitutional amendment contained in SJR 1064. Specifically, it creates an additional exemption from ad valorem taxation of tangible personal property of up to \$25,000 of taxable value. The result is an additional exemption above the current \$25,000 exemption for assessed values between \$25,001 and \$50,000. Taxpayers with tangible personal property subject to ad valorem taxation with an assessed value above \$50,000 will not qualify for the additional exemption provided in the bill.

The bill takes effect upon voter approval of the amendment proposed by SJR 1064.

This bill substantially amends section 196.183 of the Florida Statutes:

## II. Present Situation:

### Ad valorem Taxation

The Florida Constitution grants exclusive authority to local governments to levy ad valorem taxes on real and tangible personal property,<sup>1</sup> and it establishes various requirements that the state legislature and local governments must follow when levying and administering ad valorem property taxes. It requires that all ad valorem taxation be at a uniform rate within each taxing district<sup>2</sup> and that property must be assessed at just value unless the Constitution provides for a different assessment standard.<sup>3</sup>

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<sup>1</sup> FLA. CONST., art. VII, s. 1(a) and s. 9(a).

<sup>2</sup> FLA. CONST., art. VII, s. 2.

<sup>3</sup> FLA. CONST., art. VII, s. 4.

### **Tangible Personal Property<sup>4</sup>**

Tangible Personal Property, as defined in 192.001(11)(d), F.S., means all goods, chattels, and other articles of value (but does not include vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are expressly excluded from this definition.

Anyone owning tangible personal property on January 1, who has a proprietorship, partnership, corporation, is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.<sup>5</sup> Property owners who lease, lend or rent property must also file.

Sections 195.032 and 195.062(1), F.S., authorize the Department of Revenue (DOR) to prepare and maintain guidelines to assist the property appraisers. They are intended to assist in the assessment of property and are not construed to be the final authority or all inclusive in nature.

### **Constitutional Provisions for Tangible Personal Property**

Tangible personal property is singled out for special treatment by the following constitutional provisions of Article VII of the Florida Constitution:

- Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.<sup>6</sup>
- There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars . . .<sup>7</sup>
- Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.<sup>8</sup>

Tangible personal property not excluded by the above provisions is subject to ad valorem taxation.

### **Exemption for Tangible Personal Property**

Article VII, section 3(e) of the Florida Constitution, provides for a \$25,000 exemption from the assessed value of tangible personal property subject to ad valorem taxation.

Section 196.183(1), F.S., provides that a single return must be filed for each site in the county where the owner of tangible personal property transacts business. Owners of freestanding

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<sup>4</sup> See the Florida Department of Revenue website for additional information about tangible personal property and appraiser guidelines <http://dor.myflorida.com/dor/property/tpp/>.

<sup>5</sup> See s. 193.062, F.S.

<sup>6</sup> FLA. CONST., art. VII, s. 1(b).

<sup>7</sup> FLA. CONST., art. VII, s. 3(b).

<sup>8</sup> FLA. CONST., art. VII, s. 4(c).

property placed at multiple sites, other than sites where the owner transacts business, must file a single return, including all such property located in the county. Freestanding property placed at multiple sites includes vending and amusement machines, LP/propane tanks, utility and cable company property, billboards, leased equipment, and similar property that is not customarily located in the offices, stores, or plants of the owner, but is placed throughout the county.

Section 196.183(3), F.S., waives the return filing requirement under s. 193.052, F.S.,<sup>9</sup> for taxpayers owning taxable property the value of which, as listed on the return, does not exceed the \$25,000 exemption. In order to qualify for this waiver, a taxpayer must file an initial return on which the exemption is taken. If, in subsequent years, the taxpayer owns taxable property the value of which, as listed on the return, exceeds the exemption, the taxpayer is obligated to file a return. The taxpayer may again qualify for the waiver only after filing a return on which the value as listed on the return does not exceed the exemption. A return filed or required to be filed shall be considered an application filed or required to be filed for the exemption under this section.

### **Department of Revenue Data on Property Taxes**

The Florida Property Tax Data Portal on the DOR website provides reports and information on a number of property tax related including:

- Statewide Ad Valorem Tax Data;
- Property Tax Analysis, Millage, Levies and Collections;
- Tax Rolls;
- Assessment Roll Evaluation and Approval; and
- Property Listing and Assessing Resources.<sup>10</sup>

The Distribution of Taxes Levied by Property Type, County and Municipal Governments Table found on the website shows that, state-wide, tangible personal property taxes levied by counties represented 7.6% of the total county property taxes levied in FY 2011-12. State-wide tangible personal property taxes levied by municipalities represented 6.1% of the total municipal property taxes levied in FY 2011-12.<sup>11</sup>

Individual county and municipality distribution of taxes levied by property type are also available on the DOR website.<sup>12</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 196.183, F.S., to provide that the annual tangible personal property filing requirement is waived for taxpayers who own taxable personal property:

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<sup>9</sup> Chapter 193, F.S., governs assessments. Section 193.052, F.S., provides that returns shall be filed for tangible personal property and property specifically required to be returned by other provisions in this title.

<sup>10</sup> Florida Department of Revenue, *Florida Property Tax Data Portal*, available at <http://dor.myflorida.com/dor/property/resources/data.html>.

<sup>11</sup> Florida Department of Revenue *Distribution of Taxes Levied by Property Type, County and Municipal Governments Table: Fiscal Year 2011-12* available at [ftp://sdrftp03.dor.state.fl.us/County\\_Municipal\\_Data/11table2/statewide\\_table2.pdf](ftp://sdrftp03.dor.state.fl.us/County_Municipal_Data/11table2/statewide_table2.pdf).

<sup>12</sup> Florida Department of Revenue, *Distribution of Taxes Levied by Property Type - County and Municipal Governments* available at <http://dor.myflorida.com/dor/property/taxpayers/cmdata/table2.html>.

- the value of which, as listed on the return, does not exceed the exemption provided in s. 196.183, F.S.; or
- the taxable value of which is \$25,000 or less.

In addition, this section of the bill provides that in order to qualify for the filing waiver, a taxpayer must file an initial return disclosing the taxable value of the property. The taxpayer will not incur any tax liability as a result of this filing. The taxpayer is not required to file another return until the value of the taxable personal property owned by the taxpayer exceeds \$25,000. The taxpayer may requalify for the waiver by showing that the value of taxable personal property owned by the taxpayer is \$25,000 or less.

The effect of this approach to implementing the constitutional amendment contained in SJR 1064 is that it provides an additional \$25,000 exemption from ad valorem taxation of tangible personal property, but only to persons who would report on their returns property valued at \$50,000 or less. If the total value required to be reported on the taxpayer's return exceeds \$50,000, the additional exemption created by this bill is unavailable.

**Section 2** provides that this act shall take effect on the same effective date of the amendment to the State Constitution contained in SJR 1064 relating to personal property taxes, and shall apply beginning with the 2013 tax roll.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill implements a constitutional amendment to which the mandates provision of s. 18, Art. VII of the State Constitution, does not apply.

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

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.



**B. Private Sector Impact:**

If this bill had been in effect for the 2011 tax rolls, approximately 156,000 additional taxpayer accounts would have been exempt from the tax. This represents nearly 50% of all accounts with a positive taxable value.<sup>13</sup>

**C. Government Sector Impact:**

The Revenue Estimating Conference adopted an indeterminate negative estimate for the bill due to the need for the passage of the constitutional amendment in SJR 1064. Should the amendment pass, the statewide impact on ad valorem tax collections would be -\$20.1 million in 2013-14, -\$20.3 million in 2014-15, and -\$20.6 million in 2015-16.<sup>14</sup>

The DOR has determined that the provisions of the bill will necessitate the amending of Rule 12D-16.001, F.A.C., to make changes to the DR-405, Return of Tangible Personal Property.<sup>15</sup> The department did not anticipate an operational impact from the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.

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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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<sup>13</sup>Office of Economic and Demographic Research, *Analysis of HB 1005 and SB 1062: Tangible Personal Property Exemption* (Jan. 5, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page186-187.pdf>.

<sup>14</sup>*Id.*

<sup>15</sup>Florida Department of Revenue, *Analysis of SB 1062: Tangible Personal Property* (Dec. 16, 2012) (on file with the Senate Committee on Community Affairs).

By Senator Detert

23-00816-12

20121062

A bill to be entitled

An act relating to tangible personal property taxes; amending s. 196.183, F.S.; revising the conditions for a waiver of the requirements to file a tangible personal property tax return; providing for application; providing a contingent effective date.

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

Section 1. Section 196.183, Florida Statutes, is amended to read:

196.183 Exemption for tangible personal property.—

(1) Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to \$25,000 of assessed value. A single return must be filed for each site in the county where the owner of tangible personal property transacts business. Owners of freestanding property placed at multiple sites, other than sites where the owner transacts business, must file a single return, including all such property located in the county. Freestanding property placed at multiple sites includes vending and amusement machines, LP/propane tanks, utility and cable company property, billboards, leased equipment, and similar property that is not customarily located in the offices, stores, or plants of the owner, but is placed throughout the county. Railroads, private carriers, and other companies assessed pursuant to s. 193.085 shall be allowed one \$25,000 exemption for each county to which the value of their property is allocated. The \$25,000 exemption for freestanding property placed at multiple locations and for centrally assessed

23-00816-12

20121062

property shall be allocated to each taxing authority based on the proportion of just value of such property located in the taxing authority; however, the amount of the exemption allocated to each taxing authority may not change following the extension of the tax roll pursuant to s. 193.122.

(2) For purposes of this section, a "site where the owner of tangible personal property transacts business" includes facilities where the business ships or receives goods, employees of the business are located, goods or equipment of the business are stored, or goods or services of the business are produced, manufactured, or developed, or similar facilities located in offices, stores, warehouses, plants, or other locations of the business. Sites where only the freestanding property of the owner is located shall not be considered sites where the owner of tangible personal property transacts business.

(3) The requirement that an annual tangible personal property tax return pursuant to s. 193.052 be filed is waived for taxpayers who own ~~owning~~ taxable personal property:

(a) The value of which, as listed on the return, does not exceed the exemption provided in this section; or

(b) The taxable value of which is \$25,000 or less ~~waived~~.

(4) (a) In order to qualify for the ~~this~~ waiver under paragraph (3) (a), a taxpayer must file an initial return on which the exemption is taken. If, in subsequent years, the taxpayer owns taxable property the value of which, as listed on the return, exceeds the exemption, the taxpayer is obligated to file a return. The taxpayer may again qualify for the waiver only after filing a return on which the value as listed on the return does not exceed the exemption. A return filed or required

23-00816-12 20121062

to be filed shall be considered an application filed or required to be filed for the exemption under this section.

(b) In order to qualify for the waiver under paragraph (3) (b), a taxpayer must file an initial return disclosing the taxable value of property but will not incur any tax liability as a result of this filing. The taxpayer is not required to file another return until the value of taxable personal property owned by the taxpayer exceeds \$25,000. The taxpayer may requalify for the waiver by filing a return showing that the value of the taxable personal property owned by the taxpayer is \$25,000 or less.

(5) (4) Owners of property previously assessed by the property appraiser without a return being filed may, at the option of the property appraiser, qualify for the exemption under this section without filing an initial return.

(6) (5) The exemption provided in this section does not apply in any year a taxpayer fails to timely file a return that is not waived pursuant to subsection (3) or subsection (5) (4). Any taxpayer who received a waiver pursuant to subsection (3) or subsection (5) (4) and who owns taxable property the value of which, as listed on the return, exceeds the exemption in a subsequent year and who fails to file a return with the property appraiser is subject to the penalty contained in s. 193.072(1)(a) calculated without the benefit of the exemption pursuant to this section. Any taxpayer claiming more exemptions than allowed pursuant to subsection (1) is subject to the taxes exempted as a result of wrongfully claiming the additional exemptions plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. By February 1 of each year,

23-00816-12 20121062

the property appraiser shall notify by mail all taxpayers whose requirement for filing an annual tangible personal property tax return was waived in the previous year. The notification shall state that a return must be filed if the value of the taxpayer's tangible personal property exceeds the exemption and include the penalties for failure to file such a return.

(7) (6) The exemption provided in this section does not apply to a mobile home that is presumed to be tangible personal property pursuant to s. 193.075(2).

Section 2. This act shall take effect on the same effective date of the amendment to the State Constitution contained in Senate Joint Resolution \_\_\_\_, or a similar constitutional amendment, relating to tangible personal property taxes, and shall apply beginning with the 2013 tax roll.



The Florida Senate  
**Committee Agenda Request**

**To:** Senator Michael S. "Mike" Bennett, Chair  
Committee on Community Affairs

**Subject:** Committee Agenda Request

**Date:** January 12, 2012

---

I respectfully request that **Senate Bill #1062**, relating to Tangible Personal Property Taxes, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script, reading "Nancy Detert".

