The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Dockery, Vice Chair

MEETING DATE: Thursday, February 2, 2012
TIME: 3:15 —5:15 p.m.
PLACE: *James E. "Jim" King, Jr. Committee Room,* 401 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Dockery, Vice Chair; Senators Flores, Lynn, Montford, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1022** Garcia (Compare CS/H 595, H 1345, S 76)	Sales Tax Increment Districts; Providing for the transfer of certain sales tax increment revenues from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities; providing for a distribution from the Revenue Sharing Trust Fund for Municipalities relating to an increase in sales tax collections over the preceding year to the governing body of an area that receives tax increment revenues pursuant to a designation as a sales tax increment district; specifying additional powers of an enterprise zone development agency for areas designated as a sales tax increment district; specifying sales tax increment financing as a additional economic development incentive that is available within enterprise zones; creating the “Municipal Revitalization Act”, etc. CM 02/02/2012 Fav/CS CA BC	Fav/CS Yeas 6 Nays 0
2	**SB 1108** Altman (Compare CS/H 939, H 7087)	Tax Exemptions; Providing an exemption from the tax imposed by ch. 212, F.S., for chemicals, machinery, parts, and equipment used and consumed in the manufacture and fabrication of aircraft and gas turbine engines and in the production of castings, etc. CM 02/02/2012 Fav/CS CA BC	Fav/CS Yeas 6 Nays 0
3	**SB 1440** Braynon (Identical H 1083, Compare H 7041, CS/S 1204)	Unemployment Compensation; Amending provisions relating to disqualification for benefits, etc. CM 02/02/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1092** Hays (Identical H 1359)	Civil Air Patrol, Florida Wing; Requiring certain employers to provide specified unpaid leave to an employee performing a Civil Air Patrol mission or engaged in Civil Air Patrol training; prohibiting specified public and private employers from discharging, reprimanding, or penalizing a member of the Florida Wing of the Civil Air Patrol because of his or her absence by reason of Civil Air Patrol service or training; providing procedures for and requirements of employees and employers with respect to taking Civil Air Patrol leave and employment following such leave; specifying rights and entitlements of a member of the Florida Wing of the Civil Air Patrol who returns to work after completion of a Civil Air Patrol mission or training; providing for civil action for violation of the act; specifying damages; providing for attorney fees and costs, etc. CM 02/02/2012 Favorable BC	Favorable Yeas 6 Nays 0
5	**SB 1472** Richter (Similar H 1491)	Capital Formation for Infrastructure Projects; Providing for creation of the Florida Infrastructure Fund Partnership; providing for management of the partnership by the Florida Opportunity Fund; prohibiting the partnership from investing in projects with or accepting investments from certain companies; creating the Florida Infrastructure Investment Trust; providing for the trust's issuance of certificates to investment partners; specifying that the certificates guarantee the availability of tax credits under certain conditions; authorizing the Department of Revenue to disclose certain information to the partnership and the trust relative to certain tax credits, etc. CM 02/02/2012 Favorable BC	Favorable Yeas 5 Nays 1
6	**SB 1512** Evers (Similar CS/H 929)	Unfair or Deceptive Acts or Practices Involving Motor Vehicles; Providing for the disposition of certain claims against motor vehicle dealers before civil litigation; directing the Department of Legal Affairs to adopt a notice-of-claim form; prohibiting a claimant from initiating litigation against a motor vehicle dealer that pays the actual damages claimed plus a surcharge within a specified period; limiting admissibility of a motor vehicle dealer's payment or offer to pay a claimant's actual damage, etc. CM 02/02/2012 Temporarily Postponed BI JU BC	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1314** Gaetz	Career-themed Courses; Revising provisions relating to the Florida Career and Professional Education Act; requiring that each district school board, in collaboration with regional workforce boards, economic development agencies, and postsecondary institutions, develop a strategic 3-year plan addressing and meeting local and regional workforce demands; requiring that students who complete career-themed courses receive a standard high school diploma, the highest available industry certification, and opportunities to earn postsecondary credit if the career-themed course credits can be articulated to a postsecondary institution; revising provisions relating to the computation of the annual allocation of funds to each school district for operation, etc. ED 01/24/2012 Favorable CM 02/02/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
8	**SB 1514** Detert (Identical H 1085, Compare H 861, S 1352, S 2098)	Tax on Sales, Use, and Other Transactions; Revising the definition of the term “dealer” for purposes relating to the collection of the tax on sales, use, and other transactions; declaring void certain rulings, agreements, or contracts that maintain certain persons are not dealers required to collect sales and use tax in this state unless the Legislature approves the ruling, agreement, or contract by a specified vote of each house; deleting certain provisions that specify dealer activities or other circumstances that subject mail order sales to this state’s power to levy and collect the sales and use tax, etc. CM 02/02/2012 Fav/CS BI BC	Fav/CS Yeas 5 Nays 1
9	**CS/SB 842** Community Affairs / Bennett (Similar H 7081, Compare CS/H 1037, H 1489, H 7041, H 7075, CS/S 440, CS/S 1204, S 1348)	Growth Management; Authorizing a local government to retain certain charter provisions that were in effect as of a specified date and that relate to an initiative or referendum process; requiring a local land planning agency to periodically evaluate and appraise a comprehensive plan; deleting provisions relating to the Coastal Resources Interagency Management Committee; revising and providing requirements relating to public facilities and services, public education facilities, and local school concurrency system requirements; deleting redundant requirements for interlocal agreements relating to public education facilities, etc. CA 01/23/2012 Fav/CS CM 02/02/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION

Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate committee page on the Senate's website, www.flsenate.gov.

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 Commerce and Tourism Committee

BILL:	CS/SB 1022
INTRODUCER:	Commerce and Tourism Committee and Senator Garcia
SUBJECT:	Revitalizing Municipalities
DATE:	February 6, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Philo	Hrdlicka	CM	**Fav/CS**
2.			CA	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

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

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

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

This CS also permits the governing body for the enterprise zone where the sales tax TIF area is located to share with the state any annual increase in sales tax collections. The CS amends the provisions relating to the distribution formula under the Municipal Revenue Sharing Program, to require distributions to municipalities that have a sales tax TIF area prior to the final adjustment. The distributions must be made to the appropriate designated local governing body eligible for distribution. Such percentage distributions are contingent upon, among other things, a 30 percent match by the local governing body.

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

The Revenue Estimating Conference has not determined the fiscal impact to the state or local government as a result of this CS.

The CS substantially amends ss. 212.20, 218.23, 290.004, 290.0056, and 290.007, F.S., and creates ss. 290.01351, 290.0136, 290.0137, 290.0138, 290.0139, and 290.01391, F.S.

II. Present Situation:

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

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

Community Redevelopment Act

The Community Redevelopment Act of 1969, ch. 163, Part III, F.S., was enacted to provide a mechanism to revitalize slum and blighted areas "which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state."[2] The act authorizes each local government to establish a Community Redevelopment Agency

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

[2] Section 163.335(1), F.S.

(CRA) to revitalize designated slum and blighted areas upon a "finding of necessity" and a further finding of a need for a CRA to carry out community redevelopment.[3]

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

The Florida Enterprise Zone Program

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 62.[6] The program is scheduled to be repealed on December 31, 2015.[7]

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

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

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

[3] Section 163.356(1), F.S.
[4] *See* s. 163.387, F.S. For a general overview of tax increment financing, *see* City of Tampa, Economic and Urban Development Department, *Tax Increment Financing in Florida* (available at http://www.tampagov.net/dept_economic_and_urban_development/ information_resources/Tax_Increment_Financing.asp).
[5] Section 163.387(2)(a), F.S.
[6] Enterprise Florida website at http://www.floridaenterprisezones.com/PageView.asp?PageType=R&edit_id=1.
[7] Section 290.016, F.S.
[8] Section 290.0057, F.S.

- Indicate how local, state, and federal resources will all be utilized;
- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

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

A. State Sales Tax Incentives

Available state sales tax incentives for enterprise zones include:

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

[9] Section 212.08(5)(g), F.S.
[10] Section 212.08(5)(h), F.S.
[11] Section 212.096(2), F.S.
[12] *See* s. 212.096, F.S.
[13] Section 212.08(5)(p), F.S.
[14] Section 212.08(15), F.S.

business is located has passed an ordinance to exempt qualified enterprise zone businesses from 50 percent of the municipal utility tax.

B. State Corporate Income Tax Incentives

Available state corporate income tax incentives for enterprise zones include:

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

C. Local Incentives

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

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

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

Revenue Sources Available to Fund Local Infrastructure

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

[15] Section 220.181, F.S.
[16] Section 220.182, F.S.
[17] Sections 220.183, F.S. *See also* s. 624.5105, F.S.
[18] Executive Office of the Governor, Office of Tourism, Trade & Economic Development, *Florida Enterprise Zone Annual Report, October 1, 2009 – September 30, 2010* (March 2011), at 15 (available at http://www.floridaenterprisezones.com/Zones/Org1/uploads/2011EZAnnualReport.pdf); *see also* s. 290.0135, F.S.
[19] *Id*.
[20] Florida Legislature, Office of Economic and Demographic Research, *Economic Development Financial Reference Manual* (Jan. 11, 2012), at 5-8 (available at http://edr.state.fl.us/Content/presentations/localgovernment/2012economicdevelopment

A. Impact Fees[21]

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

B. Special Assessments[22]

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

C. Local Discretionary Sales Surtaxes[23]

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

D. Local Option Fuel Taxes[24]

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

Revenue Sources Available to Fund Local Economic Development Efforts

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

financialreferencemanual.pdf).
[21] *Id*. at 5.
[22] *Id*. at 6.
[23] *Id* at 7 (citing s. 212.055, F.S.).
[24] *Id*. at 8 (citing ss. 336.021 and 336.025, F.S.).
[25] *Id*. at 9-11.

A. Convention Development Taxes[26]

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

B. Local Business Tax[27]

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

C. Local Option Tourist Development Tax[29]

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

Economic Development Incentives Report - Annual Survey of Local Governments

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

According to the Office of Economic and Demographic Research (EDR), 38 counties and 36 municipalities completed the survey for local FY 2009-10.[32] The survey results are as follows:

- Reporting counties issued $84.4 million in incentives for economic development ($29.6 million in direct incentives[33] to 125 businesses; $40.5 million in indirect incentives[34] to 62

[26] *Id* at 9 (citing ss. 212.0305(4)(a) and 212.0305(4)(c)-(e), F.S.).
[27] *Id*. at 10 (citing ch. 205, F.S. and reporting that several bills (SB 760, HB 1063, and HB 4025) have been filed for the 2012 legislative session that would repeal the local business tax effective July 1, 2012).
[28] *Id*. (citing s. 205.033(7), F.S.).
[29] *Id*. at 11 (citing 212.0104(3), F.S.).
[30] Chapter 201-147, ss. 1 and 2, L.O.F. (codified at ss. 125.045(5) and 166.021(8)(e), F.S.).
[31] The Legislative Committee on Intergovernmental Relations was not funded in FY 2010-11 and the committee ceased operations on June 30, 2010. Several of the committee's work products regarding local government finance have been continued by the Office of Economic and Demographic Research (EDR). Florida Legislature, Online Sunshine (available at http://www.leg.state.fl.us/cgi-bin/View_Page.pl?Directory=committees/joint/lcir/&File=index_css.html&Tab=committees).
[32] *See* Florida Legislature, Office of Economic and Demographic Research, *Economic Development Incentives*, *available at* http://edr.state.fl.us/Content/local-government/economic-development-incentives/index.cfm.

businesses; $12.7 million in fee or tax based incentives to 111 businesses; and $1.5 million in below market leases/deeds).
- Reporting municipalities issued $60.7 million in incentives for economic development ($9.0 million in direct incentives to 71 businesses; $1.5 million in indirect incentives to 29 businesses; $36.8 million in fee or tax based incentives to 185 businesses; and $13.3 million in below market leases/deeds to 45 businesses).
- Indirect incentives given to local government entities or organizations supporting and promoting business investment or development in the amount of $40.5 million were the most popular incentive issued by counties.
- Municipalities issued the most incentives in the form of fee and tax credits in the amount of $36.8 million.

Municipal Revenue Sharing Program

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

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

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

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

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

[33] "Direct incentives" are monetary assistance provided to a business from the county or municipality or through an organization authorized by the county or municipality. Such incentives include, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies. Sections 125.045(5)(a)1. and 166.021(8)(e)1.a., F.S.
[34] "Indirect incentives" are in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development. Sections 125.045(5)(a)2. and 166.021(8)(e)1.b., F.S.
[35] Florida Legislature, Office of Economic and Demographic Research, *2011 Local Government Financial Information Handbook* (Oct. 2011), at 79 (citing s. 212.20(6)(d)5., F.S.) (available at http://edr.state.fl.us/Content/local-government/reports/lgfih11.pdf).
[36] *Id.* (citing s. 206.605(1), F.S.).
[37] *Id.* (citing s. 206.879(1), F.S.).

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

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

Distribution of Proceeds

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

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

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

Authorized Use of Funds

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

[38] *Id.* at 80 (citing s. 218.26, F.S.).
[39] Section 218.21(7), F.S.
[40] 2011 Local Government Financial Information Handbook, at 82.

other municipalities, counties, state government, or the federal government in joint projects. According to DOR, municipalities may assume that 28.11 percent of their estimated 2012 fiscal year distribution is derived from the municipal fuel tax. Therefore, at least that proportion of each municipality's revenue sharing distribution must be expended on the transportation-related purposes discussed above.[41]

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

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

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

III. Effect of Proposed Changes:

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

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

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

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

[41] *Id.*
[42] *Id.* at 83 (citing s. 218.25(1), F.S.).
[43] *Id.* (citing s. 218.25(4), F.S).
[44] *Id.* at 90.

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

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

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

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

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

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

sales tax TIF area is approved by DEO); and establish the base year for determination of sales tax receipts.

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

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

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

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

Distribution Percentage & DOR Duties

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

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

DOR must determine monthly the specific amount payable to each eligible governing body and the aggregate amount of sales tax revenue that is required for distribution, and to transfer that amount from the General Revenue Fund to the trust fund, in accordance with s. 212.20(6)(d)5., F.S., created in the CS. All amounts transferred must be distributed as provided in s. 218.23(3)(e), F.S., created in the CS. The total distribution provided to an eligible governing

body may not exceed the total tax increment revenue contribution set forth in the retail development project agreement, as specified in s. 290.0139, F.S.

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

Retail Development Project Agreement

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

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

Issuance of Bonds

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

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

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

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

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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

The Revenue Estimating Conference has not yet determined the impact of this CS.

B. Private Sector Impact:

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

However, based on a number of factors, the analyst suggests that only between 4 and 6 sales tax TIF areas would actually be created (3 in Miami-Dade County, and possibly one each in Broward County and the cities of Tampa and Jacksonville). Assuming the creation of 4 to 6 areas, the maximum amount of the incremental revenues deposited into their trust funds on an annual basis would be in the range of $25,736,000 to $38,412,000,

[45] Miami Economic Associates, Inc., *Financial Impact on the State of Florida—Proposed Municipal Revitalization Act* (Jan. 2012), at 4 (on file with the Senate Office on Commerce and Tourism).

while the state would retain from $25,504,000 to $33,588,000. The state would also retain all incremental revenues generated that exceed $1 million per month.[46]

C. Government Sector Impact:

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

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

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

VI. Technical Deficiencies:

The following technical deficiencies will need to be addressed:

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

VII. Related Issues:

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

[46] *Id.* at 4-5.
[47] DOR, *SB 1022 Agency Analysis* (Dec. 29, 2011), at 5-6 (on file with the Senate Committee on Commerce and Tourism).
[48] *Id.* at 6-7.

VIII. Additional Information:

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

CS by Commerce and Tourism on February 2, 2012:
The committee substitute does the following:

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

B. Amendments:

None.

737156

LEGISLATIVE ACTION

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

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

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

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

(d) The proceeds of all other taxes and fees imposed

pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

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

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

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

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

5. After the distributions under subparagraphs 1., 2., and 3., 1.3409 percent of the available proceeds<u>, plus the amount required under s. 290.0138(2),</u> shall be transferred monthly to


737156

the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties must begin each fiscal year on or before January 5th and continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment must continue until the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards


737156

before July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 before July 1, 2000.

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

c. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the

applicant.

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

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

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

218.23 Revenue sharing with units of local government.—

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

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

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

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

737156

entitlement for counties.

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

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

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

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

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

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

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


737156

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

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

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

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

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

(8) "Retail development project" means the establishment of a retail facility, under common ownership or control, consisting of more than 300,000 square feet of new or rehabilitated retail space within an enterprise zone engaged in direct onsite retail sales to consumers. A retail development project shall create at least 500 jobs within the compliance period and generate more than $1 million annually in additional taxes and fees collected pursuant to s. 212.20(6)(d)5. A retail development project may include restaurants, grocery and specialty food stores, art galleries, and businesses engaged in sales of home furnishings, apparel, and general merchandise goods serving both local customers and tourists. A retail development project shall

737156

exclude:

(a) Liquor stores;

(b) Adult entertainment nightclubs;

(c) Adult book stores; and

(d) The relocation of a retail business to the retail development project from another location within the enterprise zone, unless the relocation involves a significant expansion of the size of the business or results in a total increase in taxable sales of not less than 50 percent within the county in which the business relocates.