---

Senator Nancy C. Detert  
Florida Senate, District 23

*rec'd 1/12/12  
apw*

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2.6.12

Meeting Date

Topic Tangible Personal Property

Bill Number SJR 1064/SB 1062  
(if applicable)

Name Christian Weiss

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Policy Coordinator

Address 1702 Capitol  
Street

Phone 850.717.9392

TLH  
City State Zip

E-mail christian.weiss@myfloridax.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Gov's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/6/12

Meeting Date

Topic Tangible Personal Property Tax

Name Linda Cherry

Job Title Leadership Council Member

Address 110 E. Jefferson St.

Street

Tallahassee FL 32301

City

State

Zip

Bill Number SB 1062 / SB 1064  
(if applicable)

Amendment Barcode \_\_\_\_\_  
(if applicable)

Phone 850-681-0416

E-mail linda@cherrycomm.com

Speaking: ☒ For ☐ Against ☐ Information

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12

*Meeting Date*

Topic Ad Valorem Tax

Bill Number SB 1062  
*(if applicable)*

Name Vicki Weber

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney, Hopping Green & Sams

Address 119 South Monroe Suite #300  
*Street*  
Tallahassee Florida 32301  
*City State Zip*

Phone 850-222-7500

E-mail vweber@hgslaw.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2 / 6 / 2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1062  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
*Street*

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SJR 1056

INTRODUCER: Military Affairs, Space, and Domestic Security Committee and Senator Norman

SUBJECT: Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder

DATE: January 31, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	<b>Fav/CS</b>
2.	Toman	Yeatman	CA	<b>Favorable</b>
3.			JU	
4.			BC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

The joint resolution proposes an amendment to Article VII, section 6 of the Florida Constitution, that would allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty. The amount of tax relief, to be defined by general law, can equal the total amount or a portion of the ad valorem tax otherwise owed on homestead property. The joint resolution also proposes an amendment to create section 32 of Article XII of the Florida Constitution, providing an effective date of January 1, 2013.

For the proposed amendment to be placed on the ballot at the general election in November 2012, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.

The joint resolution proposes an amendment to section 6, Article VII of the Florida Constitution.

The joint resolution proposes the creation of section 32, Article XII of the Florida Constitution.

## **II. Present Situation:**

### **Just Value**

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. “Just value” is synonymous with “fair market value” and is defined as what a willing buyer would pay a willing seller for the property in an arm’s length transaction.<sup>1</sup>

### **Assessed Value**

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.<sup>2</sup> Agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.<sup>3</sup> Land used for conservation purposes must be assessed solely on the basis of character or use.<sup>4</sup> Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or be totally exempted from taxation.<sup>5</sup> Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.<sup>6</sup> Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.<sup>7</sup> The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property’s wind resistance or the installation of renewable energy source devices in the assessment of the property.<sup>8</sup> Certain working waterfront property is assessed based upon the property’s current use.<sup>9</sup>

### **Taxable Value**

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes.

### **Assessment Limitations**

#### ***Save Our Homes***

The “Save Our Homes” provision in Article VII, section 4 of the Florida Constitution, limits the amount a homestead’s assessed value can increase annually to the lesser of 3 percent or the inflation rate as measured by the consumer price index (CPI).<sup>10</sup> Homestead property owners that

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

<sup>2</sup> The constitutional provisions in section 4, Art. VII, of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

<sup>3</sup> Art. VII, section 4(a) of the Florida Constitution.

<sup>4</sup> Art. VII, section 4(b) of the Florida Constitution.

<sup>5</sup> Art. VII, section 4(c) of the Florida Constitution.

<sup>6</sup> Art. VII, section 4(e) of the Florida Constitution.

<sup>7</sup> Art. VII, section 4(f) of the Florida Constitution.

<sup>8</sup> Art. VII, section 4(i) of the Florida Constitution.

<sup>9</sup> Art. VII, section 4(j) of the Florida Constitution.

<sup>10</sup> Art. VII, section 4(d) of the Florida Constitution.

establish a new homestead may transfer up to \$500,000 of their accrued “Save Our Homes” benefit to a new homestead.<sup>11</sup>

### ***Additional Assessment Limitations***

Article VII, sections 4(g) and (h), of the Florida Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units must be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature may provide that such property shall be assessed at just value after a change of ownership or control and must provide for reassessment following a qualifying improvement, as defined by general law.

### **Exemptions**

The Legislature may only grant property tax exemptions that are authorized in the constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>12</sup>

### ***Homestead Exemptions***

Article VII, section 6(a) of the Florida Constitution, provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

### ***Additional Homestead Exemption for Certain Senior Citizens***

Article VII, section 6(d) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to \$50,000. This additional exemption applies to any person with legal and equitable title to real estate who maintains a property as a permanent residence, who has attained the age of 65, and whose household income, as defined by general law, does not exceed \$20,000 adjusted annually for inflation.<sup>13</sup>

### ***Exemptions for Widows or Widowers***

Article VII, section 3(b) of the Florida Constitution, provides an exemption to every widow or widower or person who is blind or totally and permanently disabled, to the value fixed by general law not less than five hundred dollars.<sup>14</sup>

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<sup>11</sup> Art. VII, section 4(d) of the Florida Constitution.

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

<sup>13</sup> The county or municipality must grant this additional exemption by ordinance which must be adopted pursuant to the procedures prescribed in chapters 125 and 166, F.S.

<sup>14</sup> Section 196.202, F.S., provides the general law and enacts the widows and widowers exemption at \$500.

### **Ad Valorem Discount for Veterans**

Article VII, section 6(e) provides that each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property. The disability must be combat related, the veteran must have been a resident of Florida at the time of entering the military service, and the veteran must have been honorably discharged. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.

### **Other Exemptions**

Article VII, section 3 of the Florida Constitution, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.<sup>15</sup> Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.<sup>16</sup> A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.<sup>17</sup> A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.<sup>18</sup> Tangible personal property is exempt up to \$25,000 of its assessed value.<sup>19</sup> There is an exemption for real property dedicated in perpetuity for conservation purposes.<sup>20</sup> There is an exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.<sup>21</sup>

## **III. Effect of Proposed Changes:**

The joint resolution proposes an amendment to the Florida Constitution that would allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty. The amount of tax relief, to be defined by general law, can equal the total amount or a portion of the ad valorem tax otherwise owed on homestead property.

The proposed amendment defines "first responder" to mean a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic. "In the line of duty" is defined to mean arising out of and in the actual performance of duty required by

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<sup>15</sup> Art. VII, section 3(a) of the Florida Constitution.

<sup>16</sup> Art. VII, section 3(b) of the Florida Constitution.

<sup>17</sup> Art. VII, section 3(c) of the Florida Constitution.

<sup>18</sup> Art. VII, section 3(d) of the Florida Constitution.

<sup>19</sup> Art. VII, section 3(e) of the Florida Constitution.

<sup>20</sup> Art. VII, section 3(f) of the Florida Constitution.

<sup>21</sup> Art. VII, section 3(g) of the Florida Constitution.

employment as a first responder. The Legislature is authorized to further define these terms by general law.

The proposed amendment is effective January 1, 2013, if approved by the voters.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The mandate provisions in Article VII, section 18 of the Florida Constitution, do not apply to joint resolutions.

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

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.<sup>22</sup> The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.<sup>23</sup>

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”<sup>24</sup>

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The proposed amendment, if approved by the voters and implemented by the Legislature, would provide homestead exemptions for certain surviving spouses of veterans and first responders.

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<sup>22</sup> Art. XI, section 1 of the Florida Constitution.

<sup>23</sup> Art. XI, section 5 of the Florida Constitution.

<sup>24</sup> *Roberts*, 43 So. 3d at 659, citing *Florida Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

**B. Private Sector Impact:**

If the proposed amendment is approved by the electorate and implemented by the Legislature, surviving spouses of certain veterans and first responders could receive property tax relief.

**C. Government Sector Impact:**

The Revenue Estimating Conference has estimated that, if the voters approve this constitutional amendment, and if it is implemented by the Legislature effective beginning with the January 2013 tax rolls and assuming current millage rates, the estimated statewide impact would be annual reductions in school tax revenues of \$0.3 million, beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be \$0.3 million beginning in fiscal year 2013-14.

Article XI, section 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held.

The Division of Elections (division) within the Department of State estimates the full publication costs for advertising the proposed amendment to be \$108,793.50.<sup>25</sup> The division estimates the cost based on the average cost per word to advertise the proposed constitutional amendment.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Military Affairs, Space, and Domestic Security on January 26, 2012:**

The committee substitute clarifies that the constitutional amendment proposed by the joint resolution takes effect January 1, 2013, if approved by voters.

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<sup>25</sup> E-mail correspondence with Department of State staff (Jan. 27, 2012) (on file with Senate Committee on Community Affairs).

B. Amendments:

None.

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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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By the Committee on Military Affairs, Space, and Domestic Security; and Senator Norman

583-02475-12

20121056c1

## Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution to allow the Legislature by general law to provide ad valorem homestead property tax relief to the surviving spouse of a military veteran who died from service-connected causes while on active duty or a surviving spouse of a first responder who died in the line of duty, provide definitions with respect thereto, and provide an effective date.

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

That the following amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

## ARTICLE VII

## FINANCE AND TAXATION

## SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district

Page 1 of 5

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

583-02475-12

20121056c1

levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an

Page 2 of 5

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



583-02475-12 20121056c1

59 additional homestead tax exemption not exceeding fifty thousand  
 60 dollars to any person who has the legal or equitable title to  
 61 real estate and maintains thereon the permanent residence of the  
 62 owner and who has attained age sixty-five and whose household  
 63 income, as defined by general law, does not exceed twenty  
 64 thousand dollars. The general law must allow counties and  
 65 municipalities to grant this additional exemption, within the  
 66 limits prescribed in this subsection, by ordinance adopted in  
 67 the manner prescribed by general law, and must provide for the  
 68 periodic adjustment of the income limitation prescribed in this  
 69 subsection for changes in the cost of living.

70 (e) Each veteran who is age 65 or older who is partially or  
 71 totally permanently disabled shall receive a discount from the  
 72 amount of the ad valorem tax otherwise owed on homestead  
 73 property the veteran owns and resides in if the disability was  
 74 combat related, the veteran was a resident of this state at the  
 75 time of entering the military service of the United States, and  
 76 the veteran was honorably discharged upon separation from  
 77 military service. The discount shall be in a percentage equal to  
 78 the percentage of the veteran's permanent, service-connected  
 79 disability as determined by the United States Department of  
 80 Veterans Affairs. To qualify for the discount granted by this  
 81 subsection, an applicant must submit to the county property  
 82 appraiser, by March 1, proof of residency at the time of  
 83 entering military service, an official letter from the United  
 84 States Department of Veterans Affairs stating the percentage of  
 85 the veteran's service-connected disability and such evidence  
 86 that reasonably identifies the disability as combat related, and  
 87 a copy of the veteran's honorable discharge. If the property

583-02475-12 20121056c1

88 appraiser denies the request for a discount, the appraiser must  
 89 notify the applicant in writing of the reasons for the denial,  
 90 and the veteran may reapply. The Legislature may, by general  
 91 law, waive the annual application requirement in subsequent  
 92 years. This subsection shall take effect December 7, 2006, is  
 93 self-executing, and does not require implementing legislation.

94 (f) (1) By general law and subject to conditions and  
 95 limitations specified therein, the Legislature may provide ad  
 96 valorem tax relief equal to the total amount or a portion of the  
 97 ad valorem tax otherwise owed on homestead property to the  
 98 surviving spouse of:

99 a. A veteran who died from service-connected causes while  
 100 on active duty as a member of the United States Armed Forces.

101 b. A first responder who died in the line of duty.

102 (2) As used in this subsection and as further defined by  
 103 general law, the term:

104 a. "First responder" means a law enforcement officer, a  
 105 correctional officer, a firefighter, an emergency medical  
 106 technician, or a paramedic.

107 b. "In the line of duty" means arising out of and in the  
 108 actual performance of duty required by employment as a first  
 109 responder.

## ARTICLE XII

## SCHEDULE

112 SECTION 32. Ad valorem tax relief for surviving spouses of  
 113 veterans who died from service-connected causes and first  
 114 responders who died in the line of duty.-This section and the  
 115 amendment to Section 6 of Article VII permitting the legislature  
 116 to provide ad valorem tax relief to surviving spouses of

583-02475-12 20121056c1

117 veterans who died from service-connected causes and first  
118 responders who died in the line of duty shall take effect  
119 January 1, 2013.