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

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

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

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

(13) "Tax increment revenues" means the portion of


737156

available sales tax revenue calculated pursuant to s. 290.0138(1).

(14) "TIF" means tax increment financing.

Section 4. Paragraph (a) of subsection (9) of section 290.0056, Florida Statutes, is amended, subsections (11) and (12) are renumbered as subsections (12) and (13), respectively, and a new subsection (11) is added to that section, to read:

290.0056 Enterprise zone development agency.—

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

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

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

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

(b) Expend tax increment revenues to acquire, own, convey, construct, maintain, improve, and manage property and facilities and grant and acquire licenses, easements, and options with

737156

respect to such property within the sales tax TIF area;

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

1. Construction of streetscape improvements;

2. Installation of landscaping enhancements within the public right-of-way;

3. Construction of street lighting systems;

4. Installation of water and sewer service mains; and

5. Construction of on-street and off-street public parking facilities.

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

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

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

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

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

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

Section 7. Section 290.0136, Florida Statutes, is created to read:

290.0136 Sales tax TIF area; intent and purpose.—

(1) The Legislature intends to foster the revitalization of

737156

counties and municipalities and support job-creating retail development projects within enterprise zones by authorizing the governing bodies of counties and municipalities to designate sales tax TIF areas within enterprise zones, subject to the review and approval by the department.

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

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

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

(1) Any municipality having a population of at least 300,000 residents that has designated an enterprise zone, or all of the governing bodies in the case of a county and one or more municipalities having designated an enterprise zone if the county has a population of at least 1,200,000 residents, may adopt a resolution after a public hearing designating a sales tax TIF area.

737156

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

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

1. Is essential to furthering a retail development project;

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

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

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

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

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

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

(3) No more than two sales tax TIF areas may be designated in any one eligible municipality. No more than four sales tax TIF areas may be designated in any eligible county. If an eligible municipality is located in an eligible county, any sales tax TIF area designated by a municipality shall count against the maximum number of sales tax TIF areas permitted

737156

within an eligible county. A sales tax TIF area may not be located within a one-quarter mile of any other designated sales tax TIF area and may not exceed 5 square miles in total land mass.

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

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

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

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

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

(5) The powers conferred by ss. 290.0136-290.01391 upon counties not having adopted a home rule charter may not be exercised within the boundaries of a municipality within such county unless the governing body of the municipality expresses its consent by resolution. A resolution consenting to the exercise of the powers conferred upon counties by ss. 290.0136-290.01391 must specifically enumerate the powers to be exercised by the county within the boundaries of the municipality. Any power not specifically enumerated in the resolution of consent shall be exercised exclusively by the municipality within its boundaries.

737156

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

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

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

(a) Captures taxable spending, either in whole or in significant part, that would not otherwise occur in the community rather than redistributing current spending;

(b) Supports and enhances the tourism industry; and

(c) Supports a retail development project that will meet

737156

the jobs and taxes and fees required to be generated under s. 290.004.

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

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

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

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

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

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

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

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

(e) Zero percent of the increased monthly collections of

737156

more than $1 million.

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

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

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

1. A cash deposit by the governing body to the revenue account established pursuant to subsection (4);

2. A commitment within the governing body's capital plan to underwrite any project within the sales TIF area; or

3. Approval of an economic development ad valorem tax exemption by the governing body authorized under ss. 196.1995

737156

and 196.1996.

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

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

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

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

(4) Each governing body receiving a percentage distribution under subsection (1) must establish a separate redevelopment trust fund for each designated sales tax TIF area. Funds allocated to and deposited in this fund may only be used to underwrite any eligible public improvements approved by the enterprise zone governing body pursuant to the authority provided in s. 290.0056 and ss. 290.0136-290.01391.

Section 10. Section 290.0139, Florida Statutes, is created

737156

to read:

290.0139 Retail development project agreement.—

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

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

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

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

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

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

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

(2) A retail project development agreement must be approved by resolution of the governing body following a public hearing advertised in a newspaper of general circulation not less than 10 days before the date of the required public hearing.

(3) A retail development agreement must be transmitted to

737156

the department for review and determination that the agreement complies with the requirements of this chapter.

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

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

(1) If authorized or approved by resolution of the governing body that designated the sales tax TIF area, after a public hearing, tax increment revenues may be used to support the issuance of sales tax increment revenue bonds to finance the authorized public improvements, including, but not limited to, the payment of principal and interest upon any advances for surveys and plans or preliminary loans and to issue refunding bonds for the payment or retirement of bonds or other obligations previously issued. Sales tax increment revenue bonds may not be committed for any projects identified following the 10th year after the base year established under s. 290.004. Any sales tax increment revenue bonds or other obligations issued to finance the undertaking of any eligible activity under ss. 290.0136-290.01391 must mature by the end of the 40th fiscal year after the fiscal year in which sales tax increment revenues are first deposited into the sales tax TIF area trust fund or at the expiration of any agreement between the governing body and the retail project developer for which bonds are issued to underwrite eligible public improvements, whichever is later. However, any refunding bonds issued pursuant to this subsection may not mature later than the final maturity date of any bonds or other obligations issued pursuant to this subsection being paid or retired with the proceeds of such refunding bonds.

737156

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

(3) Bonds issued under this section must be authorized by resolution of the governing body and may be issued in one or more series and may bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places, be subject to such terms of redemption with or without a premium, be secured in such manner, and have such other characteristics as may be provided by the resolution or ordinance authorizing their issuance. Bonds issued under this section may be sold in such manner, either at public or private sale, and for such price as the designated governing body may determine will effectuate the purposes of this section.

737156

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

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

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

Section 12. 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:

737156

A bill to be entitled

An act relating to revitalizing municipalities; amending s. 212.20, F.S.; providing for the transfer of certain sales tax revenues from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities; amending s. 218.23, F.S.; providing for a distribution from the Revenue Sharing Trust Fund for Municipalities relating to an increase in sales tax collections over the preceding year to the governing body of an area that receives tax increment revenues pursuant to a designation as a sales tax TIF area; amending s. 290.004, F.S.; providing definitions; amending s. 290.0056, F.S.; revising provisions relating to the enterprise zone development agency; providing powers of the governing body upon the designation of a sales tax TIF area; amending s. 290.007, F.S.; providing designation of sales tax TIF areas as an economic incentive in enterprise zones; creating ss. 290.01351, 290.0136, 290.0137, 290.0138, 290.0139, and 290.01391, F.S.; creating the "Municipal Revitalization Act"; providing legislative intent and purposes; authorizing specified governing bodies to create sales tax TIF areas within a county or municipality having a specified population; providing requirements, processes, and limitations relating to such sales tax TIF areas; providing that the governing body for an enterprise zone where a sales tax TIF area is located is eligible for specified percentage distributions of increased state sales tax collections

737156

under certain circumstances; requiring the Department of Revenue to determine the amount of increased sales tax collections to be distributed to each eligible designated enterprise zone redevelopment agency and to transfer the aggregate amount due to all such agencies to the Revenue Sharing Trust Fund for Municipalities for distribution; providing requirements and conditions relating to such distributions of increased sales tax collections to governing bodies; authorizing certain retail development project developers to enter into retail development project agreements with governing bodies designating sales tax TIF areas; providing requirements, limitations, and conditions relating to such retail development project agreements; granting specified powers to a governing body for a sales tax TIF area for the purpose of providing financing and fostering certain improvements, including issuing sales tax increment revenue bonds; providing for the issuance of tax increment revenue bonds and the use of such bonds; providing an effective date.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR RENE GARCIA
40th District

December 29, 2011

The Honorable Nancy Detert
Chair, Commerce and Tourism Committee
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Detert,

This letter should serve as a request to have my bill ***SB 1022 Sales Tax Increment Districts*** heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 40

RG:dm

posted 1/23/12
RSB

CC: Jennifer Hrdlicka , Staff Director

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

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/2/2012
Meeting Date

Topic Sales Tax Increment Districts Bill Number 1022 *(if applicable)*

Name Amber Hughes Amendment Barcode — *(if applicable)*

Job Title Legislative Advocate

Address ~~105~~ PO Box 1756 Phone 850-727-4783
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

APPEARANCE RECORD

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

2/2/12
Meeting Date

Topic _____ Bill Number 1022 *(if applicable)*

Name Javier Fernandez Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address One SE Third Ave 25th Floor Phone _____
Street

Miami FI 33131 E-mail javier.fernandez@akerman.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Miami Design District

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)

2/2/2012
Meeting Date

Topic _____ Bill Number 1022 *(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 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

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 Commerce and Tourism Committee

BILL:	CS/SB 1108
INTRODUCER:	Commerce and Tourism Committee and Senator Altman
SUBJECT:	Tax Exemptions
DATE:	February 2, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	**Fav/CS**
2.			CA	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1108 creates a new exemption from the sales and use tax for certain items used to manufacture and produce aircraft and gas turbine engines. Items used and consumed in the production of castings are also exempt.

This CS creates s. 212.08(7)(hhh), F.S.

II. Present Situation:

Sales and Use Taxes

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. The statutes currently provide more than 200 different exemptions. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.[1]

[1] See ss. 212.05 and 212.06, F.S.

Turbines

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

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

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

Castings

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

The World Foundry Organization lists the U.S. as the third largest castings producer in the world in 2009.[6]

III. Effect of Proposed Changes:

Section 1 creates a new exemption from the tax on sales, use, and other transactions under s. 212.08(7), F.S.

The CS exempts chemicals, machinery, parts, and equipment used and consumed in the manufacture or fabrication of aircraft and gas turbine engines.

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

[2] See Langston, Lee S., and George Opdyke, Jr., "Introduction to Gas Turbines for Non-Engineers," Global Gas Turbine News, Volume 37: 1997, No.2, available at http://files.asme.org/IGTI/101/13001.pdf (last visited 4/5/2011) .

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

[4] See Reliance Foundry Co. ltd. Website on "Foundry Production" for a description of different methods of casting, available at http://www.reliance-foundry.com/foundry-production/ (last visited 1/28/2012).

[5] See "Casting" article.

[6] See Modern Castings and the American Foundry Society, "44th Census of World Casting Production" (2010), available on the World Foundry Organization website at http://thewfo.com/Page.aspx?pageId=11 (last visited 1/28/2012).

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

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

The Revenue Estimating Conference estimated that this CS will have a $300,000 negative fiscal impact annually on local governments. Consequently, it may be exempt from the mandates restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) estimated the impact of the CS on December 12, 2011. The REC adopted a recurring negative impact of about $1.3 million to general revenue and a recurring negative impact of $300,000 to local funds each year.[7]

[7] Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference for 2012 Regular Session – Exemption on Gas Turbine Manufacturers, HB 939* (December 22, 2011), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page174-178.pdf (last visited 1/28/12).

B. Private Sector Impact:

Purchasers of these items will benefit from the exemption of these items from taxes.

C. Government Sector Impact:

The Department of Revenue has indicated that this CS would have an insignificant impact on its operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Turbine engines are classified by the type of fluid used to drive the engine. In general, the manufacturing process for all engines is the same and uses the same materials (cores, patterns, dies, and molds), although they may vary by type of metal. The exemption provided by this CS is limited to aircraft engines and gas turbine engines; items used for the manufacture of other engines would not be eligible. The exemption would need to be prorated for companies that produce parts for more than one type of turbine.

VIII. Additional Information:

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

CS by Commerce and Tourism on February 2, 2012:
This committee substitute combined the two separately stated exemptions in the original bill into one.

B. Amendments:

None.

196966

LEGISLATIVE ACTION

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

The Committee on Commerce and Tourism (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

196966

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

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

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

196966

42
43 ========== T I T L E A M E N D M E N T ==========
44 And the title is amended as follows:
45 Delete everything before the enacting clause
46 and insert:
47 A bill to be entitled
48 An act relating to exemptions from the tax on sales,
49 use, and other transactions; amending s. 212.08, F.S.;
50 exempting certain items used to manufacture, produce,
51 or modify aircraft engines and gas turbine engines and
52 parts from the tax on sales, use, and other
53 transactions; providing an effective date.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR THAD ALTMAN
24th District

January 11, 2012

RECEIVED
JAN 11 2012
COMMERCE

The Honorable Nancy Detert, Chair
Committee on Commerce and Tourism
318 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Detert:

Senate Bill 1108, relating to Tax Exemptions, has been referred to your committee for the first committee of reference.

I respectfully request SB 1108 be placed on the Commerce and Tourism committee agenda at your earliest convenience. Thank you for your consideration and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Thad Altman

Thad Altman

TA/kj

cc: Jennifer Hrdlicka, Staff Director
310 Knott Building

posted 1/11/12
psb

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

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/2/2012
Meeting Date

Topic _____ Bill Number 1108 *(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

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)

2/2/12
Meeting Date

Topic SALES TAX GAS TURBINES

Bill Number 1108 *(if applicable)*

Name JIM MAGILL

Amendment Barcode *(if applicable)*

Job Title LOBBYIST

Address 101 N. MONROE ST. SUITE 1090
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-681-0411

E-mail JMAGILL@FOWLERWHITE.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing CHROMALLOY CASTINGS

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)

2/2/12
Meeting Date

Topic TAX EXEMPTIONS

Bill Number SB 1108 *(if applicable)*

Name NANCY STEPHENS

Amendment Barcode _____ *(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 1625 SUMMIT LAKE DR
Street
Tallahassee FL 32317
City *State* *Zip*

Phone 850 402 2954

E-mail nancy@nstephens.com

Speaking: ☒ For ☐ Against ☐ Information

Representing MANUFACTURERS ASSOCIATION 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.

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 Commerce and Tourism Committee

BILL:	CS/SB 1440
INTRODUCER:	Commerce and Tourism Committee and Senator Braynon and others
SUBJECT:	Unemployment Compensation
DATE:	February 3, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1440 permits an individual to receive unemployment compensation benefits when an individual voluntarily quits work due to domestic violence. The individual must reasonably believe that continued employment will jeopardize the individual's safety or the safety of a member of his or her immediately family. Good cause for voluntarily leaving work due to domestic violence must be substantiated by evidence that reasonably proves that domestic violence occurred.

This CS amends ss. 443.036, 443.101, 443.1216, and 443.131, F.S.

II. Present Situation:

Unemployment Compensation Overview

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of

state law.[1] The program is administered as a partnership of the federal government and the states.[2] The individual states collect unemployment compensation (UC) payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).[3] FUTA collections go to the states for costs of administering state UC and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.[4]

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937.[5] The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's UC laws, primarily though its Division of Workforce Services. DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.[6]

State Unemployment Compensation Benefits

A qualified claimant may receive UC benefits equal to 25 percent of wages, not to exceed $6,325 in a benefit year.[7] Benefits range from a minimum of $32 per week to a maximum weekly benefit amount of $275 for up to 23 weeks, depending on the claimant's length of prior employment and wages earned, and the unemployment rate.[8]

To receive UC benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

Determinations and Redeterminations

DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.[9] Determinations and redeterminations are statements by the department regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account.

---

[1] USDOL, Employment and Training Administration (ETA), State Unemployment Insurance Benefits, available at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited 1/20/2012).
[2] There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.
[3] FUTA is codified at 26 U.S.C. 3301-3311.
[4] USDOL, ETA, Unemployment Insurance Tax Topic, available at http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited 1/20/2012).
[5] Chapter 18402, L.O.F.
[6] Section 443.1316, F.S.
[7] Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.
[8] Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent.
[9] Section 443.151(3), F.S.

Able and Available for Work

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. These include a finding by DEO that the individual:[10]

- Has filed a claim for benefits;
- Is registered to work and reports to the One-Stop Career Center;
- Takes and completes the initial skills review;
- Is able to and available for work;[11]
- Contacts at least 5 prospective employers each week or reports to the One-Stop Career Center for reemployment services;
- Participates in reemployment services;
- Has been unemployed for a waiting period of 1 week;
- Has been paid total base period wages equal to the high quarter wages multiplied by 1.5, but at least $3,400 in the base period; and
- Has submitted a valid social security number to DEO.

The law does not distinguish between part-time and full-time work with respect to benefits.

Disqualification for Unemployment Compensation

Section 443.101, F.S., specifies the circumstances under which an individual would be disqualified from receiving unemployment compensation benefits, to include:

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;
- Failing to apply for available suitable work when directed by DEO or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;[12]
- Making false or fraudulent representations in filing for benefits;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work; and
- Discharge from employment due to drug use or rejection from a job offer for failing a drug test.

The statute specifies the duration of the disqualification and the requirements for requalification for an individual's next benefit claim, depending on the reason for the disqualification.

As used in s. 443.101(1), F.S., the term "good cause" includes only that cause attributable to the employer that would compel a reasonable employee to cease working or cause which consists of illness or disability of the individual requiring separation from work.

There are currently two situations which permit individuals to receive unemployment benefits despite the fact that they voluntarily left work:

[10] Section 443.091(1), F.S.

[11] "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought. "Available for work" means actively seeking and being ready and willing to accept suitable employment. See s. 443.036(1) and (6), F.S. Additionally, DEO has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work. See Rule 60BB-3.021, F.A.C.

[12] Section 443.101(2), F.S., sets forth the requirements to determine "suitable work."

- An individual is not disqualified for voluntarily leaving temporary work to return immediately when called to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6 calendar months.
- An individual is not disqualified for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders.

An individual who voluntarily quits work for a good *personal* cause not related to any of the conditions specified in the statute will be disqualified from receiving benefits.

Domestic Violence[13]

Sometimes victims of domestic violence must leave their jobs due to the impact that the violence has had on their lives. Ninety-six percent report some type of work-related problem due to the violence they suffered in their personal relationships.[14]

Section 741.313, F.S., requires employers to "permit an employee to request and take up to 3 working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence or sexual violence."[15]

Except in cases of imminent danger to the health or safety of the employee, or a family or household member, an employee seeking leave from work must provide his or her employer with appropriate advance notice of the leave as required by the employer's policy along with sufficient documentation of the act of domestic violence or sexual violence as required by the employer. An employer must keep all information relating to an employee's leave confidential.[16] Further, an employer may not fire, demote, suspend, retaliate, or otherwise discriminate against an individual for taking leave.

However, these individuals may be disqualified from receiving unemployment benefits if domestic violence is not considered good cause for leaving a job.[17] As of December 2010, 32 states had provisions to provide unemployment benefits to individuals who must leave employment due to domestic violence or stalking.[18]

---

[13] "'Domestic violence' means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." s. 741.28, F.S.

[14] See National Employment Labor Project (NELP), "Implementing the Model Provisions of the Unemployment Insurance Modernization Act in the States" (February 2009), at http://nelp.3cdn.net/dcc61269e71d7220ef_t8m6bpprp.pdf (last visited 1/28/2012).

[15] This section is set to expire on October 2, 2013, unless reenacted by the Legislature.

[16] Additionally, confidential information held by a domestic violence facility review team is confidential and exempt from public records, as is the address of domestic violence victims. ss. 741.3165 and 741.401-741.409, F.S.

[17] See Amy J. Hall v. Florida Unemployment Appeals Commission, 679 So. 2d 541 (1st DCA 1997). The court held that the claimant could not receive benefits because the claimant's safety concerns did not constitute "good cause" on grounds of a family emergency.

[18] Data on other states obtained from NELP, "Question and Answer: Unemployment Insurance Modernization: Filling the Gaps in the Unemployment Safety Net While Stimulating the Economy" (December 2010), available at http://nelp.3cdn.net/d2e0a0eb686ddc0826_v4m6bx17s.pdf (last visited 1/28/2012).

III. Effect of Proposed Changes:

SB 1440 permits an individual to receive unemployment compensation benefits when an individual voluntarily quits work due to domestic violence.

Section 2 amends s. 443.101, F.S., to revise the definition of "good cause" for voluntarily leaving work to mean:

- Cause attributable to an employer;
- An illness or disability that requires separation from work; and
- Domestic violence that causes the individual to reasonably believe that continued employment will jeopardize the individual's safety or the safety of a member of his or her immediately family.

Good cause for voluntarily leaving work due to domestic violence must be verified by evidence that reasonably proves that domestic violence occurred, such as an injunction, protective order, or other such reasonable and confidential documentation authorized by state law.

The CS also provides grammatical and stylistic changes unrelated to the revision of the definition of "good cause" (**Section 1** amends s. 443.036, F.S.; **Section 3** amends s. 443.1216, F.S.; and **Section 4** amends s. 4436.131, F.S.).

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Article VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

To the extent this CS requires cities and counties to expend funds to pay benefits for individuals who are affected by domestic violence, the provisions of Section 18(a), Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest and one of the following relevant exceptions:

a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
c. The expenditure is required to comply with a law that applies to all persons "similarly situated," including state and local governments;[19] or
d. The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

[19] "Similarly situated" refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities.

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

The Revenue Estimating Conference has not yet estimated the impact of this CS. However, DEO has indicated that local governments could realize a small increase in reimbursements to the Unemployment Compensation Trust Fund for benefits paid on claims for which the local governmental entity is a base period employer.[20] Consequently, this CS may be exempt from the mandates restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that this provision increases the amount of funds paid out to claimants from the Unemployment Compensation Trust Fund, it may require employer tax contributions be increased.

DEO estimated that the CS would have a negative recurring impact to the Unemployment Compensation Trust Fund of at least $400,000.[21]

B. Private Sector Impact:

Individuals who leave work due to domestic violence will be eligible to receive unemployment compensation benefits while unemployed.

Reimbursing employers, such as charities, could be required to reimburse the Unemployment Compensation Trust Fund for benefits paid to eligible individuals under the provisions of this CS.[22] See Tax/Fee Issues above.

[20] DEO Bill Analysis for SB 1440 (January 13, 2012), on file with the Senate Commerce and Tourism Committee.
[21] DEO Bill Analysis. The estimate by DEO was based on 100 claims; the average cost of a claim is $4,207.17; thus the total estimate was $420,717.00.
[22] Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. See s. 443.1312, F.S. The state and local governments are reimbursing employers. Most employers are contributory employers.

C. Government Sector Impact:

DEO indicated that this CS would have an insignificant impact on its operations that could be accomplished using existing resources.[23] State and local governments could be required to reimburse the Unemployment Compensation Trust Fund for benefits paid to eligible individuals under the CS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DEO provided the following information related to records:

Sections 443.171(5) and 443.1715, F.S., provide that unemployment compensation claim records are confidential and can only be disclosed as specified in law. However, whenever a party is adversely affected by a determination and participates in an appeals hearing, the information relating to the appealed determination becomes public. Because an unemployment compensation hearing is an administrative hearing, it is open to the public pursuant to Chapter 120, F.S. The hearing is not confidential nor is the record created from the hearing. At the conclusion of an appeals hearing records of the decision by the hearing officer are considered public record and available for public inspection.[24]

VIII. Additional Information:

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

CS by Commerce and Tourism on February 2, 2012:
The committee substitute made the following changes:

- Clarified provisions related to domestic violence. Specifically, the CS identifies documentation that can be used to verify that domestic violence occurred, and clarified that an individual who experienced domestic violence that was suitably documented but did not have any immediate family members in danger would be able to establish good cause for quitting work if the worker feared for his or her own personal safety; and
- Restored current law which states that a disqualification runs from the time a person has left "his or her full-time, part-time, or temporary" work. This language was specifically implemented by the Legislature in 1999 to clarify legislative intent and overturn court decisions to the contrary.

B. Amendments:

None.

[23] DEO Bill Analysis.
[24] DEO Bill Analysis.

576984

LEGISLATIVE ACTION

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

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment

Delete lines 178 - 179
and insert:
individual has left his or her full time, part time, or temporary work voluntarily without good cause and until the

126480

LEGISLATIVE ACTION

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

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment

Delete lines 222 - 226
and insert:
b. Domestic violence, as defined in s. 741.28, which causes the individual to reasonably believe that continued employment will jeopardize the individual's safety or the safety of a member of her or his immediate family. Such cause must be substantiated by evidence that reasonably proves that domestic violence has occurred, such as an injunction, protective order, or other such reasonable and confidential documentation authorized by state law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities
Ethics and Elections
Judiciary
Subcommittee on General Government Appropriations
Subcommittee on Higher Education Appropriations
Reapportionment
Regulated Industries

JOINT COMMITTEE:
Public Counsel Oversight

SENATOR OSCAR BRAYNON II
33rd District

January 25, 2012

Senator Nancy Detert, Chair
Commerce and Tourism,
318 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Detert:

This letter is to request that SB 1440, relating to ***Unemployment Compensation*** be placed on the agenda of the next scheduled meeting of the committee.

SB 1440 Amending provisions relating to disqualification for benefits, etc.

Thank you for consideration of this request.

Sincerely,

Senator Braynon
District 33

cc. *Jennifer Hrdlicka, Staff Director, Committee Commerce and Tourism*
Patty Blackburn, Committee Administrative Assistant

posted 1/25/12
psh

REPLY TO:
☐ 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7154
☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5116

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

1 D V 3

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/2/2012
Meeting Date

Topic Unemployment Compensation Bill Number SB 1440 *(if applicable)*

Name Reina Fernandez Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ Phone 305-761-1148
Street

Miami FL 33179 E-mail Reinax01@Yahoo.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing _____

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

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

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 3

2/2/12
Meeting Date

Topic Domestic Violence

Bill Number SB 1440 *(if applicable)*

Name Jill Tavlin Swartz

Amendment Barcode *(if applicable)*

Job Title

Address 6081 N. Bay Road
Street
Miami Beach Fl 33140
City *State* *Zip*

Phone 305 915 7654

E-mail njwflspa@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing National Council of Jewish Women

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)

3 3

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/2/2012
Meeting Date

Topic Domestic Violence

Bill Number 0440 *(if applicable)*

Name Liz Turner / Marilyn Carter

Amendment Barcode _____ *(if applicable)*

Job Title Community Activists

Address _____
Street

Phone 904 610-7103

_____
City *State* *Zip*

E-mail angie@flnewmajority.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Victims / Survivors of Domestic Violence

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

4

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

2/2/12
Meeting Date

Topic _____ Bill Number SB 1440 *(if applicable)*

Name Karen Woodall Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 545 E. Tennessee St. Phone _____
Street

Tallahassee, FL 32301 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Center for Fiscal & Economic Policy

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)

2/2/12
Meeting Date

Topic Unemployment Compensation

Bill Number 1440 *(if applicable)*

Name Arthur Rosenberg

Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address 3000 Biscayne BLVD, #102
Street

Phone 850-509-2085

Miami, FL 33137
City *State* *Zip*

E-mail arthur@floridalegal.org

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA LEGAL SERVICES

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)

2-2-11
Meeting Date

Topic Unemployment Compensation Bill Number SB 1440 *(if applicable)*

Name Brad Jones Amendment Barcode _____ *(if applicable)*

Job Title Policy & Legislative Director / ~~Florida New Majority~~

Address 8330 Biscayne Blvd Phone 305-576-8920
Street

Miami E-mail brad@thenewmajority.org
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida New Majority

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/FEB/12
Meeting Date

Topic Unemployment Compensation Bill Number 1440 *(if applicable)*

Name Marlos Ferrell Amendment Barcode *(if applicable)*

Job Title Resource Manager / Executive Director

Address 311 W. Ashley St Phone 904 300 6112
Street

Jacksonville FL 32202 E-mail Oarealty@yahoo.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing MPACT

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 / 2 /2012
Meeting Date

Topic _____ Bill Number 1490 *(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

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)

2/2/12
Meeting Date

Topic Unemployment

Bill Number SB 1440 *(if applicable)*

Name Rick Templin

Amendment Barcode *(if applicable)*

Job Title

Address 135 S. Monroe
Street

Phone 850-224-6926

Tallahassee FL 32301
City *State* *Zip*

E-mail

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

Representing Florida AFL-CIO

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

2 Feb 2012 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic V. C. Bill Number 1440 *(if applicable)*

Name John Rogers Amendment Barcode *(if applicable)*

Job Title Sr. V.P. & General Counsel

Address 227 S. Adams Phone 850/222-4082

Street

Tal FL 32301 E-mail John@frf.org

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Fla. Retail Federation

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 Commerce and Tourism Committee

BILL:	SB 1092
INTRODUCER:	Senator Hays
SUBJECT:	Civil Air Patrol
DATE:	February 1, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1092 creates labor protections for members of the Florida Wing of the Civil Air Patrol who are absent from their place of employment as a result of their service or training on behalf of the Civil Air Patrol. Specifically, the bill creates the following protections: requires employers to provide unpaid leave to an employee performing a Civil Air Patrol mission or engaged in Civil Air Patrol training; prohibits the termination of employees who are absent from work due to a mission or training because of their Civil Air Patrol service, except for cause; establishes procedures with respect to the calculation of leave for a member of the Florida Wing of the Civil Air Patrol; and authorizes a cause of action for members of the Florida Wing of the Civil Air Patrol who are affected by a violation of any of the provisions found in this section.

This bill amends the following section of the Florida Statutes: s. 252.55, F.S.

II. Present Situation:

Civil Air Patrol

The Civil Air Patrol (CAP) was created under the administration of President Harry Truman, largely in response to the organization's admirable contributions during the Second World War.[1] Today, CAP is organized as a congressionally chartered non-profit corporation that serves as the official civilian auxiliary of the United States Air Force (U.S. Air Force).[2] CAP is a volunteer organization with its three primary missions centered on providing support in the following areas: emergency services, aerospace education, and cadet training.

With respect to Emergency Services, CAP provides support in air and ground search and rescue, disaster relief, counterdrug, and homeland security.[3] In 2011, CAP performed 90 percent of the continental U.S. inland search and rescue missions and was credited with saving 53 lives.[4]

CAP also works in collaboration with Joint Task Force North, U.S. Customs and Border Protection (customs), the Drug Enforcement Administration (DEA), and the U.S. Forest Service in counterdrug efforts. In 2010, it was reported that CAP air crew members flew more than 10,500 hours leading to the confiscation of an estimated millions of dollars in illegal drugs. Moreover, CAP also flies noncombatant homeland security missions that, among other things, consist of the surveillance of the nation's critical infrastructures. Authorization and tasking for these missions comes directly from 1st Air Force, which is located at the Tyndall Air Force Base near Panama City.[5]

Additionally, CAP's aerospace and education programs promote aviation and space education nationwide through the publication of K-12 curriculum materials for use in CAP units, schools, and youth development organizations. CAP also organizes educational conferences for teachers and professional workshops that present an aerospace theme approach to presenting STEM[6] subjects.[7]

Lastly, CAP's cadet programs offer aerospace and leadership training to youths from ages 12 to 20. This program is offered as an extracurricular activity for young adults and centers around activities that afford cadets with the opportunity to explore aerospace-related careers, as well as develop their leadership skills. The top 15 percent of cadets become eligible for the grade of Airman of the first class upon enlisting in the Air Force. Both the Air Force Reserve Officer

---

[1] "In the late 1939s, more than 150,000 volunteers with a love for aviation argued for an organization to put their planes and flying skills to use in defense of their country. As a result, the Civil Air Patrol was born one week prior to the Japanese attack on Pearl Harbor. Thousands of volunteer members answered America's call to national service and sacrifice by accepting and performing critical wartime missions. Assigned to the War Department under the jurisdiction of the Army Air Corps, their contributions of Civil Air Patrol, including logging more than 500,000 flying hours, sinking two enemy submarines, and saving hundreds of crash victims during World War II, are well documented." Information available at: http://www.gocivilairpatrol.com/about/ (last visited January 31, 2012).
[2] Information available at: http://www.af.mil/information/factsheets/factsheet.asp?id=163 (last visited January 31, 2012).
[3] *Id.*
[4] Information available at: http://www.1af.acc.af.mil/news/story.asp?id=123287077 (last visited January 31, 2012).
[5] Information found in this paragraph is available at, *supra*, note 2
[6] Note that the acronym STEM refers to science technology, engineering, and math.
[7] Information found in this paragraph is available at, *supra*, note 2

Training Corps and U.S. Air Force look favorably upon a prospective candidate's involvement with the CAP Cadet Program.[8]

Florida Wing of the Civil Air Patrol

CAP is organized at both the national and state level. Nationally, there is a headquarters followed by regional offices. At the local level, each state, including the U.S. territories of Puerto Rico and Guam, is classified as a "wing." Within each "wing," there exist smaller units, referred to as squadrons," located throughout various cities. To date, Florida represents the country's largest wing.[9]

Provided below is a summary of the 2011 statistics for the Florida Wing of the Civil Air Patrol.[10]

Civil Air Patrol's Florida Wing 2011 Statistics	
Volunteer Members	
Adult Members	2,089
Cadets	2,138
Voting-Age Members	2,453
Aircrew Personnel	490
Emergency Responders	3011
Squadrons	
Statewide	93
Aircraft	
Single Engine	27
Glider	2
Vehicles	
Statewide	28
Interoperable Communications	
VHF-FM Repeaters	20
VHF-FM Fixed Stations	17
VHF-FM Mobile Stations	239
HF fixed stations	37
HF mobile stations	3

[8] *Id.*
[9] Conversation with Lieutenant Colonel (Ret.) Phillip Zedonek, Civil Air Patrol, Florida Wing Vice Commander and Governmental Relations Office (January 31, 2012).
[10] Statistics are on file with the Senate Commerce and Tourism Committee (January 31, 2012).