120 BE IT FURTHER RESOLVED that the following statement be  
121 placed on the ballot:

122 CONSTITUTIONAL AMENDMENT

123 ARTICLE VII, SECTION 6

124 ARTICLE XII, SECTION 32

125 HOMESTEAD PROPERTY TAX EXEMPTION FOR SURVIVING SPOUSE OF  
126 MILITARY VETERAN OR FIRST RESPONDER.—Proposing an amendment to  
127 the State Constitution to authorize the Legislature to provide  
128 by general law ad valorem homestead property tax relief to the  
129 surviving spouse of a military veteran who died from service-  
130 connected causes while on active duty or to the surviving spouse  
131 of a first responder who died in the line of duty. The amendment  
132 authorizes the Legislature to totally exempt or partially exempt  
133 such surviving spouse's homestead property from ad valorem  
134 taxation. The amendment defines a first responder as a law  
135 enforcement officer, a correctional officer, a firefighter, an  
136 emergency medical technician, or a paramedic. This amendment  
137 takes effect January 1, 2013.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Community Affairs, *Vice Chair*  
Budget - Subcommittee on Finance and Tax  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Health Regulation  
Military Affairs, Space, and Domestic Security  
Transportation

## JOINT COMMITTEE:

Legislative Auditing Committee, *Alternating Chair*

**SENATOR JIM NORMAN**

12th District

January 12, 2012

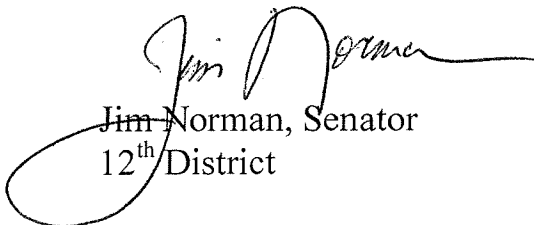
The Honorable Mike Bennett, Chair  
Senate Community Affairs  
315 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Bennett:

My Senate Bill 1056, an act relating to Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder has been referred to your committee. I respectfully request that this bill be placed on the first possible agenda for a hearing.

Should you or your staff have any questions, please do not hesitate to contact me or my chief aide, Ben Kelly.

Sincerely,



Jim Norman, Senator  
12<sup>th</sup> District

JN: dlc

rec'd 1/12/12 afw

cc: Tom Yeatman, Staff Director – Senate Community Affairs

## REPLY TO:

- 14031 North Dale Mabry Boulevard, Tampa, Florida 33618 (813) 265-6260
- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5068

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**MIKE HARIDOPOLOS**  
President of the Senate

**MICHAEL S. "MIKE" BENNETT**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-6-12

*Meeting Date*

Topic Homestead Exemption

Bill Number 1656  
*(if applicable)*

Name Ken Kopczynski

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lobbyist

Address 300 East Brevard St  
*Street*

Phone 222-3329

Talla FL 32301  
*City State Zip*

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing FLA PBA Inc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2 / 6 / 2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1056  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

*Street*

Phone 727/897-9291

SAINT PETERSBURG

*City*

FLORIDA

*State*

33705

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 1058

INTRODUCER: Military Affairs, Space, and Domestic Security Committee and Senator Norman

SUBJECT: Homestead Property Tax Exemptions

DATE: January 31, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	<b>Fav/CS</b>
2.	Toman	Yeatman	CA	<b>Favorable</b>
3.			JU	
4.			BC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

The bill creates a new statutory provision that creates and sets forth the requirements for a full exemption from ad valorem taxes authorized by the proposed constitutional amendment in CS/SJR 1056. The exemption is available under specified conditions to the surviving spouse of a “first responder” who died in the line of duty when the real estate is owned and used by the surviving spouse as a homestead. The bill defines the terms “first responder” and “in the line of duty.”

The bill takes effect upon the approval of the amendment proposed by CS/SJR 1056 by the voters. The bill will operate prospectively to tax rolls submitted to the Department of Revenue by each county tax collector beginning January 2013 and each January thereafter.

This bill substantially amends section 196.081 of the Florida Statutes.

This bill creates three undesignated sections of law.

## **II. Present Situation:**

### **Just Value**

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. “Just value” is synonymous with “fair market value” and is defined as what a willing buyer would pay a willing seller for the property in an arm’s length transaction.<sup>1</sup>

### **Assessed Value**

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.<sup>2</sup> Agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.<sup>3</sup> Land used for conservation purposes must be assessed solely on the basis of character or use.<sup>4</sup> Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or be totally exempted from taxation.<sup>5</sup> Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.<sup>6</sup> Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.<sup>7</sup> The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property’s wind resistance or the installation of renewable energy source devices in the assessment of the property.<sup>8</sup> Certain working waterfront property is assessed based upon the property’s current use.<sup>9</sup>

### **Taxable Value**

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes.

### **Assessment Limitations**

#### ***Save Our Homes***

The “Save Our Homes” provision in Article VII, section 4 of the Florida Constitution, limits the amount a homestead’s assessed value can increase annually to the lesser of 3 percent or the inflation rate as measured by the consumer price index (CPI).<sup>10</sup> Homestead property owners that

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

<sup>2</sup> The constitutional provisions in section 4, Art. VII, of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

<sup>3</sup> Art. VII, section 4(a) of the Florida Constitution.

<sup>4</sup> Art. VII, section 4(b) of the Florida Constitution.

<sup>5</sup> Art. VII, section 4(c) of the Florida Constitution.

<sup>6</sup> Art. VII, section 4(e) of the Florida Constitution.

<sup>7</sup> Art. VII, section 4(f) of the Florida Constitution.

<sup>8</sup> Art. VII, section 4(i) of the Florida Constitution.

<sup>9</sup> Art. VII, section 4(j) of the Florida Constitution.

<sup>10</sup> Art. VII, section 4(d) of the Florida Constitution.

establish a new homestead may transfer up to \$500,000 of their accrued “Save Our Homes” benefit to a new homestead.<sup>11</sup>

### ***Additional Assessment Limitations***

Article VII, sections 4(g) and (h), of the Florida Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units must be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature may provide that such property shall be assessed at just value after a change of ownership or control and must provide for reassessment following a qualifying improvement, as defined by general law.

### **Exemptions**

The Legislature may only grant property tax exemptions that are authorized in the constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>12</sup>

### ***Homestead Exemptions***

Article VII, section 6(a) of the Florida Constitution, provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

### ***Additional Homestead Exemption for Certain Senior Citizens***

Article VII, section 6(d) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to \$50,000. This additional exemption applies to any person with legal and equitable title to real estate who maintains a property as a permanent residence, who has attained the age of 65, and whose household income, as defined by general law, does not exceed \$20,000 adjusted annually for inflation.<sup>13</sup>

### ***Exemptions for Widows or Widowers***

Article VII, section 3(b) of the Florida Constitution, provides an exemption to every widow or widower or person who is blind or totally and permanently disabled, to the value fixed by general law not less than five hundred dollars.<sup>14</sup>

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<sup>11</sup> Art. VII, section 4(d) of the Florida Constitution.

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

<sup>13</sup> The county or municipality must grant this additional exemption by ordinance which must be adopted pursuant to the procedures prescribed in chapters 125 and 166, F.S.

<sup>14</sup> Section 196.202, F.S., provides the general law and enacts the widows and widowers exemption at \$500.



***Exemption for Surviving Spouses of Certain Veterans***

Section 196.081(4), F.S., currently provides, under specified conditions, a full exemption from ad valorem taxes on property that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran died from service-connected causes while on active duty. Additionally, the veteran must have been a permanent resident of this state on January 1 of the year in which he or she died.

**Ad Valorem Discount for Veterans**

Article VII, section 6(e) of the Florida Constitution, provides that each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property. The disability must be combat related, the veteran must have been a resident of Florida at the time of entering the military service, and the veteran must have been honorably discharged. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.

**Other Exemptions**

Article VII, section 3 of the Florida Constitution, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.<sup>15</sup> Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.<sup>16</sup> A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.<sup>17</sup> A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.<sup>18</sup> Tangible personal property is exempt up to \$25,000 of its assessed value.<sup>19</sup> There is an exemption for real property dedicated in perpetuity for conservation purposes.<sup>20</sup> There is an exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.<sup>21</sup>

**III. Effect of Proposed Changes:**

**Section 1** creates an undesignated section of law to provide that the act may be cited as the "Fallen Heroes Family Tax Relief Act."

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<sup>15</sup> Art. VII, section 3(a) of the Florida Constitution.

<sup>16</sup> Art. VII, section 3(b) of the Florida Constitution.

<sup>17</sup> Art. VII, section 3(c) of the Florida Constitution.

<sup>18</sup> Art. VII, section 3(d) of the Florida Constitution.

<sup>19</sup> Art. VII, section 3(e) of the Florida Constitution.

<sup>20</sup> Art. VII, section 3(f) of the Florida Constitution.

<sup>21</sup> Art. VII, section 3(g) of the Florida Constitution.

**Section 2** amends s. 196.081, F.S., to set forth the requirements for a full exemption from ad valorem taxes authorized by the proposed constitutional amendment in CS/SJR 1056. The exemption is available under specified conditions to the surviving spouse of a “first responder” who died in the line of duty when the real estate is owned and used by the surviving spouse as a homestead.

The bill defines the term “first responder” to mean a law enforcement officer or correctional officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.30, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

The bill defines “in the line of duty” to mean:

- While engaging in law enforcement;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities enumerated in this subparagraph if the training has been authorized by the employing entity.

The bill specifies that these terms are defined for purposes of this exemption only and do not apply to the payment of benefits under ss. 112.19 or 112.191, F.S.

The bill provides that a heart attack or stroke that causes death or causes an injury resulting in death must occur within 24 hours after an event or activity enumerated above and must be directly and proximately caused by the event or activity in order to be considered as having occurred in the line of duty.

The bill specifies the documentation required to qualify for the exemption to be a legally issued letter from the state or appropriate political subdivision of the state or other authority or special district recognizing and certifying that the individual died in the line of duty while employed as a first responder. The bill provides that presentation by the surviving spouse of this letter that attests the individual’s death was in the line of duty is prima facie evidence that the surviving spouse is entitled to this exemption.

The bill provides that the exemption may apply as long as the spouse holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence as long as it is used as his or her primary residence and he or she does not remarry.

**Section 3** creates an undesignated section of law to provide that the bill will operate prospectively to tax rolls submitted to the Department of Revenue by each county tax collector

beginning January 2013 and each January thereafter and do not provide a basis for relief from an assessment of taxes not paid or create a right to refund of taxes paid before January 1, 2013.

The provisions of the bill apply for surviving spouses of first responders whose deaths occur before, on, or after the effective date of the bill.

**Section 4** creates an undesignated section of law to provide a General Revenue appropriation of \$100,302 to the Department of State to publish the proposed constitutional amendment contained in CS/SJR 1056 in newspapers in each county as required by Article XI, section 5(d) of the Florida Constitution.

**Section 5** provides that the bill takes effect upon the approval of the amendment proposed by CS/SJR 1056.

#### **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 bill implements the proposed constitutional amendment contained in CS/SJR 1056, which provides ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty.

#### **V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

If the amendment proposed by CS/SJR 1056 is approved by the voters, the bill would allow surviving spouses of certain first responders complete exemption from ad valorem taxes.

**B. Private Sector Impact:**

If the amendment proposed by CS/SJR 1056 is approved by the voters, the bill would provide property tax relief to surviving spouses of certain first responders.

**C. Government Sector Impact:**

The Revenue Estimating Conference has estimated that, if the amendment proposed by CS/SJR 1056 is approved by the voters, assuming current millage rates, the estimated statewide impact of the bill would be annual reductions in school tax revenues of \$0.3 million beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be \$0.3 million beginning in fiscal year 2013-14.

The bill provides a General Revenue appropriation of \$100,302 to the Department of State (department) to publish the proposed constitutional amendment contained in CS/SJR 1056 in newspapers in each county as required by Article XI, section 5(d) of the Florida Constitution. According to the department, the updated estimate of the cost to publish the proposed constitutional amendment is \$108,793.50.<sup>22</sup> The department estimates the cost based on the average cost per word to advertise the constitutional amendment. This updated estimate reflects the additional words that were added to the constitutional amendment in the current version of CS/SJR 1056.

**VI. Technical Deficiencies:**

The word “deaths” in line 134 of the CS should be changed to the singular form “death” for subject-verb agreement.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Military Affairs, Space, and Domestic Security on January 26, 2012:**

- Removes changes dealing with the current exemption for surviving spouses of military veterans who died from service-connected causes while on active duty.
- Clarifies that the terms “first responder” and “in the line of duty” are defined for purposes of this exemption.
- Clarifies that the exemption begins with the 2013 tax roll.
- Provides an appropriation to publish the proposed constitutional amendment in newspapers in each county as required by the Florida Constitution.

**B. Amendments:**

None.

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<sup>22</sup> E-mail correspondence with Department of State staff (Jan. 27, 2012) (on file with Senate Committee on Community Affairs).