Missions	
Search and Rescue Missions	112
Finds	**7**
Other State Supported Missions	70
Cadet Flying	
Cadets Flown	2,339
Hours Flown	1,390
Total Hours Flown	
Total	7,395
Finances	
State Funding	$49,500[11]
Value of Wing's Volunteer Hours	$9.2M

The Deepwater Horizon Oil Spill

CAP provided extensive support to the nation's Gulf coast following the Deepwater Horizon oil spill in the Gulf of Mexico. During the Deepwater response, CAP supported operations out of Alabama, Florida, Louisiana, and Mississippi. More than 600 CAP members from 10 wings volunteered over 18,000 man hours over the course of 120 days to provide airborne reconnaissance and transportation support throughout the Gulf Coast. In total, CAP flew over 2,100 hours in support of the U.S. Coast Guard and state counterparts.[12]

Specifically, Florida Wing's contribution to the Gulf Oil spill response is described below:

> [T]he wing's aircrew and mission support personnel were tasked by the Florida Department of Environmental Protection, and later by the Federal Emergency Management Agency, to conduct repeated aerial photographic assessments along some 200 miles of the Panhandle's coast. Using both off-the-shelf and specialized technology, aircrews captured nearly continuous images of the Florida shoreline and close-in coastal waters. Each imaged was geocoded for exact location and time to allow shore-based analysis by federal and state disaster planners.
>
> The wing flew 710 flight hours in 14 aircraft while capturing more than 50,300 images . . . Staged from Tallahassee, personnel and aircraft came from bases in Naples, Sarasota, Ocala, Merritt Island, Jacksonville, Clearwater, and elsewhere, flying daily sorties during 105 continuous days of operation. Meanwhile, mission base personnel provided aircrew coordination, logistics, media relations, chaplain services, and volunteer professionalism

[11] Line no. 1504, s. 5, ch. 2011-69, L.O.F.
[12] Information found in this paragraph is available at, *supra*, note 2.

to the state and federal emergency efforts. In all, 97 aircrew members and 14 mission base personnel were involved, contributing 9,153 man-hours.

Col. Christian Moersch, Florida Wing Commander,[13] remarked, 'These are your next-door heroes. Many of those who participated exhausted all their year's vacation just to serve.'[14]

Federal Uniformed Services Employment and Reemployment Rights Act

In 1994, Congress passed the Uniformed Services Employment and Reemployment Act.[15] Specifically, the act provides that "a person who performs or has an obligation to perform in a uniformed service[16] shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that service.

With a similar objective in mind, Florida 2 years later enacted s. 250.482, F.S., to extend employment protections and rights to members of the National Guard ordered into state activity duty.[17] As a result, current law now provides a cause of action for National Guard members who receive a certification by the Adjutant General[18] that a violation by an employer of one of the provisions enumerated in s. 250.482, F.S., has occurred.

Notably, while CAP is not considered to be part of the armed forces, several states have enacted laws offering similar employment protections for its members who are absent from work due to CAP related training or mission assignments. These states include California, Colorado, Illinois, Minnesota, and Wisconsin.[19]

III. Effect of Proposed Changes:

Section 1 amends s. 252.55, F.S., to specify employment protections for members of the Civil Air Patrol, Florida Wing returning to employment following a period of CAP or training. It should be noted that many of the protections offered in SB 1092 pattern those offered to members of the National Guard found under s. 250.842, F.S.

[13] Today, Colonel Michael N. Cook is the Florida Wing Commander.
[14] Civil Air Patrol's Florida Wing Newsletter (January 31, 2012) (on file with the Senate Committee on Commerce and Tourism).
[15] *See*, 38 U.S.C. ss. 4301-4335 (2006).
[16] Note that "uniformed services" means the Armed Forces, the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health, and other category of persons designated by the President in time of war or national emergency. 38 U.S.C. s. 4303(16).
[17] According to the Department of Military Affairs, when the Guard is left on state status (meaning state active duty) its members are not protected under [42 U.S.C. ss. 4301-4335]. Hence, that was the impetus for the enactment of s. 250.842, F.S., which was to provide similar provisions to National Guard members on state status. *See* analysis for SB 2786 by Senate Committee on Commerce and Economic Opportunities (April 2, 1996) (analysis on file with Senate Committee on Commerce and Tourism).
[18] The Adjutant General is the Chief of the Department of Military Affairs.
[19] Cal. Lab. Code ss. 1500-1507 (West 2011); Col. Rev. Stat. s. 28-1 (2011); 820 ILCS 148/1-35 (2011); Minn. Stat. s. 181.946; Wis. Stat. s. 321.68.

Definitions

"Benefits" is defined as all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

"Civil Air Patrol leave" refers to leave requested by an employee who is a member of the Florida Wing of the Civil Air Patrol.

"Employee" means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment and who has been employed by the same employer for at least 90 days immediately preceding the commencement of Civil Air Patrol leave. Employee does include an independent contractor.

"Employer" refers to a private or public employer, or an employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, community colleges, or universities.

Unpaid Leave

With respect to leave, an employer that employs 15 or more employees shall provide up to 15 days of unpaid CAP leave annually to an employee performing a CAP mission or engaged in CAP training, subject to certain conditions. As a general matter, CAP leave granted under this section may consist of unpaid leave.

An employer may not require any member of the Florida Wing of the Civil Air Patrol returning to employment following a period of CAP service or training to use vacation, annual, compensatory, or similar leave for the period during which the member was performing a CAP mission or engaged in CAP training. However, such employee may be able to apply any vacation, annual, compensatory or similar leave accrued prior to the commencement of his or her service training towards that period.

Reemployment

A member of the Florida Wing of the Civil Air Patrol may not be penalized because of his or her absence as a result of being ordered into service to perform a CAP mission or engage in training by a private or public employer, or any employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, community colleges, or universities.

Upon completion of a CAP mission or training, such member shall promptly notify the employer of his or her intent to return to work.

An employer is not required to allow a member of the CAP to return to work upon the completion of a CAP mission or training if one of the following applies:

- The employer's circumstances have changed as to make employment impossible or unreasonable.
- Employment would impose undue hardship on the employer.
- The employment from which the member of the CAP leaves to perform a mission or engage in training is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.
- The employer had legally sufficient cause to terminate the member of the CAP at the time he or she left to perform a CAP mission or engage in CAP training.

The employer has the burden of proving the following enumerated factors that served as the employer's basis for not allowing a member of the CAP to return to work upon completion of a CAP mission or training.

Additional Employment Protections

A member of the Florida Wing of the Civil Air Patrol who returns to work after completion of a CAP mission or training is entitled to the following:

- The seniority that the member had at his or her place of employment on the date of the commencement of his or her CAP mission or training and other rights and benefits that inure to the member as a result of such seniority.
- Any additional seniority that the member would have attained at his or her place of employment if he or she had remained continuously employed, as well as the rights and benefits that inure to the member as a result of such seniority.

A member of the Florida Wing of the Civil Air Patrol who returns to work after completion of a CAP mission or training may not be discharged from such employment for a period of 1 year after the date the member returns to work, except for cause.

Civil Lawsuit

If the wing commander of the Florida Wing of the Civil Air Patrol certifies that there is probable cause to believe that there has been a violation of any of these provisions, than the injured member may bring a civil action against the employer. Proper venue for such action will be in the county where the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred. If the employer is found liable, then the defendant will be responsible for either actual damages or $500, whichever amount is greater. The prevailing party in any litigation proceeding is entitled to recover reasonable attorney fees and court costs.

The certification of probable cause may not be issued until the wing commander of the Florida Wing of the Civil Air Patrol, or his or her designee, has investigated the issue. All employers and other personnel involved with the issues of such investigation must cooperate with the wing commander of the Florida Wing of the Civil Air Patrol in the investigation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

According to the Office of the State Court Administrator's 2012 Judicial Impact Statement, the fiscal impact of SB 1092 cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial time and court workload resulting from this new cause of action in civil cases. However, the impact is likely to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR D. ALAN HAYS
20th District

RECEIVED
JAN 12 2012
COMMERCE

COMMITTEES:
Budget - Subcommittee on General Government
Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education Appropriations
Children, Families, and Elder Affairs
Reapportionment

January 11, 2012

Senator Nancy C. Detert, Chair
Commerce and Tourism Committee
318 Senate Office Building
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 1092 Relating to Civil Air Patrol, Florida Wing

Dear Chair Detert:

I respectfully request my above bill be heard before your committee. I feel this bill would benefit the citizens of this state.

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

Sincerely,

D. Alan Hays, DMD

D. Alan Hays, DMD
State Senator
District 20

CC: **Jennifer Hrdlicka**, *Staff Director*
Patty Blackburn, *Committee Administrative Assistant*

posted 1/12/12 Rsh

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*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

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

February 1, 2012

Senator Nancy Detert, Chair
Commerce & Tourism

310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 1092 Relating to Civil Air Patrol

Dear Chair Detert,

I am unable to attend Commerce and Tourism Committee meeting scheduled for tomorrow at 3:15 pm. Please allow my aide, Nanci Cornwell to present the above referenced bill before that committee.

Thank you for favorable consideration of this request.

Sincerely,

Senator D. Alan Hays, DMD
District 20

CC: Jennifer Hrdlicka, Staff Director
Patty Blackburn, 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*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL:	SB 1472
INTRODUCER:	Senator Richter
SUBJECT:	Capital Formation for Infrastructure Projects
DATE:	February 1, 2012
REVISED:	2/6/2012

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Philo	Hrdlicka	CM	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1472 creates the Florida Infrastructure Fund Partnership, a contingent tax credit program designed to leverage investment and private funding for state infrastructure projects, which may encourage private sector economic activity. The partnership is authorized to raise $700 million in private funds for direct investment in infrastructure projects including water or wastewater systems, communication systems, power systems, transportation systems, renewable energy systems, ancillary or support systems, or other strategic infrastructure needs. Tax credits are available for redemption no earlier than 2024 and will be used only as a guarantee on an investment partner's principal investment. The Florida Opportunity Fund will serve as the general partner of the program. A separate entity, the Florida Infrastructure Investment Trust, will administer the tax credit program.

The Revenue Estimating Conference has not yet determined the impact of this bill. However, the bill may have a recurring negative indeterminate impact on both state and local government revenues, possibly beginning in 2024, due to contingent tax credits. No more than $150 million in credits may be utilized in any one state fiscal year.

The bill substantially amends ss. 213.053, 288.9621, 288.9622, and 288.9623, F.S., and creates ss. 288.9627 and 288.9628, F.S.

II. Present Situation:

The Florida Opportunity Fund[1]

The Florida Opportunity Fund, Inc. (FOF) was created by the Florida Legislature in 2007 to mobilize and increase venture capital available to Florida businesses. Sections 288.9621 - 288.9625, F.S., collectively referred to as the Florida Capital Formation Act, provided for the authorization of the entity. Initially, FOF was set up as a "fund-of-funds" program that emphasized investment in seed capital and early stage venture capital funds. However in 2009, the Florida Legislature expanded FOF's directive under the Florida Capital Formation Act to create direct investment programs that invest in individual businesses and infrastructure projects. FOF may not use its original appropriation of $29.5 million to make direct investments but may raise private capital or utilize other public funding sources. In 2010, FOF launched a direct investment program with the Office of Energy, a state entity within the Department of Agriculture and Consumer Services. The progress of direct investments by FOF must be included in its annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

FOF is organized as a private, not-for-profit corporation under ch. 617, F.S., and administered by Enterprise Florida, Inc (EFI). EFI selects a five-person appointment committee which selects a board of directors for FOF. The board then selects an FOF investment manager. Currently, FOF is managed by Florida First Partners, a joint venture between the Credit Suisse Customized Fund Investment Group (CFIG) and Florida-based MILCOM Venture Partners (MVP). CFIG serves various client types including the states of Indiana and Oregon, endowments, family offices, and high net worth individuals. MVP is a venture capital firm focused on the intersection of the commercial and defense markets. MVP manages two venture capital funds: MILCOM Technologies, a seed-stage investment fund, and OnPointTechnologies, an early-stage venture capital fund.

Infrastructure Funding in Florida

For nearly six decades, Florida has been one of the fastest growing states in the nation, with population expanding from 5 million in 1960 to nearly 19 million in 2010.[2] Demand for energy, transportation, and communication systems expanded rapidly over the past several decades. Current projections suggest Florida may add an additional 5 million new residents by the year 2030.[3] Employment, tourism, gross state product, and income will expand as well, contributing to growth in demand for strategic infrastructure. In order to meet future capacity over the next 20-25 years, it is estimated that Florida will need:

- $47.0 billion for highway and rail infrastructure; [4]
- $29.9 billion for water and wastewater facilities and infrastructure;[5]
- $3.5 billion for aviation facilities and infrastructure;[6]

---

[1] *See generally* Florida Opportunity Fund website at http://floridaopportunityfund.com/HomePage.asp.
[2] Office of Economic & Demographic Research, *Florida Population by Age Group* (2010 Census), at 1 (available at http://edr.state.fl.us/Content/population-demographics/data/Pop_Census_Day.pdf).
[3] *Id.*
[4] Florida Department of Transportation, *Strategic Intermodal System Unfunded Needs Plan* (May 2006), at 1 (available at http://www.dot.state.fl.us/planning/systems/mspi/sisnplan.shtm).
[5] United States Environmental Protection Agency, *Clean Watersheds Needs Survey 2008 Report to Congress*, at v-vii of Executive Summary (available at http://water.epa.gov/scitech/datait/databases/cwns/2008reportdata.cfm).

- $2.8 billion for seaport facilities and infrastructure;[7] and
- $2.5 billion for storm water management.[8]

Due to the large size and cost, and often monopolistic characteristics of these assets, infrastructure projects have historically been financed, built, owned, and operated by state and local governments. Today, public entities solicit grants, borrow capital, or issue bonds to pay for public infrastructure projects. However, projected infrastructure funding from all public sources – federal, state, and local – is not sufficient to pay for all needed improvements.

Contingent Tax Credit Programs

Contingent tax credits help to raise money for state-affiliated venture capital initiatives without immediately affecting state revenues. Contingent tax credit programs are statutory state guarantees established to incentivize venture capital investment into state target industries. At least seven states (Arkansas, Iowa, Michigan, Ohio, Oklahoma, South Carolina, and Utah) have adopted programs authorizing the issuance of contingent tax credits to investors in state-sponsored fund of funds.[9] However, it does not appear that any state has created an infrastructure funding program similar to the one proposed in this bill.

III. Effect of Proposed Changes:

SB 1472 broadens the Capital Formation Act in Part X of ch. 288, F.S., to create the Florida Infrastructure Fund Partnership (partnership) and the Florida Infrastructure Investment Trust (trust) as a means to attract private capital to finance large-scale infrastructure improvements in this state. The bill provides up to $700 million in tax credits, which are equal to the investors' net capital losses and are available to investors at the investment's designated maturity date. The credits cannot be claimed prior to 12 years from the date of the investment; based on the bill's effective date, credits may not be claimed before July 1, 2024.

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

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

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

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

---

[6] Strategic Intermodal System Unfunded Needs Plan, at 1.
[7] *Id.*
[8] Clean Watersheds Needs Survey 2008 Report to Congress, at vii of Executive Summary.
[9] As a sample, see State Venture Capital Symposium presentation "Building a Regional Venture Capital Industry with Contingent Tax Credits" (May 2006), available at http://www.cdfa.net/cdfa/cdfaweb.nsf/ordredirect.html?open&id=nasvftaxcredits.html; Utah's Fund of Funds program, available at http://www.utahfundoffunds.com/; and Invest Iowa's Fund of Funds program, available at http://www.investiowa.com/icic/web.nsf/pages/fundoffunds.html.

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

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

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

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

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

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

Capital for these investments must be raised by the partnership through "commitment agreements" with investment partners, and the terms of the commitment agreements must be approved by the FOF's board. Investments can be accepted by the partnership beginning July 1, 2012. SB 1472 provides for the concurrent issuance of certificates by the trust *(described in*

Section 5 below) for future tax credits that guarantee the return of only the equity portion of the investments to the partners.

SB 1472 requires that the total principal investment payable to the partnership and the total amount of tax credits to be issued by the Department of Revenue (DOR) may not exceed $700 million. However, if the partnership fails to obtain investment commitments totaling at least $100 million by December 1, 2013, then the partnership must cancel all agreements and return the equity investments to the partners.

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

- Fulfill an important infrastructure need in the state;
- Raise funding from other sources so that the total amount invested in the project is at least twice the amount invested by the partnership, inclusive of the partnership's investment; and
- Have appropriate legal controls in place to ensure that no infrastructure project will be fraudulently closed.

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

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

Additionally, the partnership may not invest more than 20 percent of its total capital in any single infrastructure project. The partnership is prohibited from investing in any infrastructure project authorized under the Florida Rail Enterprise Act, related to high-speed rail projects;[10] with any financial institution or company identified in s. 215.472, F.S., that engages in commerce with Cuba; or with any "scrutinized company," as that term is defined in s. 215.473, F.S., relating to companies that engage in commerce with Iran and Sudan.

Provisions related to the Credit of the State
SB 1472 prohibits the partnership from pledging the credit or taxing power of the state or any political subdivision thereof and may not make its debts payable from any moneys or resources except those of the partnership. An obligation of the partnership is not an obligation of the state or any political subdivision thereof but is an obligation of the partnership, payable exclusively from the partnership's resources.

[10] Sections 341.8201 – 341.842, F.S.