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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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By the Committee on Military Affairs, Space, and Domestic Security; and Senator Norman

583-02476-12

20121058c1

A bill to be entitled

An act relating to homestead property tax exemptions; providing a short title; amending s. 196.081, F.S.; exempting from taxation the homestead property of the surviving spouse of a first responder who dies in the line of duty; providing definitions for "first responder" and "line of duty"; providing construction with respect the applicable tax roll and the date of death; providing an appropriation; providing effective dates, one of which is contingent.

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

Section 1. This act may be cited as the "Fallen Heroes Family Tax Relief Act."

Section 2. Section 196.081, Florida Statutes, is amended to read:

196.081 Exemption for certain permanently and totally disabled veterans and for surviving spouses of veterans; exemption for surviving spouses of first responders who die in the line of duty.—

(1) Any real estate that is owned and used as a homestead by a veteran who was honorably discharged with a service-connected total and permanent disability and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran is totally and permanently disabled is exempt from taxation, if the veteran is a permanent resident of this state on January 1 of the tax year for which exemption is being

583-02476-12

20121058c1

claimed or was a permanent resident of this state on January 1 of the year the veteran died.

(2) The production by a veteran or the spouse or surviving spouse of a letter of total and permanent disability from the United States Government or United States Department of Veterans Affairs or its predecessor before the property appraiser of the county in which property of the veteran lies is prima facie evidence of the fact that the veteran or the surviving spouse is entitled to the exemption.

(3) If the totally and permanently disabled veteran predeceases his or her spouse and if, upon the death of the veteran, the spouse holds the legal or beneficial title to the homestead and permanently resides thereon as specified in s. 196.031, the exemption from taxation carries over to the benefit of the veteran's spouse until such time as he or she remarries or sells or otherwise disposes of the property. If the spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as it is used as his or her primary residence and he or she does not remarry.

(4) ~~(a)~~ Any real estate that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran who died from service-connected causes while on active duty is exempt from taxation if the veteran was a permanent resident of this state on January 1 of the year in which the

583-02476-12

20121058c1

59 veteran died.

60 ~~(a)(b)~~ The production of the letter by the surviving spouse  
 61 ~~which of a letter that was issued as required under paragraph~~  
 62 ~~(a) and that~~ attests to the veteran's death while on active duty  
 63 is prima facie evidence ~~of the fact~~ that the surviving spouse is  
 64 entitled to ~~the an exemption under paragraph (a).~~

65 ~~(b)(c)~~ The tax exemption ~~that applies under paragraph (a)~~  
 66 ~~to the surviving spouse~~ carries over to the benefit of the  
 67 veteran's surviving spouse as long as the spouse holds the legal  
 68 or beneficial title to the homestead, permanently resides  
 69 thereon as specified in s. 196.031, and does not remarry. If the  
 70 surviving spouse sells the property, an exemption not to exceed  
 71 the amount granted under ~~from~~ the most recent ad valorem tax  
 72 roll may be transferred to his or her new residence as long as  
 73 it is used as his or her primary residence and he or she does  
 74 not remarry.

75 (5) Any real estate that is owned and used as a homestead  
 76 by the surviving spouse of a first responder who died in the  
 77 line of duty while employed by the state or any political  
 78 subdivision of the state, including authorities and special  
 79 districts, and for whom a letter from the state or appropriate  
 80 political subdivision of the state, or other authority or  
 81 special district, has been issued which legally recognizes and  
 82 certifies that the first responder died in the line of duty  
 83 while employed as a first responder is exempt from taxation if  
 84 the first responder and his or her surviving spouse were  
 85 permanent residents of this state on January 1 of the year in  
 86 which the first responder died.

87 (a) The production of the letter by the surviving spouse

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20121058c1

88 which attests to the first responder's death in the line of duty  
 89 is prima facie evidence that the surviving spouse is entitled to  
 90 the exemption.

91 (b) The tax exemption carries over to the benefit of the  
 92 first responder's surviving spouse as long as the spouse holds  
 93 the legal or beneficial title to the homestead, permanently  
 94 resides thereon as specified in s. 196.031, and does not  
 95 remarry. If the surviving spouse sells the property, an  
 96 exemption not to exceed the amount granted under the most recent  
 97 ad valorem tax roll may be transferred to his or her new  
 98 residence if it is used as his or her primary residence and he  
 99 or she does not remarry.

100 (c) As used in this subsection only, and not applicable to  
 101 the payment of benefits under s. 112.19 or s. 112.191, the term:

102 1. "First responder" means a law enforcement officer or  
 103 correctional officer as defined in s. 943.10, a firefighter as  
 104 defined in s. 633.30, or an emergency medical technician or  
 105 paramedic as defined in s. 401.23 who is a full-time paid  
 106 employee, part-time paid employee, or unpaid volunteer.

107 2. "In the line of duty" means:

108 a. While engaging in law enforcement;

109 b. While performing an activity relating to fire  
 110 suppression and prevention;

111 c. While responding to a hazardous material emergency;

112 d. While performing rescue activity;

113 e. While providing emergency medical services;

114 f. While performing disaster relief activity;

115 g. While otherwise engaging in emergency response activity;

116 or

583-02476-12 20121058c1

117 h. While engaging in a training exercise related to any of  
118 the events or activities enumerated in this subparagraph if the  
119 training has been authorized by the employing entity.

120  
121 A heart attack or stroke that causes death or causes an injury  
122 resulting in death must occur within 24 hours after an event or  
123 activity enumerated in this subparagraph and must be directly  
124 and proximately caused by the event or activity in order to be  
125 considered as having occurred in the line of duty.

126 Section 3. Construction.—

127 (1) The revisions to s. 196.081, Florida Statutes, made by  
128 this act operate prospectively to the 2013 tax roll and do not  
129 provide a basis for relief from an assessment of taxes not paid  
130 or create a right to a refund of taxes paid before January 1,  
131 2013.

132 (2) The provisions of s. 196.081(5), Florida Statutes, as  
133 created by this act apply to the homestead exemption of the  
134 surviving spouse of a first responder whose deaths occurs  
135 before, on, or after the effective date of this act.

136 Section 4. Effective July 1, 2012, the sum of \$100,302 in  
137 nonrecurring funds is appropriated from the General Revenue Fund  
138 to the Department of State for purposes of publishing, as  
139 required under s. 5(d), Article XI of the State Constitution,  
140 the proposed constitutional amendment contained in Committee  
141 Substitute for Senate Joint Resolution 1056, or a similar joint  
142 resolution having substantially the same specific intent and  
143 purpose.

144 Section 5. Except as otherwise expressly provided in this  
145 act and except for this section, which shall take effect July 1,

583-02476-12 20121058c1

146 2012, this act shall take effect on the same date that CS for  
147 SJR 1056, or a similar joint resolution having substantially the  
148 same specific intent and purpose, takes effect if approved by  
149 the electors at the general election held in November 2012 or at  
150 an earlier special election specifically authorized by law for  
151 that purpose.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Community Affairs, *Vice Chair*  
Budget - Subcommittee on Finance and Tax  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Health Regulation  
Military Affairs, Space, and Domestic Security  
Transportation

## JOINT COMMITTEE:

Legislative Auditing Committee, *Alternating Chair*

**SENATOR JIM NORMAN**

12th District

January 12, 2012

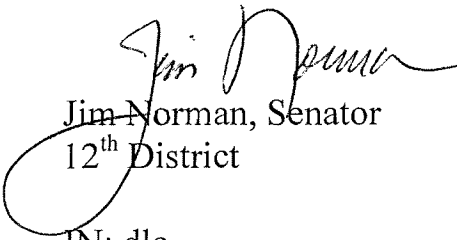
The Honorable Mike Bennett, Chair  
Senate Community Affairs  
315 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Bennett:

My Senate Bill 1058, an act relating to Homestead Property Tax Exemptions has been referred to your committee. I respectfully request that this bill be placed on the first possible agenda for a hearing.

Should you or your staff have any questions, please do not hesitate to contact me or my chief aide, Ben Kelly.

Sincerely,

  
Jim Norman, Senator  
12<sup>th</sup> District

JN: dlc

*rec'd 1/12/12 afw*

cc: Tom Yeatman, Staff Director – Senate Community Affairs

## REPLY TO:

- ☐ 14031 North Dale Mabry Boulevard, Tampa, Florida 33618 (813) 265-6260
- ☐ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5068

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**MIKE HARIDOPOLOS**  
President of the Senate

**MICHAEL S. "MIKE" BENNETT**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2.6.12

Meeting Date

Topic Homestead Exemption

Bill Number 1058  
(if applicable)

Name Ken Kopczynski

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title lobbyist

Address 300 East Brevard St  
Street

Phone 222-3329

Tallah FL 32301  
City State Zip

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing FLN PBA Inc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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2 / 6 / 2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1058  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
*Street*

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 1180

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Developments of Regional Impact

DATE: February 6, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	<b>Fav/CS</b>
2.			BC	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

The committee substitute (bill) makes a number of changes to the Development of Regional Impact (DRI) program. A DRI is any development that has a substantial effect upon the health, safety, or welfare of citizens of more than one county.

Specifically, this bill requires that comprehensive plan amendments proposing certain developments follow the state coordinated review process. The bill limits the scope of certain recommendations and comments by reviewing agencies regarding proposed developments. Also, it revises certain review criteria for reports and recommendations on the regional impact of proposed developments. The bill requires regional planning agency reports to contain recommendations consistent with the standards of state permitting agencies and water management districts. Additionally, the bill provides that specified changes to a development order are not substantial deviations and provides an exemption from development-of-regional-impact review for proposed developments that meet specified criteria and are located in certain jurisdictions. The bill revises conditions under which a local government is required to rescind a development-of-regional-impact development order.

The bill creates a section of law which provides for application and approval of an amendment to the local comprehensive plan by the owner of land that meets certain criteria as an agricultural enclave. Also, the bill extends an application deadline for a 2 year permit extension.

This bill creates s. 163.3165, F.S., and substantially amends the following sections of the Florida Statutes: 163.3184, 380.06, and 380.115. The bill also creates an undesignated section of law.

## **II. Present Situation:**

### **Development of Regional Impact Background**

A development of regional impact (DRI) is defined in s. 380.06, F.S., as “any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.” Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils (RPCs) coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity (DEO) for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the state land planning agency to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.<sup>1</sup> Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

The DRI program was initially created in 1972. Since that time, the state has required all local governments to adopt local comprehensive plans. The Environmental Land Management Study Committee (ELMS III) in 1992 recommended that the DRI program be eliminated in the largest local governments and relegated to an enhanced version of the intergovernmental coordination element (ICE) in their local plans.<sup>2</sup> After much controversy, this recommendation never fully came to fruition and the DRI program continued. The Legislature has made changes to the DRI program in the past for various reasons.

### **DRI Review**

All developments that meet the DRI thresholds and standards provided by statute<sup>3</sup> and rules adopted by the Administration Commission<sup>4</sup> are required to undergo DRI review, unless the Legislature has provided an exemption, the development is located within a dense urban land area (DULA), or is located in a planning area receiving a legislative exemption such as a sector plan or rural land stewardship area.<sup>5</sup> The types of developments required to undergo DRI review upon meeting the specified thresholds and standards include certain airports, attraction and recreation facilities, office development, retail and service development, multiuse development, residential development, schools, and recreational vehicle development.<sup>6</sup> The state land planning agency, a RPC, or the local government may request the Administration Commission to increase

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<sup>1</sup> S. 380.07(2), F.S.

<sup>2</sup> See Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.

<sup>3</sup> S. 380.0651, F.S.

<sup>4</sup> Rule 28-24, F.A.C.

<sup>5</sup> See the section “DRI Exemptions.”

<sup>6</sup> S. 380.0651, F.S.

or decrease the thresholds for part of the local government's jurisdiction or for the entire jurisdiction.<sup>7</sup> Over the years, the Legislature also has increased the thresholds that determine which projects are subject to DRI review.

Florida's 11 RPCs coordinate the multi-agency review of proposed DRIs. RPCs are recognized as Florida's only multipurpose regional entity that plans for and coordinates intergovernmental solutions to growth-related problems on greater-than-local issues, provides technical assistance to local governments, and meets other needs of the communities in each region.<sup>8</sup> A DRI review begins by the developer contacting the RPC with jurisdiction over the proposed development to arrange a preapplication conference.<sup>9</sup> A developer or the RPC may also request other affected state and regional agencies to participate in the conference and to help identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures. At the preapplication conference, the RPC is to provide the developer with information about the DRI process and use the preapplication conference to identify issues, coordinate appropriate state and local agency requirements, and otherwise efficiently review the proposed development.

An agreement may also be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval, and if an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant. In an effort to reduce paperwork, discourage unnecessary gathering of data, and to coordinate federal, state, and local environmental reviews with the DRI review process, s. 380.06(7)(b), F.S., provides that the developer may enter into a binding written agreement with the RPC to eliminate certain questions from the application for development approval when those questions are found to be unnecessary for DRI review.