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

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

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

Governance
The board is comprised of the executive director of DOR, executive director of the Department of Economic Opportunity, and the vice chair of EFI, or their designees. The bill allows an administrative officer to act on behalf of the trust under the direction of the board. The board members and the administrative officer are prohibited from receiving compensation from, and having a financial interest in, any investment partner. They serve without compensation, but are entitled to reimbursement of their expenses. SB 1472 specifies that each board member and staff "has a duty of care to the trust." The trust and the FOF may seek reimbursements for expenses by charging a fee for the issuance of certificates to investment partners. The fee may be no more than .25 percent of the aggregate investment capital committed to the partnership.

Powers and duties of the trust
SB 1472 authorizes the trust to:

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

As mentioned above, the trust may issue certificates, redeemable against the state tax credits, to partners that make equity investments in the partnership. A certificate issued to a partner guarantees the availability of tax credits equal to the principal investment specified in the partner's commitment agreement with the partnership. Certificates issued by the trust may not exceed a total aggregate of $700 million of tax credits. Further, a certificate issued by the trust

must have a specific calendar year maturity date designated by the trust of no earlier than 12 years after the date of issuance. A partner's certificate and related tax credits can be transferred to a new owner in whole or in part.

SB 1472 specifies that the provisions of ch. 517, F.S., dealing with regulation of securities, do not apply to the certificates and tax credits transferred or sold under this program.

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

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

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

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

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

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

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

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

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

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

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

SB 1472 specifies that the tax credits, when issued to a partner, are an obligation of the state, secured exclusively by the ownership interest transferred to the FOF by the partner whose investment generated the tax credits. In that case, the state's recovery is limited to the forfeited ownership interest. The FOF is not liable to the state for repayment of the used tax credits.

DOR is directed to account for the tax credits used pursuant to the provisions of SB 1472 and to make that information available to the partnership.

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

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

The Revenue Estimating Conference (REC) determined the impact of the bill. Specifically, after its meeting on February 3, 2012, the REC adopted a consensus estimate of "0 cash, negative indeterminate recurring for the four years [through 2016]. This bill exposes the state to contingent future tax credits ranging from $0 to $700 million, beginning in 2024 at the earliest."[11] DEO additionally submits that the impact of the bill is indeterminate because of contingent tax credits. No more than $150 million in tax credits may be utilized in any one fiscal year.[12]

B. Private Sector Impact:

The program has potential for encouraging the funding of state infrastructure projects. DEO submits that projects with a positive return will have a positive impact on the private sector and growth.[13] If the program invests in successful projects, the economic impact on the private sector will be positive. EFI and FOF suggest that the program could:

- Attract up to $6+ billion of private capital to Florida;
- Create thousands of Florida jobs;
- Create permanent infrastructure assets in Florida;
- Alleviate budget pressure, by leveraging private capital to solve government needs;
- Generate results with potentially no costs to the state; and
- Accelerate the deployment of infrastructure funds and speed recovery of the Florida economy.[14]

In a different vein, DOR notes that some taxes may be credited against other taxes, such as when the corporate income tax of an insurer is credited against the insurer's insurance premium tax liability. It warns that, if taxpayers are not careful with their application of this credit, they may not receive any overall financial benefit from it.[15]

C. Government Sector Impact:

DOR advises that tax returns will need to be revised in time for claiming credits on 2024 returns. Under its current environment, extensive system modifications would be

[11] Revenue Estimating Conference Report for HB 1491 (Feb. 3, 2012) (available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page361.pdf).
[12] DEO, *2012 Bill Analysis for HB 1491* (Jan. 23, 2012), at 5.
[13] *Id*.
[14] EFI, *2011 Legislative Priorities: Florida Infrastructure Fund-House Bill 943 by Rep. Eisnaugle*; FOF, *Proposed Addition of Sections 288.9627-288.9638*; and FOF, *Proposed Florida Infrastructure Program* (Jan. 2012). All three of these documents are on file with the Senate Committee on Commerce and Tourism.
[15] DOR, *2012 Bill Analysis (Revised): SB 1472-Capital Formation for Infrastructure Projects* (Jan. 24, 2012), at 9 (on file with the Senate Committee on Commerce and Tourism).

necessary to administer this credit. A process for issuing the refunds will need to be developed, and system modifications for data capture will be needed.[16]

VI. Technical Deficiencies:

DOR identifies several technical issues that it says cannot be resolved by rulemaking:

- On page 5, lines 128-30 state that the partnership shall manage its business affairs, while lines 135-37 state that FOF, as a general partner of the partnership, "shall manage the partnership's business affairs." It is unclear what entity is vested with the management responsibilities of the partnership.
- On pages 15 and 16, lines 431-42 provide the state with the possibility of recovery of amounts provided to designated investors as tax credits or refunds. However, the bill does not address to whom recovered amounts will be paid, where such recovered amounts shall be deposited, or when the partnership is required to make such payments.
- On page 16, lines 447-50 require DOR to issue assurances to the trust that its certificates will be honored by DOR. It is unclear what assurances DOR could provide over and above the statutory provisions.[17]

VII. Related Issues:

DOR explains that a trustee of the trust (one of which is the executive director of DOR) is required to perform two major functions: (1) issue the certificates to the investment partner, and (2) sell the investment partner's credit certificate in certain situations. The executive director of DOR may have a conflict of interest between her current responsibilities administering the enforcement and collection of taxes as head of DOR and her role as a trustee of the trust, which is authorized to sell tax credit certificates. The same taxpayers whose tax liabilities are enforced by DOR are the ones that would be purchasing the tax credit certificates. DOR states that this issue cannot be resolved by rulemaking.[18]

VIII. Additional Information:

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

None.

B. Amendments:

None.

[16] DOR, *Fiscal Impact Analysis-2012 Session: SB 1472-Capital Formation of Infrastructure Projects* (Jan. 13, 2012), at 2 (on file with the Senate Committee on Commerce and Tourism).
[17] DOR Bill Analysis, at 7-8.
[18] DOR Bill Analysis, at 8.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Budget
Budget - Subcommittee on Health and Human Services Appropriations
Community Affairs
Judiciary
Rules
Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:
Legislative Budget Commission

SENATOR GARRETT RICHTER
37th District

January 24, 2012

Honorable Nancy C. Detert, Chair
Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Detert:

Senate Bill 1472, related to Capital Formation for Infrastructure Projects, has been referred to Commerce and Tourism as its first committee of reference. I would appreciate the placing of this bill on the committee's next available agenda.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Jennifer Hrdlicka, Staff Director

posted 1/24/12
psb

REPLY TO:
- 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- 1039 S.E. 9th Place, Room 310, Cape Coral, Florida 33990 (239) 338-2777
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5124

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Commerce and Industry - Policy and Steering
Communications, Energy, and Public Utilities
Education Pre-K - 12 Appropriations
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Florida's Economy

JOINT COMMITTEE:
Everglades Oversight

SENATOR GARRETT S. RICHTER
37th District

February 1, 2012

The Honorable Nancy C. Detert, Chair
Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Detert:

Senate Bill 1472, related to Capital Formation for Infrastructure Projects is scheduled to be heard in your Commerce and Tourisim committee meeting on February, 2nd at 3:15 PM. Due to a conflicts in my committee schedule I will be sending my Legislative Assistant, Michael Nachef as a representative to present the bills for your committee's consideration.

Sincerely,

Garrett Richter

cc: Jennifer Hrdlicka, Staff Director

REPLY TO:
- ❒ 3301 East Tamiami Trail, Suite 203, Building F, Naples, Florida 34112-4961 (239) 417-6205
- ❒ 1039 S.E. 9th Place, Room 310, Cape Coral, Florida 33990 (239) 338-2777
- ❒ 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5124

Senate's Website: *www.flsenate.gov*

JEFF ATWATER
President of the Senate

MIKE FASANO
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/2/12
Meeting Date

Topic Capital formation for Infrastructure

Bill Number 1472 *(if applicable)*

Name David Cruz

Amendment Barcode *(if applicable)*

Job Title Legislative Advocate

Address P.O. Box 1757
Street
Tallahassee FL 32309
City *State* *Zip*

Phone 305-322-3643

E-mail DCRuz@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)

FEBRUARY 2, 2012
Meeting Date

Topic SB 1472 Bill Number SB1472 *(if applicable)*

Name JASON ROTTENBERG Amendment Barcode *(if applicable)*

Job Title MANAGING DIRECTOR

Address 2601 ROSE ISLE CIRCLE Phone 407-509-6088
Street

ORLANDO FL 32803 E-mail jason@arsenalvp.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA FIRST PARTNERS

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)

2/2/2012
Meeting Date

Topic _____ Bill Number 1472 *(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

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)

2/2/12
Meeting Date

Topic SB 1472 Bill Number SB 1472 *(if applicable)*

Name Louis Lawbscher Amendment Barcode *(if applicable)*

Job Title Senior Vice President

Address 800 N. Magnolia Ave #1100 Phone 407-956-5631
Street

Orlando FL 32803 E-mail llawbscher@eflorida.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Enterprise Florida, Florida Opportunity Fund

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.

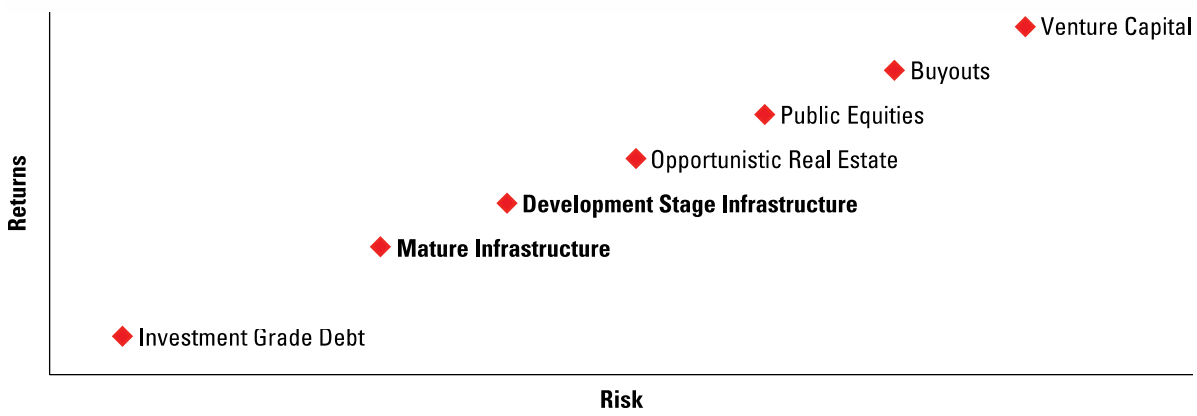
This form is part of the public record for this meeting.

S-001 (10/20/11)

Infrastructure Fund Profile vs. Venture Capital (VC) Profile

	Infrastructure	Venture Capital
Market Size	$25-30 trillion of infrastructure assets worldwide; from 2006-2008, $250 billion of infrastructure project transactions occurred in Europe, U.S. and Canada as a result of PPP, mergers and acquisitions, and privatizations	$180 billion* of VC assets under management in 2010 (*U.S. only)
Assets	Physical assets such as roads, bridges, railways, ports, power stations, utilities, desalinization plants, solar, wind farms, water/wastewater, etc.; characterized as "economic infrastructure" or "social infrastructure"	Private, often early stage, companies developing innovative technologies for IT, energy, power, healthcare, biotechnology, environmental, defense, and industrial applications
Fund Life	12 – 15 years (longer if assets have a long development time or lifespan), with investment cycles lasting 4 years	10 years, with investment cycles lasting 3 - 5 years
Returns	Target 10% - 12% average gross returns	Target returns in excess of 20% - 25%
Risk	Lower potential failure rate; capital-intensive assets have risk of construction delays and potential for lower-than-projected usage demand; overall, risk and volatility of cash flows is much lower than VC/private equity investments	Higher potential failure rate (~ 40% - 50%) of portfolio companies due to technology risk, management risk, adoption/commercial risk, etc.

Risk/Return Profile by Asset Class (Source: Citi Alternative Investments, CAI)



States with VC Related Tax Credit Programs:

STATE	PROGRAM
Arkansas	The Arkansas Venture Capital Investment Program is a fund-of-funds program that is intended to assist emerging, expanding, relocating, and restructuring enterprises in Arkansas.
Iowa	The Iowa Fund of Funds, backed by contingent tax credits, has made commitments to 7 VC funds, with the intention to attract investment in life sciences, advanced manufacturing, IT, and value-added agriculture.
Michigan	The Venture Michigan Fund (VMF) has two fund-of-funds (VMF I, $95 million; VMF II, $120 million) that are backed by $450 million of tax voucher certificates.
Ohio	Ohio Capital Fund is a fund of funds program backed by $380M of contingent tax credits and established to increase private investment in Ohio's seed and early stage companies.
Oklahoma	The Oklahoma Capital Investment Board has established a fund of funds program backed by contingent tax credits that, as of August 2011, had made commitments to 19 venture funds.
South Carolina	SC Venture Capital Authority was allocated contingent tax credits to support venture capital investment in South Carolina and foster entrepreneurial growth.
Tennessee	The TNInvestco program allocated $200M dollars in tax credits to capitalize a cross section of VC funds.
Utah	The Utah Fund of Funds is backed by $300M of contingent tax credits and is intended to provide Utah entrepreneurs access to alternative capital.

Florida's Proposed Contingent Tax Credit Program:

Florida	Florida Infrastructure Fund is intended to use $700 million of private investment backed by a like amount of contingent tax credits that will further leverage additional private capital to create several billions of dollars of permanent infrastructure and thousands of permanent jobs, all of which will remain in Florida.

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 Commerce and Tourism Committee

BILL:	SB 1512
INTRODUCER:	Senator Evers
SUBJECT:	Unfair or Deceptive Acts or Practices Involving Motor Vehicles
DATE:	February 1, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	**Pre-meeting**
2.			BI	
3.			JU	
4.			BC	
5.				
6.				

I. Summary:

SB 1512 addresses unfair deceptive acts or practices involving motor vehicles as regulated under part VI of ch. 501, F.S. Specifically, the bill does the following: defines the term business day; creates a presuit notice requirement for filing claims relating to unfair or deceptive acts or practices against a motor vehicle dealer; as well as establishes substantive rules for the filing and handling of such notices and claims. The bill does not apply to actions by an enforcing authority, certified class action suits, other provisions of federal or state law, or personal injury or death claims.

This bill amends the following section of the Florida Statutes: 501.975, F.S.

This bill creates the following section of the Florida Statutes: 501.977, F.S.

II. Present Situation:

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA), found in part II of ch. 501, F.S., prohibits unfair methods of competition, as well as deceptive acts or practices, in the conduct of any trade or commerce.[1] Specifically, the act is designed to accomplish the following objectives:

- Simplify, clarify and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices;
- Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce; and
- Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.[2]

With respect to enforcement, s. 501.203, F.S., defines the term "enforcing authority" to mean the office of the state attorney if a violation of FDUTPA occurs in or affects the judicial circuit under the office's jurisdiction, or the Department of Legal Affairs (department) if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney. Thus, the enforcing authority may bring:

- An action to obtain a declaratory judgment that an act or practice violates FDUTPA;
- An action to enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; and
- An action on behalf of one or more consumers for the actual damages caused by an act or practice in violation of FDUTPA.[3, 4]

Similarly, s. 501.211, F.S., provides that, in any individual action brought by a consumer who has suffered a loss as a result of a violation of FDUTPA, such consumer may recover actual damages, plus certain attorney's fees and court costs. However, no damages, fees, or costs shall be recoverable under this section against a retailer who has, in good faith, engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this part.

[1] Section 501.204, F.S. (2011)
[2] Section 501.202, F.S. (2011)
[3] Section 501.207, F.S. (2011)
[4] Note that the statute stipulates that no damages shall be recoverable under this section against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated FDUTPA.

In 2001, ch. 2001-196, L.O.F., was enacted and codified as part VI of ch. 501, F.S., which dealt directly with unfair, deceptive acts or practice by a motor vehicle dealer.[5] Accordingly, the law enumerated the following actions by a dealer as unfair or deceptive acts or practices actionable under FDUTPA including, but not limited to, the following:

- Represent directly or indirectly that a motor vehicle is a factory executive vehicle or executive vehicle unless that vehicle was purchased directly from the manufacturer or a subsidiary of the manufacturer and the vehicle was used exclusively by the manufacturer, its subsidiary, or a dealer for the commercial or personal use.
- Represent the previous usage or status of a vehicle to be something that it was not, or make usage or status representations unless the dealer has correct information regarding the history of the vehicle to support the representations.
- Represent orally or in writing that a vehicle has not sustained structural or substantial skin damage unless the statement is made in good faith and the vehicle has been inspected by the dealer or his agent to determine whether the vehicle has incurred such damage.
- Require or accept a deposit from a prospective customer prior to entering into a binding contract for the purchase and sale of a vehicle unless the customer is given a written receipt that states how long the dealer will hold the vehicle from other sale, the amount of the deposit, and the conditions under which the deposit is refundable or nonrefundable.
- Increase the price of the vehicle after having accepted an order of purchase or a contract from a buyer, unless
    - A trade-in vehicle is reappraised because it subsequently is damaged or parts or accessories are removed;
    - The price increase is caused by the addition of new equipment, as required by state or federal law;
    - The price increase is caused by the revaluation of the U.S. dollar by the Federal Government, in the case of a foreign-made vehicle;
    - The price increase is caused by state or federal tax rate changes; or
    - Price protection is not provided by the manufacturer, importer, or distributor.