The RPC also assists with technical planning aspects of the project, which can be beneficial to rural local governments that often have smaller planning staffs. Upon completion of the preapplication conference with all parties, the developer then files an application for development approval with the local government, RPC, and the state land planning agency. The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.<sup>10</sup>

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days, and must publish notice at least 60 days in advance of the hearing.<sup>11</sup> Within 50 days after receiving notice of the public hearing, the RPC, is required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.<sup>12</sup> The RPC is required to identify regional issues<sup>13</sup> specifically examining the extent to which:

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<sup>7</sup> S. 380.06(3), F.S.

<sup>8</sup> S. 186.502, F.S.

<sup>9</sup> S. 380.06(7), F.S.

<sup>10</sup> S. 380.06(10), F.S.

<sup>11</sup> S. 380.06(11), F.S.

<sup>12</sup> S. 380.06(12), F.S.

1. the development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;
2. the development will significantly impact adjacent jurisdictions;
3. in reviewing the first two issues, whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.<sup>14</sup>

Other appropriate agencies may also review the proposed development and prepare reports and recommendations on issues within their jurisdiction. These reports become part of the RPC's report, but the RPC may attach dissenting views.<sup>15</sup> When water management district and Department of Environmental Protection permits have been issued pursuant to ch. 373, F.S., or ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.<sup>16</sup>

The state land planning agency also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.<sup>17</sup> Rule 9J-2, F.A.C., provides the rules of procedure and practice pertaining to DRIs. These rules provide detailed guidelines for how the state land planning agency evaluates the development's impact on:

- hurricane preparedness;<sup>18</sup>
- conservation of listed plan and wildlife resources;<sup>19</sup>
- treatment of archaeological and historical resources;<sup>20</sup>
- hazardous material usage, potable water, wastewater, and solid waste facilities;<sup>21</sup>
- transportation;<sup>22</sup>
- air quality;<sup>23</sup> and
- adequate housing.<sup>24</sup>

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well. When considering whether the

<sup>13</sup> Rule 9J-2.024, F.A.C., states in part: "In preparing the regional report, the regional planning agency shall identify and make recommendations on regional issues. Regional issues to be used in reviewing DRI applications are included in the applicable local government comprehensive plans, the Development of Regional Impact Uniform Standards Rule, the State Comprehensive Plan, and Sections 380.06(12)(a)1., 2., and 3., Florida Statutes. In addition, Strategic Regional Policy Plans adopted by regional planning councils pursuant to Sections 186.507 and .508, Florida Statutes, are a long-range policy guide for the development of the region and shall be used as the basis for regional review of DRIs. The regional planning agency may also identify and make recommendations on other local issues. However, local issues shall not be grounds for or be included as issues in a regional planning agency recommendation for appeal of a local government development order."

<sup>14</sup> S. 380.06(12)(a), F.S.

<sup>15</sup> S. 380.06(12)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> See Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sep. 2011.

<sup>18</sup> Rule 9J-2.0256, F.A.C.

<sup>19</sup> Rule 9J-2.041, F.A.C.

<sup>20</sup> Rule 9J-2.043, F.A.C.

<sup>21</sup> Rule 9J-2.044, F.A.C.

<sup>22</sup> Rule 9J-2.045, F.A.C.

<sup>23</sup> Rule 9J-2.046, F.A.C.

<sup>24</sup> Rule 9J-2.048, F.A.C.

development must be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the extent to which:

1. the development is consistent with its comprehensive plan and land development regulations;
2. the development is consistent with the report and recommendations of the RPC;
3. the development is consistent with the state comprehensive plan.<sup>25</sup>

Local governments are required by s. 163.3177(6)(f), F.S., to adopt a housing element in the local comprehensive plan that expresses principles, guidelines, standards, and strategies related to affordable housing for all current and anticipated future residents.

Within 30 days of the public hearing on the application for development, the local government must render a decision on the application. Within 45 days after a development order is rendered, the owner or developer of the property or the state land planning agency may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.<sup>26</sup> An “aggrieved or adversely affected party” may appeal and challenge the consistency of a development order with the local comprehensive plan.<sup>27</sup>

### **Substantial Deviations**

DRIs are designed to be built out over many years, which increases the likelihood of necessary changes to the development due to changing market conditions or other reasons. When a developer proposes a change to a previously approved development that creates a reasonable likelihood of additional regional impact, or creates a reasonable likelihood of a regional impact not previously reviewed by the RPC, a substantial deviation exists and the proposed change is required to be subject to further DRI review. If a change qualifies as a substantial deviation and there is no exemption, a notice of proposed change must be made to the RPC and the state land planning agency.<sup>28</sup> The notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.<sup>29</sup>

Section 380.06(19), F.S., provides the specific criteria that constitutes a substantial deviation and causes a development to be subject to additional review.<sup>30</sup> The numerical standards are also automatically increased if a project is a job-creating one or is located wholly within an urban infill and redevelopment area. During the 2011 Session, the Legislature increased the substantial deviation standards by approximately 50 percent for attraction or recreational facilities, office

<sup>25</sup> S. 380.06(14), F.S. DRIs located in areas of critical state concern (ACSC) must also comply with the land development regulations in s. 380.05, F.S.

<sup>26</sup> S. 380.07(2), F.S.

<sup>27</sup> S. 163.3215, F.S.

<sup>28</sup> S. 380.06(19)(e)1., F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Among the changes that constitute a substantial deviation include a decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less (s. 380.06(19)(b)8., F.S.); a 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original DRI review (s. 380.06(19)(b)10., F.S.); and any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State (s. 380.06(19)(b)11., F.S.).



development, and commercial development.<sup>31</sup> Section 380.06(19), F.S., also specifies changes that individually or cumulatively with any previous changes, are not substantial deviations.

### **DRI Exemptions**

The Legislature has exempted many types of development from DRI review.<sup>32</sup> The Legislature has also exempted projects from DRI review within certain counties and municipalities that qualify as a “dense urban land area” (DULA).<sup>33</sup> There are currently 8 counties and 242 cities that meet, or have met, the population and density criteria necessary to qualify as a dense urban land area.<sup>34</sup> The exemption for projects within a DULA reflects state policy to encourage development within urban areas and the increased sophistication of local staffs and the progress, since the DRI program was instituted in 1972, which larger, urban counties and municipalities have made in the area of large-scale land use planning. Additionally, the Legislature has also provided two alternative large-scale planning tools known as the sector plan<sup>35</sup> and rural land stewardship program.<sup>36</sup> Large scale projects within a sector plan or rural land stewardship area are exempt from DRI review.

### **State Coordinated Review Process for Comprehensive Plan Amendments**

The “state coordinated review process” is designed for new comprehensive plans and for amendments that require a more comprehensive review. Amendments that: are in an area of critical state concern designated pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S., propose a sector plan pursuant to s. 163.3245, F.S., update a comprehensive plan based on an evaluation and appraisal review pursuant to s. 163.3191, F.S., and new plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S., are required to follow the state coordinated review process.

The state coordinated review process requires two public hearings and a proposed plan or plan amendment to be transmitted to the reviewing agencies<sup>37</sup> within 10 days after the initial public hearing. Under the state coordinated review process, reviewing agency comments are sent to the state land planning agency that may elect to issue an objections, recommendations, and comments (ORC) report to the local government within 60 days after receiving the proposed plan or plan amendment. The state land planning agency’s ORC report details whether the proposed plan or plan amendment is in compliance and whether the proposed plan or plan amendment will

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<sup>31</sup> Ch. 2011-139, L.O.F.; HB 7207 (2011).

<sup>32</sup> See 380.06(24), F.S.; ch. 2011-139, L.O.F., exempted from DRI review- movie theaters; industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities; and hotel or motel development.

<sup>33</sup> S. 380.06(29), F.S.

<sup>34</sup> For a complete list of counties and municipalities qualifying as a DULA see <http://www.floridajobs.org/community-planning-and-development/programs/developments-of-regional-impact-and-florida-quality-developments/list-of-local-governments-qualifying-as-dense-urban-land-areas> (last accessed January 31, 2012).

<sup>35</sup> S. 163.3245, F.S.

<sup>36</sup> S. 163.3248, F.S.

<sup>37</sup> S. 163.3184(c), F.S., defines “reviewing agencies” as: the state land planning agency; the appropriate regional planning council; the appropriate water management district; the Department of Environmental Protection; the Department of State; the Department of Transportation; in the case of plan amendments relating to public schools, the Department of Education; in the case of plans or plan amendments that affect a military installation listed in s. [163.3175](#), the commanding officer of the affected military installation; in the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and in the case of municipal plans and plan amendments, the county in which the municipality is located.

adversely impact important state resources and facilities. Once a local government receives the ORC report, it has 180 days to hold a second public hearing on whether to adopt the plan or plan amendment. After a plan or amendment is adopted, the local government must transmit the plan or plan amendment to the state land planning agency within 10 days of the second public hearing, and the state land planning agency must notify the local government of any deficiencies within 5 working days. The state land planning agency then has 45 days to determine if the adopted plan or plan amendment is in compliance or not in compliance. The state land planning agency must issue a notice of intent (NOI) to find that the plan or plan amendment is in compliance or not in compliance and must post a copy of the NOI on its website. If a NOI is issued to find the plan or plan amendment not in compliance, the NOI is forwarded to the Division of Administrative Hearings (DOAH) for a compliance hearing.

In addition to challenges brought by the state land planning agency, under the state coordinated review process any “affected person,” as defined by s. 163.3184(1)(a), F.S., may challenge an adopted plan or plan amendment by filing a petition with the Division of Administrative Hearings (DOAH) within 30 days after the local government adopts the plan or plan amendment.

### **Vested Rights & Rescission**

One of the greatest benefits of a DRI is the vested rights that attach to the development. Since DRIs are large-scale, high-cost, and long-term projects that occur in multiple phases, it is important that the rights and duties or obligations specified in the development order are vested and not changed due to a change in DRI guidelines or standards. This predictability is important so that a developer has the assurance that a future change in standards will not prohibit or delay the full build-out of the project as planned. Section 380.115, F.S., provides the procedures for developments that received a DRI development order but now are no longer required to undergo DRI review because of a change in the guidelines and standards, or a reduction in the project’s size, or a development that is located in a DULA.

A development that was once subject to DRI review but now is exempt may continue to be governed by the DRI development order.<sup>38</sup> Alternatively, the developer or landowner may request the development order to be rescinded upon a showing that all required mitigation has been completed related to the amount of development that existed on the date of rescission.<sup>39</sup>

### **Background on Florida’s economic development incentive efforts**

Chapter 288, F.S., includes at least a dozen economic development incentive programs to recruit, expand, or retain businesses to Florida. Each program is different, but can be accessed in various combinations by businesses, depending on their location, job creation, and other factors. Typically, these incentives are coupled with state tax exemptions or tax refunds provided in other chapters of law, and with local incentives, to broaden Florida’s economic base.

The Division of Strategic Business Development provides support for attracting out-of-state businesses to Florida, promoting the creation and expansion of Florida businesses and facilitating Florida’s economic development partnerships. This office manages Florida’s economic

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<sup>38</sup> Section 380.115(a), F.S.

<sup>39</sup> Section 380.115(b), F.S.

development initiatives<sup>40</sup>, with assistance from Enterprise Florida, Inc. (EFI),<sup>41</sup> a public-private entity.

### **Agricultural Land and Practices Act**

Current law allows the owner of a parcel of land defined as an agricultural enclave to apply with a local government unit for an amendment to the local government's comprehensive plan.<sup>42</sup>

Application for amendment as an agricultural enclave requires consistency with 163.3164, F.S., which sets out the statutory definition for “agricultural enclave.” By statute an agricultural enclave is defined as an unincorporated, undeveloped parcel that is owned by a single person or entity and has been in continuous use for bona fide agricultural purposes, for a period of 5 years prior to the date of any comprehensive plan amendment application. The parcel is surrounded on at least 75 percent of its perimeter by either property that has existing industrial, commercial, or residential development, or property that the local government has designated, in the local government’s comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development. The parcel has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled in the capital improvement element to be provided by the local government or can be provided by an alternative provider of local government infrastructure in order to ensure consistency with applicable concurrency provisions of s.

163.3180, F.S. Additionally, the parcel may not exceed 1,280 acres; however, if the property is surrounded by existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 4,480 acres.<sup>43</sup>

Land uses and land use intensities considered compatible with designation as an agricultural enclave include industrial, commercial, and residential parcels that surround the agricultural enclave. The law states that local government amendments under the act “must be transmitted to the state land planning agency for review” after good faith negotiations have been concluded “regardless of whether the local government and owner reach consensus on the land uses and intensities of use.”<sup>44</sup> Additionally, the law requires that each application for a comprehensive plan amendment under this subsection for a parcel larger than 640 acres must include appropriate new urbanism concepts such as clustering, mixed-use development, the creation of rural village and city centers, and the transfer of development rights in order to discourage urban sprawl while protecting landowner rights. Nothing within s. 163.3162, F.S., relating to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of either the Wekiva Study Area, as described in 369.316, F.S., or Everglades Protection Area, as defined in 373.4592(2), F.S.<sup>45</sup>

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<sup>40</sup> Section 288.061, F.S.

<sup>41</sup> Sections 288.901-288.923, F.S. (Part VII of ch. 288, F.S.)

<sup>42</sup> Section 163.3162, F.S.

<sup>43</sup> Section 163.3164(4), F.S.

<sup>44</sup> Section 163.3162, F.S.

<sup>45</sup> Section 163.3162(4)(d), F.S.

**Permit Extensions**

A permit extension was provided by the 2011 Florida Legislature, “in recognition of 2011 real estate market conditions,” extending “any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2012, through January 1, 2014,” and also “any local government-issued development order or building permit” (including certificates of levels of service), for a period of 2 years after its previously scheduled date of expiration.<sup>46</sup> This extension is in addition to any existing permit extension, but cannot exceed four years total.<sup>47</sup> To get this extension, the holder of such a permit or other authorization must have notified the authorizing agency in writing by December 31, 2011.<sup>48</sup>

**III. Effect of Proposed Changes:**

**Section 1** amends s. 163.3184, F.S., requiring that plan amendments proposing a development that is exempt from review because a local government elects not to apply the development-of-regional-impact review process, follow the state coordinated review process. This applies as found in s. 380.06(24)(x), F.S. This exemption does not apply to areas within the boundary of any area of critical state concern designated pursuant to s. 380.05, F.S., within the boundary of the Wekiva Study Area as described in s. 369.316, F.S, or within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592(2), F.S.

**Section 2** amends s. 380.06, F.S., to require that reviewing agencies make only recommendations and comments regarding a proposed development which are consistent with statutes, rules, or adopted local ordinances that are applicable to developments in the jurisdiction where the proposed development is located; revises provisions relating to regional reports prepared and submitted by a regional planning agency; requires that a regional planning agency make recommendations in its regional report which are consistent with the standards of state permitting agencies and the water management district; provides that changes to a development order which do not increase the number of external peak hour trips and do not reduce open space and conserved areas within a project are not substantial deviations; provides an exemption from development-of-regional-impact review in certain jurisdictions for any proposed development where the developer, local government, and Department of Economic Opportunity agrees in writing not to apply the review process and the development is approved as a comprehensive plan amendment adopted pursuant to the state coordinated review process and qualifies for an incentive program; provides exceptions.

**Section 3** amends s. 380.115, F.S., allows a DRI to rescind a development order upon a showing that all required mitigation related to the amount of development that existed on the date of rescission will be completed under an existing permit or equivalent authorization issued by a governmental agency so long as such permit or authorization is subject to enforcement through administrative or judicial remedies.

**Section 4** creates s. 163.3165, F.S., provides the owner of a parcel of land that qualifies under certain conditions may apply for an amendment to the local government comprehensive plan

<sup>46</sup> Section 79, 2011-39 L.O.F. (HB 7207).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

pursuant to s. 163.3184. Provides that if the parcel of land that is the subject of an application for an comprehensive plan amendment is abutted by land having only one land use designation, the same land use designation shall be presumed by the County to be appropriate for the parcel and the county shall grant the parcel the same land use designation as the surrounding parcel which abuts the parcel. Provides the qualifications to be an agricultural enclave under this section of law.

**Section 5** provides for an extension of any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2012, through January 1, 2014, and also any local government-issued development order or building permit, for a period of 2 years after its previously scheduled date of expiration. Provides the applicant must notify the authorizing agency in writing by December 31, 2012. Extensions granted pursuant to this section shall not exceed 4 years in total.

**Section 6** provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing developers, local governments, and DEO to elect to use the state coordinated review process for certain developments instead of the DRI review process may provide significant cost and time savings for private developers.

C. Government Sector Impact:

Indeterminate, but expected to be minimal. Staff of the Division of Community Planning do not anticipate that the bill will have any net impact on workload.<sup>49</sup>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Community Affairs on February 6, 2012**

The CS makes changes to the language of the Development of Regional Impact procedures and exemptions. The CS creates a section of law regarding agricultural lands surrounded by other land uses. The CS extends the deadline for those who qualify for 2 year permit extensions.

B. Amendments:

None.

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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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<sup>49</sup> Staff Analysis of SB 1180, Department of Economic Opportunity (Dec. 22, 2011) (on file with the Senate Community Affairs Committee).



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2012	.	
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The Committee on Community Affairs (Bennett) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (c) of subsection (2) of section  
163.3184, Florida Statutes, is amended to read:

163.3184 Process for adoption of comprehensive plan or plan  
amendment.—

(2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

(c) Plan amendments that are in an area of critical state  
concern designated pursuant to s. 380.05; propose a rural land  
stewardship area pursuant to s. 163.3248; propose a sector plan



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pursuant to s. 163.3245; update a comprehensive plan based on an evaluation and appraisal pursuant to s. 163.3191; propose a development pursuant to s. 380.06(24)(x); or are new plans for newly incorporated municipalities adopted pursuant to s. 163.3167 shall follow the state coordinated review process in subsection (4).

Section 2. Paragraph (a) of subsection (7), subsection (12), and paragraph (e) of subsection (19) of section 380.06, Florida Statutes, are amended, and paragraph (x) is added to subsection (24) of that section, to read:

380.06 Developments of regional impact.—

(7) PREAPPLICATION PROCEDURES.—

(a) Before filing an application for development approval, the developer shall contact the regional planning agency having ~~with~~ jurisdiction over the proposed development to arrange a preapplication conference. Upon the request of the developer or the regional planning agency, other affected state and regional agencies shall participate in this conference and shall identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development. The levels of service required in the transportation methodology shall be the same levels of service used to evaluate concurrency in accordance with s. 163.3180. The regional planning agency shall provide the developer information about the development-of-regional-impact process and the use of preapplication conferences to identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development. If an agreement is reached





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regarding assumptions and methodology to be used in the application for development approval, the reviewing agencies may not subsequently object to those assumptions and methodologies unless subsequent changes to the project or information obtained during the review make those assumptions and methodologies inappropriate. The reviewing agencies may make only recommendations or comments regarding a proposed development which are consistent with the statutes, rules, or adopted local government ordinances that are applicable to developments in the jurisdiction where the proposed development is located.

(12) REGIONAL REPORTS.—

(a) Within 50 days after receipt of the notice of public hearing required in paragraph (11)(c), the regional planning agency, if one has been designated for the area including the local government, shall prepare and submit to the local government a report and recommendations on the regional impact of the proposed development. In preparing its report and recommendations, the regional planning agency shall identify regional issues based upon the following review criteria and make recommendations to the local government on these regional issues, specifically considering whether, and the extent to which:

1. The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state or regional plans. As used in ~~For the purposes of~~ this subsection, the term "applicable state plan" means the state comprehensive plan. As used in ~~For the purposes of~~ this subsection, the term "applicable regional plan" means an ~~adopted comprehensive regional policy plan until the adoption of~~



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71 ~~a strategic regional policy plan pursuant to s. 186.508, and~~  
72 ~~thereafter means an~~ adopted strategic regional policy plan.

73         2. The development will significantly impact adjacent  
74 jurisdictions. At the request of the appropriate local  
75 government, regional planning agencies may also review and  
76 comment upon issues that affect only the requesting local  
77 government.

78         3. As one of the issues considered in the review in  
79 subparagraphs 1. and 2., the development will favorably or  
80 adversely affect the ability of people to find adequate housing  
81 reasonably accessible to their places of employment if the  
82 regional planning agency has adopted an affordable housing  
83 policy as part of its strategic regional policy plan. The  
84 determination should take into account information on factors  
85 that are relevant to the availability of reasonably accessible  
86 adequate housing. Adequate housing means housing that is  
87 available for occupancy and that is not substandard.

88         (b) The regional planning agency report must contain  
89 recommendations that are consistent with the standards required  
90 by the applicable state permitting agencies or the water  
91 management district.

92         (c) ~~(b)~~ At the request of the regional planning agency,  
93 other appropriate agencies shall review the proposed development  
94 and shall prepare reports and recommendations on issues that are  
95 clearly within the jurisdiction of those agencies. Such agency  
96 reports shall become part of the regional planning agency  
97 report; however, the regional planning agency may attach  
98 dissenting views. When water management district and Department  
99 of Environmental Protection permits have been issued pursuant to



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chapter 373 or chapter 403, the regional planning council may comment on the regional implications of the permits but may not offer conflicting recommendations.

(d)~~(e)~~ The regional planning agency shall afford the developer or any substantially affected party reasonable opportunity to present evidence to the regional planning agency head relating to the proposed regional agency report and recommendations.

(e)~~(d)~~ If ~~When~~ the location of a proposed development involves land within the boundaries of multiple regional planning councils, the state land planning agency shall designate a lead regional planning council. The lead regional planning council shall prepare the regional report.

(19) SUBSTANTIAL DEVIATIONS.—

(e)1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order which ~~that~~ individually or cumulatively with any previous change is less than any numerical criterion contained in subparagraphs (b)1.-10. and does not exceed any other criterion, or which ~~that~~ involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice must ~~shall~~ include a description of previous individual changes made to the development, including changes previously approved by the local government, and must ~~shall~~ include appropriate amendments to the



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development order.

2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

a. Changes in the name of the project, developer, owner, or monitoring official.

b. Changes to a setback which ~~that~~ do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.

c. Changes to minimum lot sizes.

d. Changes in the configuration of internal roads which ~~that~~ do not affect external access points.

e. Changes to the building design or orientation which ~~that~~ stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.

f. Changes to increase the acreage in the development, if ~~provided that~~ no development is proposed on the acreage to be added.

g. Changes to eliminate an approved land use, if ~~provided that~~ there are no additional regional impacts.

h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, if ~~provided that~~ these changes do not create additional regional impacts.

i. Any renovation or redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use.

j. Changes that modify boundaries and configuration of areas described in subparagraph (b)11. due to science-based



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refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment. In order for changes to qualify under this sub-subparagraph, the survey, habitat evaluation, or assessment must occur before ~~prior to~~ the time that a conservation easement protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.

k. Changes that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project except as otherwise permitted by sub-subparagraph j.

~~l.k.~~ Any other change that ~~which~~ the state land planning agency, in consultation with the regional planning council, agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-k. ~~a.-j.~~ and that ~~which~~ does not create the likelihood of any additional regional impact.

This subsection does not require the filing of a notice of proposed change but requires ~~shall require~~ an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall



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render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., ~~or~~ sub-subparagraph k., or sub-subparagraph l. and if the agency ~~it~~ believes that the change creates a reasonable likelihood of new or additional regional impacts.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development must ~~shall~~ include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence.

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.



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b. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c), (d), and (e) and residential use.

6. If a local government agrees to a proposed change, a change in the transportation proportionate share calculation and mitigation plan in an adopted development order as a result of recalculation of the proportionate share contribution meeting the requirements of s. 163.3180(5)(h) in effect as of the date of such change shall be presumed not to create a substantial deviation. For purposes of this subsection, the proposed change in the proportionate share calculation or mitigation plan may ~~shall~~ not be considered an additional regional transportation impact.

(24) STATUTORY EXEMPTIONS.—

(x) Any proposed development that is located in a local government jurisdiction that does not qualify for an exemption based on the population and density criteria in s. 380.06(29)(a), that is approved as a comprehensive plan amendment adopted pursuant to s. 163.3184(4), that qualifies for an incentive program pursuant to chapter 288, and for which the developer, the local government, and the Department of Economic Opportunity agree in writing that the development-of-regional-impact review process does not apply is exempt from this section. This exemption does not apply to areas within the boundary of any area of critical state concern designated pursuant to s. 380.05, within the boundary of the Wekiva Study



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Area as described in s. 369.316, or within 2 miles of the  
boundary of the Everglades Protection Area as defined in s.  
373.4592(2).

If a use is exempt from review as a development of regional  
impact under paragraphs (a)-(u), but will be part of a larger  
project that is subject to review as a development of regional  
impact, the impact of the exempt use must be included in the  
review of the larger project, unless such exempt use involves a  
development of regional impact that includes a landowner,  
tenant, or user that has entered into a funding agreement with  
the Department of Economic Opportunity under the Innovation  
Incentive Program and the agreement contemplates a state award  
of at least \$50 million.