III. Effect of Proposed Changes:

Section 1 amends s. 501.975, F.S., to define the term "business day," which is to mean any day other than a Saturday, Sunday, or legal holiday.

Section 2 creates s. 501.977, F.S., to establish the procedure for filing a claim for unfair and deceptive trade practices against a motor vehicle dealer. A summary of the governing rules is provided below.

[5] Section 501.976, F.S. (2011)

Notice of Claim

Prior to initiating a civil lawsuit against a dealer under parts II or VI of ch. 501, F.S., a claimant must provide the dealer with written notice of the claim and the claimant's good intent to initiate litigation 15 days prior to filing his or her lawsuit. The department is authorized to adopt a notice-of-claim form that provides blank space for filling out the required information. The notice of claim shall be published on the department's Internet website. Additionally, a claimant must include the following information in the notice of claim:

- A statement that the notice of claim is provided under this section.
- The name, address, and telephone number of the claimant.
- The name and address of the dealer.
- The date and description of the transaction, event, or circumstances upon which the claim is based.
- A cite to the provisions of parts II or VI of ch. 501, F.S., which the dealer is claimed to have violated and a specific description of the facts evidencing the violation.
- A comprehensive and detailed statement describing each item for which actual damages are claimed and recoverable under part II or VI of ch. 501, F.S., and the amount claimed for each item, including, to the extent applicable, the formula or basis by which the damages are calculated.

The dealer must provide a copy of the department's notice-of-claim form to each customer at the time of each transaction and include on the form the name or position title and address of the person responsible for processing the claim. That person must be one of the following:

- The dealer's registered agent
- The party authorized to receive service of process for the dealership under s. 48.081(1), F.S.[6]
- The name and address of the dealer's business division assigned by the dealer with responsibility for processing claims.

To the extent applicable, the notice of claim must be accompanied by a copy of the document for which the claim is based on or relied upon in asserting the claim. Additionally, the notice of claim must be sent to the dealer by certified or registered U.S. postal mail by the claimant to any of the three parties described above. A dealer's failure to provide a copy of the department's notice-of-claim form to a claimant will be deemed as a waiver of the dealer's right to notice with the effect that the claimant may initiate civil litigation against the dealer automatically. The dealer must reimburse the claimant for the postal costs of providing the notice, if the dealer pays the claim and if requested by the claimant.

[6] Process against any private corporation, domestic or foreign, may be served: (a) On the president or vice president, or other head of the corporation; (b) in the absence of any person described in paragraph (a), on the cashier, treasurer, secretary, or general manager; (c) in the absence of any person described in paragraph (a) or paragraph (b), on any director; or (d) in the absence of any person described in paragraph (a), paragraph (b), or paragraph (c), on any officer or business agent residing in the state. *See* s. 48.081(1), F.S. (2011).

Civil Litigation

A claimant is precluded from initiating a civil action against a dealer under part II or VI of ch. 501, F.S., if within 15 business days after receipt of the notice of claim the dealer pays to the claimant:

- The amount of actual damages claimed in the notice
- A surcharge equal to 10 percent of the amount of actual damages claimed in the notice not to exceed a surcharge of $500. A claimant is not entitled to a surcharge if the dealer rejects or does not respond to the claimant's notice of claim.[7]

A dealer who pays the claimant for actual damages and the surcharge is not further liable to the claimant for the transaction, event, or circumstances described in the notice of claim.

Moreover, a dealer is not required to pay the claimant's attorney fees in any civil litigation initiated under parts II or VI of ch. 501, F.S., if the dealer within 15 business days after receipt of the notice of claim notifies the claimant in writing, and a court arbitrator agrees, to the following:

- The amount claimed is not supported by the underlying facts described in the notice of claim, generally accepted accounting principles,
- The amount claimed includes items that are not recoverable under parts II or VI of ch. 501, F.S., or
- The claimant has not substantially complied with this section.

Statute of Limitation

Any time limitation[8] on initiating civil litigation under part II or part VI of ch. 501, F.S., is tolled for 15 business days or for such other period agreed to in writing by the parties. The date for tolling the statute of limitations will commence the day after the notice of claim is postmarked by the U.S. postal service.

Miscellaneous

A dealer's payment of the claimant's actual damages or offer to pay such damages is not an admission of any wrongdoing by the dealer or admissible as evidence.

Moreover, a claim is deemed paid on the date that a draft or other valid payment is posted by the U.S. Postal Service; date-stamped with a verifiable tracking number by a common carrier; or delivered, if a postmark or verifiable tracking number is not available.

[7] Note that s. 57.105, F.S., governs the award of attorney's fees.
[8] The specific time limitation associated with a specific cause of action can be found in s. 95.11, F.S.

Exceptions

This section will not apply to the following actions:

- A claim for actual damages brought and certified as a maintainable class action.
- An action brought by the enforcing authority, which is either the office of the state attorney or department as defined in s. 501.203, F.S.
- An act or practice required or specifically authorized by federal law or any provision of state law found outside of ch. 501, F.S.
- A claim for personal injury or death or a claim for damage to tangible personal property other than the property that is the subject of the customer transaction.

Section 3 provides that this act shall take effect upon becoming a law.

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:

Separation of Power

Article II, Section 3 of the Florida Constitution, provides that "no person belonging to one branch shall exercise any powers appertaining to either of the other branches." Accordingly, the power to create procedural rights is reserved to the Supreme Court while the Legislature is endowed with the power to create substantive rights.

When discerning whether a statute is regulating substantive or procedural matters, the Florida Supreme Court has stated that "if a statute governs a substantive right or sets the bound of substantive right, then the statute is within the power of the Legislature and therefore constitutional."[9] Thus, the Florida Supreme Court has held that imposing a condition, such as a pre-suit notice requirement, on the arising of a cause of action is constitutional and not an improper attempt by the Legislature to invade upon the rule-

[9] *Campagnulo v. Williams*, 563 So. 2d 733, 734 (Fla. 4th DCA 1990) (quoting *VanBibber v. Hartford Accident and Indemnity Ins. Co.*, 439 So. 2d 880 (Fla. 1983)).

making power of the judicial branch.[10] As such, the creation of s. 501.977, F.S., by SB 1512 should not implicate any concerns with respect to separation of powers.

Access to Court

Article 1, Section 21 of the Florida Constitution, provides that "the courts shall be open to every person for redress of any injury and just shall be administered without sale, denial, or delay." Presuit notice requirements have been recognized and upheld for numerous causes of action[11] and generally are required to be interpreted by the courts in a manner that favors access.[12] As such, the creation of s. 501.977, F.S., by SB 1512 should not implicate any constitutional concerns with respect to access to courts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Court Administrator's 2011 Judicial Impact Statement, SB 1512 would afford claimants a brief cooling-off period during which potential defendants are asked to weigh the value of prospective claims. As such, the bill is structured in a manner that promotes settlement and consequent reduction in both court work load and expenditure of judicial time. However, the fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the potential decrease in court workload and judicial time.

VI. Technical Deficiencies:

SB 1512 provides that "a dealer who pays the claimant for actual damages and the surcharge is not further liable to the claimant for the transaction, event, or circumstances described in the notice of claim." However, it is unclear whether the term "transaction" and the subsequent listing of the more narrow terms, "event" and "circumstances," is intended to foreclose future claims concerning a separate grievance that arose from the same transaction.

Specifically, the use of such a broad term followed by more narrower terms may lead to a confusing interpretation since it is unclear whether the settling of one claim arising out of a particular transaction will foreclose future claims relating to a separate grievance that arose from

[10] *See Id.*
[11] *See* ss. 627.736(10), 766.106(2) and 558.004, F.S. (2011)
[12] *Weinstock v. Groth,* 629 So. 2d 835, 838 (Fla. 1993).

the same transaction by the fact that the earlier matter was previously settled under the provisions created by this section.

VII. Related Issues:

SB 1512 provides that the requirements, as created by this bill, for filing a civil lawsuit against a dealer under parts II or VI, of ch. 501, F.S., will not apply to a claim for actual damages brought and certified as a maintainable class action. However, because the language limits this exclusion to only a certified class action, concern exists that this will continue to encourage the "picking-off" of the named class representative[13] during the pre-certification phase of a class-action suit."[14, 15] The consequence for removing the class representative by a tender or offer of payment for his or her damages results in the class representative's claim becoming moot, which will result in a dismissal of the entire class action.[16]

Federal case law has developed with respect to this issue and some courts have implemented legal tests for averting the dismissal of a class-action during the pre-certification phase.[17] In Florida, the state of the current law remains unclear; however, the Third District Court of Appeal has briefly stated that "a [defendant] cannot simply try to 'pick off' a named class representative."[18]

VIII. Additional Information:

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

None.

B. Amendments:

None.

[13] The named class representative refers to the plaintiff filing on behalf of members of the class that are similarly situated.
[14] The 4 prerequisites for maintaining a class action are as follows: (1) the members of the class must be so numerous that it is impractical to join each member; (2) the claim or defense must raise questions of law or fact that are common to the individual members; (3) the claim or defense of the representative parties must be typical of those that would be asserted by individual members; (4) the representative party must be able to fairly and adequately protect and represent the interest of each member of the class. Fla. R. Civ. P. 1.220(a).
[15] "The purpose of the class action is to provide litigants who share common questions of law and fact with an economically viabe means of addressing their needs in court." *Johnson v. Plantation Gen. Hosp. Ltd. P'ship,* 641 So. 2d 58, 60 (Fla. 1994).
[16] *See Taran v. Blue Cross Blue Shield of Fla. Inc.*, 685 So. 2d 1004, 1006 (Fla. 3d. DCA 1997) ("If none of the named plaintiffs purporting to represent a class establishes a requisite case or controversy with the defendant, none may seek relief on behalf of himself or any other member of the class.") (holding trial court could rule on standing before considering whether to certify class).
[17] *See Weiss v. Regal Collections*, 385 F.3d 337, 348 (3d. Cir. 2004) (holding that where a defendant makes an offer to an individual claim that has the effect of mooting class relief asserted in the complaint, absent undue delay in filing a motion for class certification, the appropriate course is to relate the certification motion back to the filing of the class complaint).
[18] *Allstate Indemnity Co. v. De la Rosa,* 800 So. 2d 245, 246 (Fla. 3d DCA 2001), *review denied,* 823 So. 2d 122 (Fla. 2002).

344094

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 501.975, Florida Statutes, is amended to read:

501.975 Definitions.—As used in this part ~~s. 501.976~~, the term ~~following terms shall have the following meanings~~:

(1) "Customer" includes a customer's designated agent.

(2) "Dealer" means a motor vehicle dealer as defined in s. 320.27, but does not include a motor vehicle auction as defined in s. 320.27(1)(c)4.

(3) "Replacement item" means a tire, bumper, bumper fascia, glass, in-dashboard equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or damaged due to vandalism while the new motor vehicle is under the control of the dealer and the items are replaced with original manufacturer equipment, unless an item is replaced due to a crash, collision, or accident.

(4) "Threshold amount" means 3 percent of the manufacturer's suggested retail price of a motor vehicle or $650, whichever is less.

(5) "Vehicle" means any automobile, truck, bus, recreational vehicle, or motorcycle required to be licensed under chapter 320 for operation over the roads of Florida, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power.

Section 2. Section 501.98, Florida Statutes, is created to read:

501.98 Notice of claim.—

(1) As a condition precedent to initiating any civil litigation or arbitration arising under this part against a motor vehicle dealer, a claimant must give the dealer written notice of the claimant's intent to initiate litigation against the dealer not less than 15 days before initiating the litigation.

(2) The notice of claim, which must be completed in good faith, must:

(a) State the name, address, and telephone number of the claimant;

(b) Provide the date and a description of the transaction, event, or circumstance that is the basis of the claim;

(c) Describe the underlying facts of the claim, including a comprehensive and detailed statement describing each item of actual damage or other relief or remedy demanded; and

(d) To the extent available, be accompanied by all documents upon which the claim is based or upon which the claimant is relying to assert the claim.

(3) The notice of claim must be delivered to the dealer by United States mail or other nationally recognized carrier, return receipt requested. The cost of delivery shall be reimbursed to the claimant by the dealer if the dealer pays the claim and if the claimant requests reimbursement of the costs in the notice of claim.

(4) Notwithstanding any other provision of this part, a claimant may not initiate civil litigation against a dealer for a claim arising under this part which is related to, or in connection with, the transaction or event described in the notice of claim if the dealer pays the claimant, within 15 days after receiving the notice of claim, the amount requested as specified in paragraph (2)(c) and the cost of delivering the notice if requested pursuant to subsection (3) and provides any other remedy or relief sought by the claimant.

(5) For purposes of this section, payment by a dealer is deemed paid on the date a draft or other valid instrument that is equivalent to payment is placed in the United States mail, or another nationally recognized carrier, in a properly addressed,

postpaid envelope, or, if not so posted, on the date of delivery.

(6) Notwithstanding any other provision of this part, a dealer is not required to pay the claim of the claimant in any action brought under this part if:

(a) The dealer, within 15 days after receiving the claimant's notice of claim, notifies the claimant in writing, and a court or arbitrator agrees, that the amount claimed is not supported by the facts of the transaction or event described in the notice of claim or by generally accepted accounting principles or includes items not properly recoverable under this part; or

(b) The claimant fails to substantially comply with this section.

(7) Payment of the actual damages as set forth in this section:

(a) Does not constitute an admission of any wrongdoing or liability by the dealer; and

(b) Serves to release the dealer from any claim, suit, or other action that could be brought arising out of or in connection with the specific transaction, event, or occurrence described in the notice of claim.

(8) Mailing of the notice of claim required by this section tolls the applicable statute of limitations for an action under this part for 15 days following the date the notice is received by the dealer or any extended period agreed to by the parties. Upon denial of claim, the claimant has the remainder of the statute of limitations or 60 days, whichever is greater, in which to file an action under this part.

(9) A dealer waives the requirement of this section that a claimant serve a notice of claim prior to initiating civil litigation if the dealer fails to provide the following statement in writing to the claimant at the time of sale:

Section 501.98, Florida Statutes, requires that at least 15 days before you initiate civil litigation, including an arbitration action, against a motor vehicle dealer for violation of the Florida Deceptive and Unfair Trade Practices Act (Chapter 501, Florida Statutes), you must provide written notice to the dealer. This notice must include the following:

(a) Your name, address, and telephone number;

(b) A description and date of the transaction that resulted in the claim;

(c) A description of the underlying facts of the claim, including a comprehensive and detailed statement describing each item of actual damage demanded; and

(d) To the extent available, all documents upon which the claim is based or upon which you rely to assert the claim.

Notice may be provided to this dealership by United States mail or other nationally recognized carrier, return receipt requested (cost of delivery shall be reimbursed to the claimant by the dealer if the dealer pays the claim and if the claimant requests reimbursement of the costs in the notice of claim) to

the following:

...(Dealership Name)...
Attention: ..(Dealership Representative)...
...(Dealership Address)...

(10) This section does not apply to:
(a) Any claim brought as a class action; or
(b) Any action brought by the enforcing authority.
(11) If a claimant initiates civil litigation under this part without first complying with the requirements of this section or files a claim as a class action, but is ultimately not certified as a class, the court, upon motion, may abate the litigation, without prejudice, to permit the claimant to comply with the provisions of this section and allow the dealer the opportunity to accept or reject the demand as if it had been sent in accordance with subsection (1), and no attorney fees shall be recoverable by the claimant under this chapter for legal services rendered prior to the claimant's compliance with the notice requirement in this section. Notice by a single claimant made for the claimant on behalf of herself or himself and others similarly situated constitutes notice for the entire putative class.
(12) This section applies to all civil litigation whether maintained in court or by arbitration.
(13) A claimant is not entitled to recover attorney fees in an action under this part against a motor vehicle dealer's employees, agents, principals, sureties, or insurers for actions for which that motor vehicle dealer could also be held liable

344094

unless the motor vehicle dealer is joined in that action and the claimant has complied with this section as to such claim.

Section 3. Subsection (1) of section 501.213, Florida Statutes, is amended to read:

501.213 Effect on other remedies.—

(1) The remedies of this part are in addition to remedies otherwise available for the same conduct under state or local law. Proof of reliance on a representation, omission, act, or practice alleged to be in violation of this part is not required in any action brought under this part, and causation of loss or of being aggrieved shall be presumed upon an objective showing of an act, practice, representation, or omission in violation of this part.