Section 3. Subsection (1) of section 380.115, Florida  
Statutes, is amended to read:

380.115 Vested rights and duties; effect of size reduction,  
changes in guidelines and standards.—

(1) A change in a development-of-regional-impact guideline  
and standard does not abridge or modify any vested or other  
right or any duty or obligation pursuant to any development  
order or agreement that is applicable to a development of  
regional impact. A development that has received a development-  
of-regional-impact development order pursuant to s. 380.06, but  
is no longer required to undergo development-of-regional-impact  
review by operation of a change in the guidelines and standards  
or has reduced its size below the thresholds in s. 380.0651, or  
a development that is exempt pursuant to s. 380.06(24) or (29)  
~~380.06(29)~~ shall be governed by the following procedures:





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(a) The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order unless the developer or landowner has followed the procedures for rescission in paragraph (b). Any proposed changes to those developments which continue to be governed by a development order shall be approved pursuant to s. 380.06(19) as it existed before ~~prior to~~ a change in the development-of-regional-impact guidelines and standards, except that all percentage criteria shall be doubled and all other criteria shall be increased by 10 percent. The development-of-regional-impact development order may be enforced by the local government as provided by ss. 380.06(17) and 380.11.

(b) If requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s. 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies.

Section 4. Section 163.3165, is created to read:

163.3165 Agricultural lands surrounded by other land uses.-

(1) Notwithstanding any provision of section 163.3162 and section 163.3164 to the contrary, the owner of a parcel of land that qualifies under this section may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3184.



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The amendment is presumed not to be urban sprawl as defined in s.163.3164 if it proposes land uses and intensities of use which are consistent with the existing uses and intensities of use of, or consistent with the uses and intensities of use authorized for, the industrial, commercial, or residential areas that surround the parcel. If the parcel of land that is the subject of an application for an amendment under this section is abutted by land having only one land use designation, the same land use designation shall be presumed by the County to be appropriate for the parcel and the county shall grant the parcel the same land use designation as the surrounding parcel which abuts the parcel.

(2) In order to qualify as an agricultural enclave under this section the parcel of land must be a parcel that:

(a) Is owned by a single person or entity;

(b) Has been in continuous use for bona fide agricultural purposes, as defined by s. 193.461, for a period of 5 years before the date of any comprehensive plan amendment application;

(c) And is either:

1. surrounded on at least 90 percent of its perimeter by property that the local government has designated as land which may be developed for industrial, commercial, or residential purposes; or

2. is surrounded within a one (1) mile radius by existing or authorized residential development that will result in a density at build out of at least 1,000 residents per square mile; and

(d) Does not exceed 640 acres.

Section 5. This act shall take effect upon becoming a law.



788434

===== 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 growth management; amending s.  
163.3184, F.S.; requiring that comprehensive plan  
amendments proposing certain developments follow the  
state coordinated review process; amending s. 380.06,  
F.S.; limiting the scope of certain recommendations  
and comments by reviewing agencies regarding proposed  
developments; revising certain review criteria for  
reports and recommendations on the regional impact of  
proposed developments; requiring regional planning  
agency reports to contain recommendations consistent  
with the standards of state permitting agencies and  
water management districts; providing that specified  
changes to a development order are not substantial  
deviations; providing an exemption from development-  
of-regional-impact review for proposed developments  
that meet specified criteria and are located in  
certain jurisdictions; providing applicability;  
amending s. 380.115, F.S.; revising conditions under  
which a local government is required to rescind a  
development-of-regional-impact development order;  
creating s. 163.3165, F.S.; providing for application  
and approval of an amendment to the local  
comprehensive plan by the owner of land that meets



788434

361 certain criteria as an agricultural enclave; providing  
362 an effective date.



413270

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2012	.	
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	.	
	.	

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

**Senate Amendment to Amendment (788434) (with title amendment)**

After line 330

insert:

Section 5. (1) Except as provided in subsection (4), and in recognition of 2012 real estate market conditions, any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2012, through January 1, 2014, is extended and renewed for a period of 2 years after its previously scheduled



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date of expiration. This extension includes any local government-issued development order or building permit including certificates of levels of service. This section does not prohibit conversion from the construction phase to the operation phase upon completion of construction. This extension is in addition to any existing permit extension. Extensions granted pursuant to this section; section 14 of chapter 2009-96, Laws of Florida, as reauthorized by section 47 of chapter 2010-147, Laws of Florida; section 46 of chapter 2010-147, Laws of Florida; section 74 of chapter 2011-139, Laws of Florida; or section 79 of chapter 2011-139, Laws of Florida shall not exceed 4 years in total. Further, specific development order extensions granted pursuant to s. 380.06(19)(c)2., Florida Statutes, cannot be further extended by this section.

(2) The commencement and completion dates for any required mitigation associated with a phased construction project are extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

(3) The holder of a valid permit or other authorization that is eligible for the 2-year extension must notify the authorizing agency in writing by December 31, 2012, identifying the specific authorization for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization.

(4) The extension provided for in subsection (1) does not apply to:



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42 (a) A permit or other authorization under any programmatic or  
43 regional general permit issued by the Army Corps of Engineers.

44  
45 (b) A permit or other authorization held by an owner or operator  
46 determined to be in significant noncompliance with the  
47 conditions of the permit or authorization as established through  
48 the issuance of a warning letter or notice of violation, the  
49 initiation of formal enforcement, or other equivalent action by  
50 the authorizing agency.

51  
52 (c) A permit or other authorization, if granted an extension  
53 that would delay or prevent compliance with a court order.

54  
55 (5) Permits extended under this section shall continue to be  
56 governed by the rules in effect at the time the permit was  
57 issued, except if it is demonstrated that the rules in effect at  
58 the time the permit was issued would create an immediate threat  
59 to public safety or health. This provision applies to any  
60 modification of the plans, terms, and conditions of the permit  
61 which lessens the environmental impact, except that any such  
62 modification does not extend the time limit beyond 2 additional  
63 years.

64  
65 (6) This section does not impair the authority of a county or  
66 municipality to require the owner of a property that has  
67 notified the county or municipality of the owner's intent to  
68 receive the extension of time granted pursuant to this section  
69 to maintain and secure the property in a safe and sanitary  
70 condition in compliance with applicable laws and ordinances.



413270

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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 line 361

and insert:

certain criteria as an agricultural enclave; creating  
a 2-year permit extension; providing



By Senator Bennett

21-00965-12

20121180\_\_

1 A bill to be entitled  
 2 An act relating to developments of regional impact;  
 3 amending s. 163.3184, F.S.; requiring that plan  
 4 amendments proposing a development that is exempt from  
 5 review as a development of regional impact follow the  
 6 state coordinated review process; amending s. 380.06,  
 7 F.S.; requiring that reviewing agencies make only  
 8 recommendations and comments regarding a proposed  
 9 development which are consistent with statutes, rules,  
 10 or adopted local ordinances that are applicable to all  
 11 developments in the jurisdiction where the proposed  
 12 development is located; providing legislative intent  
 13 regarding the issues that may be considered during the  
 14 development-of-regional-impact review process;  
 15 revising provisions relating to regional reports  
 16 prepared and submitted by a regional planning agency;  
 17 requiring that a regional planning agency make  
 18 recommendations in its regional report which are  
 19 consistent with the standards of state permitting  
 20 agencies and the water management district or the  
 21 adopted local government land development regulations  
 22 if such standards are not applicable; providing that  
 23 changes to a development order which do not increase  
 24 the number of external peak hour trips and do not  
 25 reduce open space and conserved areas within a project  
 26 are not substantial deviations; providing an exemption  
 27 from development-of-regional-impact review for any  
 28 proposed development that a local government elects  
 29 not to apply the review process if a comprehensive

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

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20121180\_\_

30 plan amendment for the development is adopted pursuant  
 31 to the state coordinated review process; providing  
 32 exceptions; amending s. 380.115, F.S.; requiring that  
 33 a local government having jurisdiction rescind a  
 34 development-of-regional-impact development order, upon  
 35 request, and upon a showing that all required  
 36 mitigation related to the amount of development that  
 37 existed on the date of rescission will be completed  
 38 under a permit or other authorization issued by a  
 39 governmental agency; providing an effective date.  
 40  
 41 Be It Enacted by the Legislature of the State of Florida:  
 42  
 43 Section 1. Paragraph (c) of subsection (2) of section  
 44 163.3184, Florida Statutes, is amended to read:  
 45 163.3184 Process for adoption of comprehensive plan or plan  
 46 amendment.—  
 47 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—  
 48 (c) Plan amendments that are in an area of critical state  
 49 concern designated pursuant to s. 380.05; propose a rural land  
 50 stewardship area pursuant to s. 163.3248; propose a sector plan  
 51 pursuant to s. 163.3245; update a comprehensive plan based on an  
 52 evaluation and appraisal pursuant to s. 163.3191; propose a  
 53 development pursuant to s. 380.06(24)(x); or are new plans for  
 54 newly incorporated municipalities adopted pursuant to s.  
 55 163.3167 shall follow the state coordinated review process in  
 56 subsection (4).  
 57 Section 2. Paragraphs (a) and (b) of subsection (7),  
 58 subsection (12), and paragraph (e) of subsection (19) of section

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

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59 380.06, Florida Statutes, are amended, and paragraph (x) is  
 60 added to subsection (24) of that section, to read:

61 380.06 Developments of regional impact.—

62 (7) PREAPPLICATION PROCEDURES.—

63 (a) Before filing an application for development approval,  
 64 the developer shall contact the regional planning agency having  
 65 ~~with~~ jurisdiction over the proposed development to arrange a  
 66 preapplication conference. Upon the request of the developer or  
 67 the regional planning agency, other affected state and regional  
 68 agencies shall participate in this conference and shall identify  
 69 the types of permits issued by the agencies, the level of  
 70 information required, and the permit issuance procedures as  
 71 applied to the proposed development. The levels of service  
 72 required in the transportation methodology shall be the same  
 73 levels of service used to evaluate concurrency in accordance  
 74 with s. 163.3180. The regional planning agency shall provide the  
 75 developer information about the development-of-regional-impact  
 76 process and the use of preapplication conferences to identify  
 77 issues, coordinate appropriate state and local agency  
 78 requirements, and otherwise promote a proper and efficient  
 79 review of the proposed development. If an agreement is reached  
 80 regarding assumptions and methodology to be used in the  
 81 application for development approval, the reviewing agencies may  
 82 not subsequently object to those assumptions and methodologies  
 83 unless subsequent changes to the project or information obtained  
 84 during the review make those assumptions and methodologies  
 85 inappropriate. The reviewing agencies may make only  
 86 recommendations or comments regarding a proposed development  
 87 which are consistent with the statutes, rules, or adopted local

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88 government ordinances that are applicable to all developments in  
 89 the jurisdiction where the proposed development is located.

90 (b) The regional planning agency shall establish by rule a  
 91 procedure by which a developer may enter into binding written  
 92 agreements with the regional planning agency to eliminate  
 93 questions from the application for development approval when  
 94 those questions are found to be unnecessary for development-of-  
 95 regional-impact review. It is the legislative intent of this  
 96 subsection to encourage the reduction of paperwork, to  
 97 discourage the unnecessary gathering of data, and to encourage  
 98 the coordination of the development-of-regional-impact review  
 99 process with federal, state, and local environmental reviews  
 100 when such reviews are required by law. It is also the  
 101 legislative intent of this subsection to limit development-of-  
 102 regional-impact review to issues directly related to land use,  
 103 environmental protection, and public facilities, including  
 104 transportation. However, issues regarding hurricane preparedness  
 105 and affordable housing may be considered if the local government  
 106 has adopted an ordinance that generally applies to all other  
 107 developments. Any other issue may not be considered during the  
 108 development-of-regional-impact review.

109 (12) REGIONAL REPORTS.—

110 (a) Within 50 days after receipt of the notice of public  
 111 hearing required in paragraph (11)(c), the regional planning  
 112 agency, if one has been designated for the area including the  
 113 local government, shall prepare and submit to the local  
 114 government a report and recommendations on the regional impact  
 115 of the proposed development. In preparing its report and  
 116 recommendations, the regional planning agency shall identify

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regional issues based upon the following review criteria and make recommendations to the local government on these regional issues, specifically considering whether, and the extent to which:

1. The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state or regional plans. As used in ~~For the purposes of~~ this subsection, the term "applicable state plan" means the state comprehensive plan. As used in ~~For the purposes of~~ this subsection, the term "applicable regional plan" means an adopted comprehensive regional policy plan until the adoption of a strategic regional policy plan pursuant to s. 186.508, and thereafter means an adopted strategic regional policy plan.

2. The development will significantly impact adjacent jurisdictions. At the request of the appropriate local government, regional planning agencies may also review and comment upon issues that affect only the requesting local government.

3. As one of the issues considered in the review in subparagraphs 1. and 2., the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment if the local government has adopted an affordable housing ordinance that generally applies to all other developments. The determination should take into account information on factors that are relevant to the availability of reasonably accessible adequate housing. Adequate housing means housing that is available for occupancy and that is not substandard.