Section 4. 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 unfair or deceptive acts or practices involving motor vehicles; amending s. 501.975, F.S.; conforming provisions; creating s. 501.98, F.S.; providing for the disposition of certain claims against motor vehicle dealers before civil litigation; requiring that a claimant provide written notice of such claim to the motor vehicle dealer before initiating litigation; specifying the required contents and procedures for providing the written

notice; requiring that a motor vehicle dealer provide a copy of the notice-of-claim form to each customer; authorizing a claimant to initiate litigation without prior notice to a motor vehicle dealer that does not provide a copy of the notice-of-claim form; prohibiting a claimant from initiating litigation against a motor vehicle dealer that pays the actual damages claimed within a specified period; limiting a motor vehicle dealer's further liability upon payment of a claim; limiting a motor vehicle dealer's liability for payment of attorney fees under certain circumstances; tolling time limitations for initiating litigation against a motor vehicle dealer under certain circumstances; limiting admissibility of a motor vehicle dealer's payment or offer to pay a claimant's actual damages; providing for applicability; amending s. 501.213, F.S.; clarifying the availability of remedies under part II of ch. 501, F.S., upon an objective showing of certain acts, practices, representations, or omissions; providing an effective date.

397606

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment to Amendment (344094) (with title amendment)

Delete lines 160 - 170.

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

And the title is amended as follows:

Delete lines 203 - 206

and insert:

applicability; providing an

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL:	CS/SB 1314
INTRODUCER:	Commerce and Tourism Committee and Senators Gaetz and Gardiner
SUBJECT:	Career-themed Courses
DATE:	February 3, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	deMarsh-Mathues	ED	**Favorable**
2.	Hrdlicka	Hrdlicka	CM	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1314 streamlines provisions included in the Career and Professional Academy (CAPE) law, as well as provisions established in 2011 for similar academies at the middle school level.[1] The CS allows for greater access to attainment of industry certifications in high demand fields, thus supporting critical workforce needs and providing an economic benefit to the state.

This CS amends ss. 1003.491, 1003.492, 1003.493, 1003.4935, and 1011.62 of the Florida Statutes.

II. Present Situation:

The Career and Professional Education (CAPE) Act was enacted by the 2007 Florida Legislature to attract and retain targeted, high-value industries and to develop a knowledge-based workforce.[2] The legislation has established significant partnerships among workforce and economic development agencies and local education communities, and resulted in meaningful

[1] Chapter 2011-175, L.O.F.
[2] Chapter 2007-216, L.O.F.

career and postsecondary opportunities for Florida's secondary students.[3] Current law requires each district school board to develop, in collaboration with the local workforce board and area postsecondary institutions, a 5-year strategic plan to address and meet local and regional workforce demands.[4] A focus of the plan was the requirement for at least one operational career and professional academy per school district beginning with the 2008-09 school year.[5] As specified in statute, career and professional academies must integrate a rigorous academic curriculum with an industry-specific curriculum that leads to an industry certification[6] in high-skill, high-wage, and high-demand occupations.[7] Additional requirements include opportunities for students to earn nationally recognized industry certifications, postsecondary credit, Bright Futures scholarships, and expanded offerings of integrated courses that combine academic content with technical skills.

For each student enrolled in a career and professional academy who graduates with a standard high school diploma and who earns a certification included on the "Industry Certification Funding List," the district of instruction may earn up to 0.3 full-time equivalent (FTE) student membership for the following year's funding calculation in the Florida Education Finance Program (FEFP).[8] In 2010-11, 9,712 students generated 2,913.6 additional FTE in the K-12 funding formula.[9] Because the funding is awarded retroactively, the data reported for 2009-10 is used for the 2010-11 FEFP calculation.[10]

Profile of Career and Professional Academies[11]

In 2010-11, the fourth year of implementation of the Florida Career and Professional Education Act, school districts registered 1,298 career and professional academies, representing all of Florida's 67 school districts.[12]

[3] Presentation by the Department of Education, Okaloosa County School District, and St. John's County School District to the Senate Pre-K – 12 Appropriations Committee on March 15, 2011. The superintendent of schools in St. Johns County testified that the CAPE model is the most important and effective legislation of his 24-year career. Presentations available at http://www.flsenate.gov/Committees/Show/BEA/ (last visited 1/30/2012).

[4] Section 1003.491(2), F.S.

[5] Section 1003.492(2), F.S., requires the Department of Education (DOE) to adopt rules for implementing an industry certification process. Rule 6A-6.0573, F.A.C., provides for a collaborative two-staged process by Workforce Florida, Inc. (WFI). The DOE annually establishes the Industry Certification Funding List, a subset of items included on the WFI Comprehensive Industry Certification List. References to years in this bill analysis refer to school years unless otherwise indicated.

[6] Industry certifications are based on assessment of skills by an independent, third-party certifying entity using predetermined standards for knowledge, skills and competencies. Successful completion of the assessment results in the award of a time-limited credential that is nationally recognized and applicable to an occupation included in the workforce system's targeted occupation list or otherwise determined to be an occupation that is critical, emerging or addresses a local need. See the *CAPE Enrollment and Performance Report for 2009-2010*, pg. 3, on file with the Senate Committee on Pre-K – 12 Education.

[7] Section 1003.493(4), F.S.

[8] Section 1011.62(1)(p), F.S. Certifications earned through dual enrollment are not eligible for additional FTE. The additional FTE may not exceed 0.3 per student (i.e., no repeat allocations for additional certifications).

[9] Information provided by staff of the DOE Office of Career and Adult Education, January 20, 2012. On file with the Senate Committee on Pre-K – 12 Education.

[10] *Id.*

[11] *Id.*

[12] *Id.*

History of Secondary Career and Professional Academies

	2008-09	2009-10	2010-11
Academies Registered	490	838	1,298
CAPE Academy Enrollment	53,324	102,430	154,327

The most prevalent career areas represented by academies registered in 2009-10 were information technology, health sciences, and hospitality and tourism.[13]

Performance of Career and Professional Academy Students[14]
Among the 154,327 students enrolled in career and professional academies, 24,910 or 16.1 percent were reported as having earned one or more approved industry certifications in their high school careers going back to the 2007-08 school year; 20,644 students earned certifications in 2010-11 alone. A total of 31,389 assessments were attempted by academy students in 2010-11, of which 23,088 were passed, resulting in a pass rate of 73.6 percent. Forty-one percent of industry certifications earned by career and professional academy students were awarded to 12th graders. Among ninth-graders, 2,887 certifications were earned, representing 12.5 percent of total certifications reported.[15]

2010-2011 Industry Certifications Earned by Grade Level[16]

Grade Level	Certifications Earned	Percent
9	2,887	12.5%
10	4,193	18.2%
11	6,468	28%
12	9,540	41.3%
Total	23,088	100.0%

[13] *Id.*
[14] Information regarding CAPE Academy performance can be found in DOE's "Career and Professional Academy Enrollment and Performance Report, 2010-11" (December 2011), available at http://www.fldoe.org/workforce/pdf/capepr1011.pdf (last visited 1/30/2012).
[15] The progression in the number of certifications as grade level increases is expected given the time and training required to earn industry certifications.
[16] *See* CAPE Performance Report, Table 6, p. 12. Updated information provided by staff of the DOE Office of Career and Adult Education, on file with the Senate Committee on Pre-K – 12 Education.

Highlights of Performance Comparisons Among Non-Academy, Academy, and Industry Certified Academy Students, 2010-11[17]

Performance Indicator	Non-CAPE	CAPE, No Certification	Non-CAPE + Certification	CAPE and Certification
Average GPA	2.46	2.58	2.79	3.00
Chronically Absent	16.3%	15.7%	11.2%	9.9%
At Least One Disciplinary Action	20.6%	20.5%	12.8%	10.9%
Dropout Rate	2.1%	0.9%	0.6%	0.3%
12th Graders Earning Standard Diploma	73.9%	85.9%	93.3%	96.1%
At Least One Accelerated Course	22.9%	25.4%	38.8%	41.2%
Bright Futures Eligible Seniors (2009-10)*	27.9%	25.9%		43.7%

* Updated information not yet available.

Additionally, academy seniors earning certifications were much more likely to be Bright Futures scholarship eligible than their peers. Among academy seniors who earned at least one industry certification, 43.7 percent were eligible for Bright Futures compared to 25.9 percent among academy seniors who did not earn a certification.[18]

Factors Included in the Calculation of High School Grades

The 2008 Legislature enacted significant changes to the high school grading formula.[19] Beginning with the 2009-10 school year, in addition to the statewide assessment results in grades 9, 10, and 11, the law requires an equal focus be placed on access to and performance in rigorous, accelerated coursework, college readiness,[20] and graduation rates for all students including those who are academically at-risk.[21]

[17] *Id* at Table 12, p. 18.
[18] *Id.*
[19] Chapter 2008-235, L.O.F.
[20] In 2007, 54 percent of high school graduates who enrolled in community college required remediation in at least one subject. The Postsecondary Education Readiness Test (P.E.R.T.) is Florida's customized common placement test. The purpose of the P.E.R.T. is accurate course placement based on the student's skills and abilities. The P.E.R.T. is aligned with the Postsecondary Readiness Competencies identified by Florida faculty as necessary for success in entry-level college credit coursework. The P.E.R.T. assessment system includes Placement and Diagnostic tests in mathematics, reading and writing. *See* DOE's P.E.R.T. website available at http://www.fldoe.org/cc/pert.asp (last visited 1/30/2012).
[21] Section 1008.34(3)(b)3., F.S.

Middle School Model
Beginning in 2011-12, districts were required to register career and professional academies offered in middle school with the Department of Education (DOE).[22] In 2011-12, 56 middle school academies were registered with DOE.[23]

III. Effect of Proposed Changes:

CS/SB 1314 streamlines provisions included in the CAPE law, as well as provisions established in 2011 for similar academies at the middle school level. The CS allows for greater access to attainment of industry certifications in high demand fields, thus supporting critical workforce needs and providing an economic benefit to the state.

Under the CS:

- Secondary schools would no longer be required to have in place a full-scale career academy in order to be eligible for industry certification bonus funding. This provision maintains the integrity of CAPE and the rigorous coursework required for attainment of industry certifications, but removes additional, non-essential steps required of schools to earn the bonus funding.
- Secondary schools would still be required to offer rigorous courses that lead to industry certifications in high wage, high skill, and high demand occupations and to employ instructors who hold industry certifications.
- The strategic 5-year plan developed by the school district in collaboration with regional workforce boards and postsecondary institutions determines areas of academic emphasis to meet workforce needs. Under the CS, there would now be a 3-year plan. This provision allows for a more timely response to meet critical workforce needs.
- The 3-year plan would also encompass additional strategies, including strategies for providing personalized student advisement, plans to sustain and improve career-themed courses and career and professional academies, strategies to recruit students into the career-themed courses, and strategies to redirect appropriate funding to support such programs.
- The curriculum review committee, responsible to review and approve newly developed workforce-related courses, must now approve or deny proposals within 30 days instead of 60.
- The appropriation cap to fund the bonus awarded for the attainment of certifications is increased from $15 million to $30 million.

Based on the requirements in s. 1011.62(1)(o), F.S., and Rule 6A-6.0573(6), F.A.C., a student must meet all of the following conditions for the additional FTE membership funding for an earned industry certification:

- Be enrolled in career-themed courses or a career and professional academy that leads to industry certification;

[22] Chapter 2011-175, L.O.F., established criteria for middle school career and professional academies relating to alignment to high school career and professional academies, an opportunity to earn an industry certification, and partnerships with the business community.
[23] DOE 2012 Agency Legislative Bill Analysis for SB 1314 (1/1/2012), on file with the Senate Committee on Pre-K – 12 Education.

- Attain the highest level of certification on the Industry Certification Funding List; and
- Receive a standard high school diploma.

This CS provides an effective date of July 1, 2012.

Other Potential Implications:
Career-themed courses will need to be identified based on a course with an industry-specific curriculum aligned directly to priority workforce needs established by the regional workforce board or the Department of Economic Opportunity. Since it is not a requirement that all career education programs (and courses), under s. 1003.01, F.S., lead to industry certification, the DOE or districts would be required to identify which career-themed courses were being offered in a given year.

The accountability requirements would be based on students enrolled in career-themed courses, instead of students in career and professional academies who take an industry certification exam.

As the CS is currently written, eligibility for the additional FTE membership calculation would be based on successful completion of career-themed courses and attainment of an industry certification rather than participation in a career and professional academy.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS provides for greater access to attainment of industry certifications in high demand fields, thus supporting critical workforce needs and providing an economic benefit to the state.

C. Government Sector Impact:

The appropriation cap to fund the bonus awarded for the attainment of certifications is increased from $15 million to $30 million. The appropriation has never reached the $15 million level and the amount has never had to be pro-rated because the calculation exceeded the appropriation cap.[24] The amount is $10.1 million in the 2011-12 3rd FEFP calculation.[25] However, in 2012-13, the tiered bonus will begin to take place and that will also affect the funding.[26]

VI. Technical Deficiencies:

The current performance factors are more directly aligned to program completion rather than the successful completion of a course. While there is much data to show the impact of a student's successful completion of a certain core academic course (Algebra 1, Biology, etc) there is not comparative data available at this time for a "career-themed course." Thus, the term "career-themed course" could be amended to refer to "career-themed programs" in some instances. While the term "career- themed courses" is used, the intent or application of the term is not clear.[27]

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Commerce and Tourism on February 2, 2012:
This committee substitute provided clarification throughout, made changes recommended by DOE, and moved portions of planning and strategies from the career academies partnerships to be included in the 3-year strategic plan.

B. Amendments:

None.

[24] *Id.*
[25] Figure obtained from Senate Education Appropriations staff, January 23, 2012.
[26] *See* s. 1011.62(1) (o), F.S.
[27] DOE 2012 Agency Legislative Bill Analysis for SB 1314.

260108

LEGISLATIVE ACTION

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

The Committee on Commerce and Tourism (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 1003.491, Florida Statutes, is amended to read:

1003.491 Florida Career and Professional Education Act.—The Florida Career and Professional Education Act is created to provide a statewide planning partnership between the business and education communities in order to attract, expand, and retain targeted, high-value industry and to sustain a strong, knowledge-based economy.

260108

(1) The primary purpose of the Florida Career and Professional Education Act is to:

(a) Improve middle and high school academic performance by providing rigorous and relevant curriculum opportunities;

(b) Provide rigorous and relevant career-themed courses that articulate to postsecondary-level coursework and lead to industry certification;

(c) Support local and regional economic development;

(d) Respond to Florida's critical workforce needs; and

(e) Provide state residents with access to high-wage and high-demand careers.

(2) Each district school board shall develop, in collaboration with regional workforce boards, economic development agencies, and postsecondary institutions approved to operate in the state, a strategic 3-year ~~5-year~~ plan to address and meet local and regional workforce demands. If involvement of a regional workforce board or an economic development agency in the strategic plan development is not feasible, the local school board, with the approval of the Department of Economic Opportunity, shall collaborate with the most appropriate regional business leadership board. Two or more school districts may collaborate in the development of the strategic plan and offer career-themed courses or a career and professional academy as a joint venture. The strategic plan must describe in detail provisions for the efficient transportation of students, the maximum use of shared resources, access to courses aligned to state curriculum standards through virtual education providers legislatively authorized to provide part-time instruction to middle school students, and an objective review of proposed

42 career-themed ~~career and professional academy~~ courses to
43 determine if the courses will lead to the attainment of industry
44 certifications included on the Industry Certified Funding List
45 pursuant to rules adopted by the State Board of Education. Each
46 strategic plan shall be reviewed, updated, and jointly approved
47 every 3 ~~5~~ years by the local school district, regional workforce
48 boards, economic development agencies, and state-approved
49 postsecondary institutions.
50 (3) The strategic 3-year ~~5-year~~ plan developed jointly by
51 the local school district, regional workforce boards, economic
52 development agencies, and state-approved postsecondary
53 institutions shall be constructed and based on:
54 (a) Research conducted to objectively determine local and
55 regional workforce needs for the ensuing 3 ~~5~~ years, using labor
56 projections of the United States Department of Labor and the
57 Department of Economic Opportunity;
58 (b) Strategies to develop and implement career-themed
59 courses ~~career academies~~ based on those careers determined to be
60 in high demand;
61 (c) Strategies to provide shared, maximum use of private
62 sector facilities and personnel;
63 (d) Strategies that ensure instruction by industry-
64 certified faculty and standards and strategies to maintain
65 current industry credentials and for recruiting and retaining
66 faculty to meet those standards;
67 (e) Strategies to provide personalized student advisement,
68 including a parent-participation component, and coordination
69 with middle schools to promote and support career-themed courses
70 and education planning as required under s. 1003.4156. As part

of the coordination with middle schools, career-themed courses must provide information to middle school students about secondary and postsecondary career education courses that lead to industry certification;

(f) ~~(e)~~ Alignment of requirements for middle school and high school career-themed courses ~~career exploration, middle and high school career and professional academies~~ leading to industry certification, postsecondary credit, and high school graduation requirements;

(g) ~~(f)~~ Provisions to ensure that career-themed courses ~~offered through career and professional academies~~ are academically rigorous, meet or exceed appropriate state-adopted subject area standards, result in attainment of industry certification, and, when appropriate, result in postsecondary credit;

(h) Plans to sustain and improve career-themed courses and career and professional academies;

(i) ~~(g)~~ Strategies to improve the passage rate for industry certification examinations if the rate falls below 50 percent;

(j) ~~(h)~~ Strategies to recruit students into career-themed courses, ~~Establishment of student eligibility criteria in career and professional academies~~ which include opportunities for students who have been unsuccessful in traditional classrooms but who are interested in enrolling in career-themed courses ~~show aptitude to participate in academies~~. School boards shall address the analysis of middle school ~~eighth grade~~ student achievement data to provide opportunities for students who may be deemed ~~as~~ potential dropouts to enroll ~~participate~~ in career-themed courses ~~career and professional academies~~;

(k) ~~(i)~~ Strategies to provide sufficient space within career-themed courses ~~academies~~ to meet workforce needs and to provide access to all interested and qualified students;

(l) ~~(j)~~ Strategies to implement career-themed courses ~~career and professional academy training~~ that lead ~~leads~~ to industry certification in juvenile justice education programs ~~at Department of Juvenile Justice facilities~~;

(m) ~~(k)~~ Opportunities for high school students to earn weighted or dual enrollment credit for higher-level career-themed ~~career and technical~~ courses;

(n) ~~(l)~~ Promotion of the benefits of the Gold Seal Bright Futures Scholarship;

(o) ~~(m)~~ Strategies to ensure the review of district pupil-progression plans and to amend such plans to include career-themed ~~career and professional~~ courses, and to include courses that may qualify as substitute courses for core graduation requirements and those that may be counted as elective courses; ~~and~~

(p) ~~(n)~~ Strategies to provide professional development for secondary guidance counselors on the benefits of career-themed courses that lead to industry certification; and ~~career and professional academies.~~

(q) Strategies to redirect appropriated career funding to career-themed courses and career and professional academies.