4. As one of the issues considered in the review in

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subparagraphs 1. and 2., the development will favorably or adversely affect hurricane preparedness if the local government has adopted a hurricane preparedness ordinance that generally applies to all other developments.

(b) The regional planning agency report must contain recommendations that are consistent with the standards required by the applicable state permitting agencies or the water management district or that are consistent with the land development regulations adopted by the local government if a state permitting agency or water management district standard is not applicable. The regional planning agency may not recommend a standard unless the local government has adopted the same standard in its land development regulations or in an ordinance that generally applies to all other developments or unless the standard is required by state permitting agencies or the water management district.

(c) ~~(b)~~ At the request of the regional planning agency, other appropriate agencies shall review the proposed development and shall prepare reports and recommendations on issues that are clearly within the jurisdiction of those agencies. Such agency reports shall become part of the regional planning agency report; however, the regional planning agency may attach dissenting views. When water management district and Department of Environmental Protection permits have been issued pursuant to chapter 373 or chapter 403, the regional planning council may comment on the regional implications of the permits but may not offer conflicting recommendations.

(d) ~~(c)~~ The regional planning agency shall afford the developer or any substantially affected party reasonable

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175 opportunity to present evidence to the regional planning agency  
176 head relating to the proposed regional agency report and  
177 recommendations.

178 ~~(e)(d)~~ If when the location of a proposed development  
179 involves land within the boundaries of multiple regional  
180 planning councils, the state land planning agency shall  
181 designate a lead regional planning council. The lead regional  
182 planning council shall prepare the regional report.

183 (19) SUBSTANTIAL DEVIATIONS.—

184 (e)1. Except for a development order rendered pursuant to  
185 subsection (22) or subsection (25), a proposed change to a  
186 development order which ~~that~~ individually or cumulatively with  
187 any previous change is less than any numerical criterion  
188 contained in subparagraphs (b)1.-10. and does not exceed any  
189 other criterion, or which ~~that~~ involves an extension of the  
190 buildout date of a development, or any phase thereof, of less  
191 than 5 years is not subject to the public hearing requirements  
192 of subparagraph (f)3., and is not subject to a determination  
193 pursuant to subparagraph (f)5. Notice of the proposed change  
194 shall be made to the regional planning council and the state  
195 land planning agency. Such notice must ~~shall~~ include a  
196 description of previous individual changes made to the  
197 development, including changes previously approved by the local  
198 government, and must ~~shall~~ include appropriate amendments to the  
199 development order.

200 2. The following changes, individually or cumulatively with  
201 any previous changes, are not substantial deviations:

202 a. Changes in the name of the project, developer, owner, or  
203 monitoring official.

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204 b. Changes to a setback which ~~that~~ do not affect noise  
205 buffers, environmental protection or mitigation areas, or  
206 archaeological or historical resources.

207 c. Changes to minimum lot sizes.

208 d. Changes in the configuration of internal roads which  
209 ~~that~~ do not affect external access points.

210 e. Changes to the building design or orientation which ~~that~~  
211 stay approximately within the approved area designated for such  
212 building and parking lot, and which do not affect historical  
213 buildings designated as significant by the Division of  
214 Historical Resources of the Department of State.

215 f. Changes to increase the acreage in the development, if  
216 ~~provided that~~ no development is proposed on the acreage to be  
217 added.

218 g. Changes to eliminate an approved land use, if ~~provided~~  
219 ~~that~~ there are no additional regional impacts.

220 h. Changes required to conform to permits approved by any  
221 federal, state, or regional permitting agency, if ~~provided that~~  
222 these changes do not create additional regional impacts.

223 i. Any renovation or redevelopment of development within a  
224 previously approved development of regional impact which does  
225 not change land use or increase density or intensity of use.

226 j. Changes that modify boundaries and configuration of  
227 areas described in subparagraph (b)11. due to science-based  
228 refinement of such areas by survey, by habitat evaluation, by  
229 other recognized assessment methodology, or by an environmental  
230 assessment. In order for changes to qualify under this sub-  
231 subparagraph, the survey, habitat evaluation, or assessment must  
232 occur before ~~prior to~~ the time that a conservation easement

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protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.

k. Changes that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project except as otherwise permitted by sub-subparagraph j.

l.~~k.~~ Any other change that ~~which~~ the state land planning agency, in consultation with the regional planning council, agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-k. ~~a.-j.~~ and that ~~which~~ does not create the likelihood of any additional regional impact.

This subsection does not require the filing of a notice of proposed change but requires ~~shall require~~ an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., ~~or~~ sub-subparagraph k., or sub-

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subparagraph l. and if the agency ~~it~~ believes that the change creates a reasonable likelihood of new or additional regional impacts.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development must ~~shall~~ include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence.

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

b. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c),

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(d), and (e) and residential use.

6. If a local government agrees to a proposed change, a change in the transportation proportionate share calculation and mitigation plan in an adopted development order as a result of recalculation of the proportionate share contribution meeting the requirements of s. 163.3180(5)(h) in effect as of the date of such change shall be presumed not to create a substantial deviation. For purposes of this subsection, the proposed change in the proportionate share calculation or mitigation plan may ~~shall~~ not be considered an additional regional transportation impact.

(24) STATUTORY EXEMPTIONS.—

(x) Any proposed development for which a local government elects not to apply the development-of-regional-impact review process, if a comprehensive plan amendment for the development is adopted pursuant to the state coordinated review process in s. 163.3184(4), is exempt from this section. This exemption does not apply to areas within the boundary of any area of critical state concern designated pursuant to s. 380.05, within the boundary of the Wekiva Study Area as described in s. 369.316, or within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592(2).

If a use is exempt from review as a development of regional impact under paragraphs (a)-(u), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner,

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tenant, or user that has entered into a funding agreement with the Department of Economic Opportunity under the Innovation Incentive Program and the agreement contemplates a state award of at least \$50 million.

Section 3. Subsection (1) of section 380.115, Florida Statutes, is amended to read:

380.115 Vested rights and duties; effect of size reduction, changes in guidelines and standards.—

(1) A change in a development-of-regional-impact guideline and standard does not abridge or modify any vested or other right or any duty or obligation pursuant to any development order or agreement that is applicable to a development of regional impact. A development that has received a development-of-regional-impact development order pursuant to s. 380.06, but is no longer required to undergo development-of-regional-impact review by operation of a change in the guidelines and standards or has reduced its size below the thresholds in s. 380.0651, or a development that is exempt pursuant to s. 380.06(24) or (29) ~~380.06(29)~~ shall be governed by the following procedures:

(a) The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order unless the developer or landowner has followed the procedures for rescission in paragraph (b). Any proposed changes to those developments which continue to be governed by a development order shall be approved pursuant to s. 380.06(19) as it existed before ~~prior to~~ a change in the development-of-regional-impact guidelines and standards, except that all percentage criteria shall be doubled and all other criteria shall be increased by 10

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349 percent. The development-of-regional-impact development order  
350 may be enforced by the local government as provided by ss.  
351 380.06(17) and 380.11.

352 (b) If requested by the developer or landowner, the  
353 development-of-regional-impact development order shall be  
354 rescinded by the local government having jurisdiction upon a  
355 showing that all required mitigation related to the amount of  
356 development that existed on the date of rescission has been  
357 completed or will be completed under a permit or other  
358 authorization issued by a governmental agency as defined in s.  
359 380.031(6).

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12

*Meeting Date*

Topic Growth Management

Bill Number SB 1180  
*(if applicable)*

Name Linda Shelley

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 101 N. Monroe St Suite 1090

Phone 681-4260

*Street*

Tallahassee FL 32312

E-mail lshelley@fowlerwhite.com

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Association of Florida Community Developers

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12

*Meeting Date*

Topic DRI Bill Amendment # 788434

Bill Number 1180

Name David Cruz

Amendment Barcode 788434  
(if applicable)

Job Title Legislative Advocate

Address P.O. Box 1757

Phone 305-322-3643

*Street*

Tallahassee

FL

32302

*City*

*State*

*Zip*

E-mail \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/12  
Meeting Date

Topic DRIs

Bill Number 1180  
(if applicable)

Name CHARLES PATTISON

Amendment Barcode 788434  
(if applicable)

Job Title PRESIDENT

Address 308 N. MONROE ST.  
Street  
TALLAHASSEE  
City State Zip

Phone 222-6277

E-mail cpattison@1000toF.org

Speaking: ☐ For ☐ Against ☒ Information

Representing 1000 FRIENDS OF FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1180  
*(if applicable)*

Name Leticia M Adams

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director of Infrastructure & Governance Policy

Address 136 South Bronough Street

Phone 850-544-6866

*Street*

Tallahassee

FL

32301

*City*

*State*

*Zip*

E-mail ladams@flchamber.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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2/6/12  
Meeting Date

Topic DR1's

Bill Number 1180  
(if applicable)

Name Nancy Linnas

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 215 S. Monroe St. #500  
Street

Phone 850 212-7431

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing The Villages

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-6-12

Meeting Date

Topic DR 1's

Bill Number SB 1180  
(if applicable)

Name Richard Gentry

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 2305 BRAEBURN CIR  
Street

Phone 251-1837

TLH 32309  
City State Zip

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/6/2012  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1180  
(if applicable)

Name JOSE L. GONZALEZ

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title VP GOVT. AFFAIRS

Address 516 N. ADAMS ST.  
Street  
TALLAHASSEE, FL 32301  
City State Zip

Phone 224-7173

E-mail jgonzalez@aif.com

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

# CourtSmart Tag Report

**Room:** KN 412  
**Caption:** Senate Committee on Community Affairs

**Type:**  
**Judge:**

**Started:** 2/6/2012 10:04:00 AM  
**Ends:** 2/6/2012 11:11:56 AM  
**Length:** 01:07:57

10:04:08 AM	Call to order
10:04:11 AM	Roll Call
10:04:25 AM	Tab 4
10:04:28 AM	Senator Detert presents
10:04:55 AM	Late filed amendment introduced
10:05:18 AM	Senator Ring question
10:05:29 AM	Response
10:07:07 AM	Amber Hughes
10:08:13 AM	Davin Suggs
10:09:34 AM	Question from chair
10:11:02 AM	Vicki Weber
10:12:50 AM	Vicki Weber
10:12:52 AM	Small county coalition
10:13:22 AM	Brian Pitts
10:15:52 AM	Linda Cherry
10:16:00 AM	Small county coalition was represented by Chris Doolin
10:18:44 AM	Senator Ring question
10:19:50 AM	Senator Storms comment
10:22:24 AM	Chair comment
10:23:27 AM	Senator Detert closes
10:25:54 AM	Roll Call
10:26:16 AM	Tab 5
10:26:19 AM	Senator Detert presents
10:26:52 AM	Roll Call
10:27:19 AM	Tab 3
10:27:26 AM	Senator Bogdanoff presents
10:28:55 AM	Senator Norman question
10:29:46 AM	Senator Storms question
10:30:20 AM	Senator Gibson question on amendment
10:30:55 AM	Amendment adopted
10:31:00 AM	On bill as amended
10:31:04 AM	Senator Storms question
10:32:13 AM	Follow up from Storms
10:34:19 AM	Follow up Storms
10:35:08 AM	Response
10:36:17 AM	Final follow up Storms
10:37:44 AM	Response
10:38:58 AM	Frank Meiners
10:42:15 AM	Frank Meiners
10:42:18 AM	Senator Gibson discussion
10:42:35 AM	Senator Storms comment
10:43:12 AM	Senator Bogdanoff closes
10:43:53 AM	Roll Call
10:44:15 AM	Tab 1
10:44:18 AM	Senator Hays presents
10:45:31 AM	Late filed amendment introduced by chair
10:46:20 AM	Amendment adopted
10:47:18 AM	Roll Call
10:47:42 AM	Tab 2
10:47:47 AM	Senator Hays presents
10:48:49 AM	Chair - question
10:50:37 AM	Amber Hughes

<b>10:52:54 AM</b>	Brian Pitts
<b>10:55:24 AM</b>	Trey Price
<b>10:56:08 AM</b>	Roll Call
<b>10:56:30 AM</b>	Tab 6
<b>10:56:36 AM</b>	Senator Norman presents
<b>10:57:56 AM</b>	Brian Pitts
<b>11:00:45 AM</b>	Roll Call
<b>11:01:15 AM</b>	Tab 7
<b>11:01:43 AM</b>	Senator Norman presents
<b>11:02:11 AM</b>	Brian Pitts
<b>11:02:59 AM</b>	Roll Call
<b>11:03:16 AM</b>	Tab 8
<b>11:03:19 AM</b>	Presented by Norman
<b>11:05:46 AM</b>	David Cruz
<b>11:07:37 AM</b>	Charles Pattison
<b>11:10:36 AM</b>	Senator Storms comment/question
<b>11:11:12 AM</b>	Roll Call
<b>11:11:40 AM</b>	Meeting closes