(4) The State Board of Education shall establish a process for the continual and uninterrupted review of newly proposed core secondary courses and existing courses requested to be considered as core courses to ensure that sufficient rigor and relevance is provided for workforce skills and postsecondary

education and aligned to state curriculum standards. The review of newly proposed core secondary courses shall be the responsibility of a curriculum review committee whose membership is approved by Workforce Florida, Inc., ~~the Workforce Florida Board~~ as described in s. 445.004, and shall include:

(a) Three certified high school guidance counselors recommended by the Florida Association of Student Services Administrators.

(b) Three assistant superintendents for curriculum and instruction, recommended by the Florida Association of District School Superintendents and who serve in districts that offer career-themed courses ~~operate successful career and professional academies~~ pursuant to s. 1003.492. Committee members in this category shall employ the expertise of appropriate subject area specialists in the review of proposed courses.

(c) Three workforce representatives recommended by the Department of Economic Opportunity.

(d) Three admissions directors of postsecondary institutions accredited by the Southern Association of Colleges and Schools, representing both public and private institutions.

(e) The ~~Deputy~~ Commissioner of Education, or his or her designee, responsible for K-12 curriculum and instruction. The Deputy Commissioner shall employ the expertise of appropriate subject area specialists in the review of proposed courses.

(5) The curriculum review committee shall review ~~submission and review of~~ newly proposed core courses ~~shall be conducted~~ electronically~~,~~ and approve or deny each proposed core course ~~shall be approved or denied~~ within 30 ~~60~~ days. All courses approved as core courses for purposes of middle school promotion

260108

and high school graduation shall be immediately added to the Course Code Directory. Approved core courses shall also be reviewed and considered for approval for dual enrollment credit. The Board of Governors and the Commissioner of Education shall jointly recommend an annual deadline for approval of new core courses to be included for purposes of postsecondary admissions and dual enrollment credit the following academic year. The State Board of Education shall establish an appeals process in the event that a proposed course is denied which shall require a consensus ruling by the Department of Economic Opportunity and the Commissioner of Education within 15 days.

Section 2. Section 1003.492, Florida Statutes, is amended to read:

1003.492 Industry-certified career-themed courses ~~career education programs~~.—

(1) Career-themed courses must ~~Career and professional academies shall~~ be coordinated with the relevant and appropriate industry ~~indicating that all components of the program are relevant and appropriate~~ to prepare a ~~the~~ student for further education or for employment in that industry.

(2) The State Board of Education shall use the expertise of Workforce Florida, Inc., to develop and adopt rules pursuant to ss. 120.536(1) and 120.54 for implementing an industry certification process. Industry certification shall be defined by the Department of Economic Opportunity, based upon the highest available national standards for specific industry certification, to ensure student skill proficiency and to address emerging labor market and industry trends. A regional workforce board or a school principal ~~career and professional~~

 260108

~~academy~~ may apply to Workforce Florida, Inc., to request additions to the approved list of industry certifications based on high-demand job requirements in the regional economy. The list of industry certifications approved by Workforce Florida, Inc., and the Department of Education shall be published and updated annually by a date certain, to be included in the adopted rule.

(3) The Department of Education shall collect student achievement and performance data in industry-certified career-themed courses ~~career education programs~~ and shall work with Workforce Florida, Inc., in the analysis of collected data. The data collection and analyses shall examine the performance of participating students over time. Performance factors shall include, but not be limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, and industry certification~~, and employer satisfaction~~. The results of this study shall be submitted to the President of the Senate and the Speaker of the House of Representatives annually by December 31.

Section 3. Section 1003.493, Florida Statutes, is amended to read:

1003.493 Career-themed courses ~~Career and professional academies~~.—

(1) A "career-themed course" ~~"career and professional academy"~~ is a course in an ~~research-based program that integrates a rigorous academic curriculum with an~~ industry-specific curriculum aligned directly to priority workforce needs established by the regional workforce board or the Department of

Economic Opportunity. ~~Career and professional academies shall be offered by~~ Public schools and school districts shall offer career-themed courses. The Florida Virtual School is encouraged to develop and offer rigorous career-themed ~~career and professional~~ courses as appropriate. A student who enrolls in and completes a career-themed course or a sequence of career-themed courses ~~Students completing career and professional academy programs~~ must receive ~~a standard high school diploma, the highest available industry certification, and~~ opportunities to earn postsecondary credit if the credits for career-themed courses can be articulated to ~~academy partners with~~ a postsecondary institution approved to operate in the state.

(2) The goals of career-themed courses ~~a career and professional academy~~ are to:

(a) Increase student academic achievement and graduation rates through integrated academic and career curricula.

(b) Prepare graduating high school students to make appropriate choices relative to employment and future educational experiences.

(c) Focus on career preparation through rigorous academics and industry certification.

(d) Raise student aspiration and commitment to academic achievement and work ethics through relevant coursework.

(e) Promote acceleration mechanisms, such as dual enrollment and~~,~~ articulated credits ~~credit, or occupational completion points~~, so that students may earn postsecondary credit while in high school.

(f) Support the state's economy by meeting industry needs for skilled employees in high-skill, high-wage, and high-demand

occupations.

(3) A career-themed course may be offered in one of the following ~~Existing career education courses may serve as a foundation for the creation of a career and professional academy. A career and professional academy may be offered as one of the following small learning communities~~:

(a) A school-within-a-school career academy, as part of an existing high school, which ~~that~~ provides courses in one occupational cluster. Students who attend ~~in~~ the high school are not required to attend ~~be students in~~ the academy.

(b) A total school configuration providing multiple career-themed courses that are ~~academies, each~~ structured around an occupational cluster. The majority of students attending ~~Every student in~~ the school also attend the ~~is in an~~ academy.

(4) A career-themed course ~~Each career and professional academy~~ must:

(a) Consider ~~Provide a rigorous standards-based academic curriculum integrated with a career curriculum. The curriculum must take into consideration~~ multiple styles of student learning; promote learning by doing through application and adaptation; maximize relevance of the subject matter; enhance each student's capacity to excel; and include an emphasis on work habits and work ethics.

(b) Include one or more partnerships with postsecondary institutions, businesses, industry, employers, economic development organizations, or other appropriate partners from the local community. These ~~Such~~ partnerships shall be delineated in articulation agreements to provide for career-themed ~~career-based~~ courses that earn postsecondary credit. The ~~Such~~

agreements may include articulation between the career-themed courses ~~academy~~ and public or private 2-year and 4-year postsecondary institutions and technical centers. The Department of Education, in consultation with the Board of Governors, shall establish a mechanism to ensure articulation and transfer of credits to postsecondary institutions in this state. The ~~Such~~ partnerships must provide opportunities for:

1. Instruction from highly skilled professionals who possess industry-certification credentials for courses they are teaching.

2. Internships, externships, and on-the-job training.

3. A postsecondary degree, diploma, or certificate.

4. The highest available level of industry certification.

5. Maximum articulation of credits pursuant to s. 1007.23 upon program completion.

~~(c) Provide shared, maximum use of private sector facilities and personnel.~~

~~(d) Provide personalized student advisement, including a parent-participation component, and coordination with middle schools to promote and support career exploration and education planning as required under s. 1003.4156. Coordination with middle schools must provide information to middle school students about secondary and postsecondary career education programs and academies.~~

(c) ~~(e)~~ Promote and provide opportunities for students enrolled in career-themed courses ~~career and professional academy students~~ to attain, at minimum, the Florida Gold Seal Vocational Scholars award pursuant to s. 1009.536.

(d) ~~(f)~~ Provide instruction in careers designated as high


260108

growth, high demand, and high pay by the regional workforce development board, the chamber of commerce, economic development agencies, or the Department of Economic Opportunity.

(e) ~~(g)~~ Deliver academic content through instruction relevant to the career, including intensive reading and mathematics intervention required by s. 1003.428, with an emphasis on strengthening reading for information skills.

(f) ~~(h)~~ Offer applied courses that combine academic content with technical skills.

(g) ~~(i)~~ Provide instruction resulting in competency, certification, or credentials in workplace skills, including, but not limited to, communication skills, interpersonal skills, decisionmaking skills, the importance of attendance and timeliness in the work environment, and work ethics.

~~(j) Include a plan to sustain career and professional academies.~~

~~(k) Redirect appropriated career funding to career and professional academies.~~

(5) All career-themed ~~career~~ courses ~~offered in a career and professional academy~~ must lead to industry certification or college credit ~~linked directly to the career theme of the course~~. If the passage rate on an industry certification examination that is associated with a career-themed course ~~the career and professional academy~~ falls below 50 percent, strategies to improve the passage rate must be included in the strategic 3-year plan ~~the academy must discontinue enrollment of new students the following school year and each year thereafter until such time as the passage rate is above 50 percent or the academy is discontinued~~.

 260108

(6) Workforce Florida, Inc., ~~through the secondary career academies initiatives,~~ shall serve in an advisory role ~~and offer technical assistance~~ in the development and deployment of newly established career-themed courses ~~career and professional academies~~.

Section 4. Section 1003.4935, Florida Statutes, is amended to read:

1003.4935 Middle school career-themed ~~career and professional academy~~ courses.—

(1) Beginning with the 2012-2013 ~~2011-2012~~ school year, each district school board, in collaboration with regional workforce boards, economic development agencies, and state-approved postsecondary institutions, shall include plans to implement career-themed courses ~~a career and professional academy~~ in at least one middle school in the district as part of the strategic 3-year ~~5-year~~ plan pursuant to s. 1003.491(2). The ~~middle school career and professional academy component of the~~ strategic plan must ensure the transition of middle school ~~career and professional academy~~ students enrolled in career-themed courses to ~~a~~ high school career-themed courses ~~career and professional academy~~ currently operating within the school district. Students who complete ~~a~~ middle school career-themed courses ~~career and professional academy~~ must have the opportunity to earn an industry certificate and high school credit and participate in career planning, job shadowing, and business leadership development activities.

(2) Each middle school career-themed course ~~career and professional academy~~ must be aligned with at least one high school career-themed course ~~career and professional academy~~

offered in the district and maintain partnerships with local business and industry and economic development boards. Middle school career-themed courses ~~career and professional academies~~ must:

(a) Lead ~~Provide instruction in courses leading~~ to careers in occupations designated as high growth, high demand, and high wage ~~pay~~ in the Industry Certification Funding List approved under rules adopted by the State Board of Education;

(b) ~~Offer career and professional academy courses that~~ Integrate content from core subject areas;

(c) ~~Offer courses that~~ Integrate career-themed course ~~career and professional academy~~ content with intensive reading and mathematics pursuant to s. 1003.428;

(d) ~~Coordinate with high schools to~~ Maximize opportunities for middle school ~~career and professional academy~~ students enrolled in career-themed courses to earn high school credit;

(e) Be offered ~~Provide access to virtual instruction courses provided~~ by virtual education providers legislatively authorized to provide part-time instruction to middle school students. The virtual instruction courses must be aligned to state curriculum standards for middle school ~~career and professional academy~~ students, with priority given to students who have required course deficits;

(f) Be taught by ~~Provide instruction from~~ highly skilled professionals who hold industry certificates in the career area in which they teach;

(g) Offer externships; and

(h) Provide personalized student advisement that includes a parent-participation component.


260108

(3) Beginning with the 2012-2013 school year, if a school district implements ~~a~~ middle school career-themed courses ~~career and professional academy~~, the Department of Education shall collect and report student achievement data pursuant to performance factors identified under s. 1003.492(3) for ~~academy~~ students who are enrolled in career-themed courses and who attain an industry certification identified in the Industry Certified Funding List pursuant to rules adopted by the State Board of Education.

Section 5. Paragraph (o) of subsection (1) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(o) *Calculation of additional full-time equivalent membership based on certification of successful completion of career-themed courses* ~~*industry-certified career and professional academy programs*~~ *pursuant to ss. 1003.491, 1003.492, 1003.493, and 1003.4935 and attainment of the highest level of industry certification identified in the Industry Certified Funding List pursuant to rules adopted by the State Board of Education.*—A value of 0.1, 0.2, or 0.3 full-time equivalent student


260108

membership shall be calculated for each student who completes career-themed courses ~~an industry-certified career and professional academy program~~ under ss. 1003.491, 1003.492, 1003.493, and 1003.4935 and who is issued the highest level of industry certification identified annually in the Industry Certification Funding List approved under rules adopted by the State Board of Education and a high school diploma. The maximum full-time equivalent student membership value for any student is 0.3. The Department of Education shall assign the appropriate full-time equivalent value for each certification, 50 percent of which is based on rigor and the remaining 50 percent on employment value. The State Board of Education shall include the assigned values in the Industry Certification Funding List under rules adopted by the state board. Rigor shall be based on the number of instructional hours, including work experience hours, required to earn the certification, with a bonus for industry certifications that have a statewide articulation agreement for college credit approved by the State Board of Education. Employment value shall be based on the entry wage, growth rate in employment for each occupational category, and average annual openings for the primary occupation linked to the industry certification. The ~~Such~~ value shall be added to the total full-time equivalent student membership in secondary career education programs for grades 9 through 12 in the subsequent year for courses that were not funded through dual enrollment. The additional full-time equivalent membership authorized under this paragraph may not exceed 0.3 per student. Each district must allocate at least 80 percent of the funds provided for industry certification, in accordance with this paragraph, to the program

260108

that generated the funds. Unless a different amount is specified in the General Appropriations Act, the appropriation for this calculation is limited to $30 ~~$15~~ million annually. If the appropriation is insufficient to fully fund the total calculation, the appropriation shall be prorated.

Section 6. 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 career-themed courses; amending s. 1003.491, F.S.; revising provisions relating to the Florida Career and Professional Education Act; requiring that each district school board, in collaboration with regional workforce boards, economic development agencies, and postsecondary institutions, develop a strategic 3-year plan addressing and meeting local and regional workforce demands; authorizing school districts to offer career-themed courses; revising the requirements of the strategic 3-year plan to include career-themed courses and specified strategies; revising the period within which newly proposed core courses are to be approved or denied by the curriculum review committee; amending s. 1003.492, F.S.; revising provisions relating to industry-certified career education programs to conform to changes made by the act; amending s. 1003.493, F.S.;

providing a definition for the term "career-themed course"; requiring that a student who enrolls in and completes a career-themed course or a sequence of career-themed courses receive opportunities to earn postsecondary credit if the career-themed course credits can be articulated to a postsecondary institution; providing goals of career-themed courses; providing for career-themed courses to be offered in a school-within-a-school career academy or a school providing multiple career-themed courses structured around an occupational cluster; providing requirements for career-themed courses; requiring that strategies to improve the passage rate on an industry certification examination be included in the strategic 3-year plan under certain circumstances; requiring that Workforce Florida, Inc., serve in a advisory role in the development and deployment of newly established career-themed courses; amending s. 1003.4935, F.S.; revising provisions relating to middle school career and professional academy courses to conform to changes made by the act; requiring that the Department of Education collect and report student achievement data for students who are enrolled in career-themed courses and who attain a specified industry certification; amending s. 1011.62, F.S.; revising provisions relating to the computation of the annual allocation of funds to each school district for operation; providing an effective date.

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 CAREER THEMED COURSES

Bill Number SB 1314 *(if applicable)*

Name NANCY STEPHENS

Amendment Barcode _____ *(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 1625 SO MUNIT LAKE DR
Street

Phone 850 402 2954

Tallahassee FL 32317
City *State* *Zip*

E-mail nancy@nstephens.com

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

Representing MANUFACTURERS ASSOCIATION OF FL

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

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

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

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

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 Commerce and Tourism Committee

BILL:	CS/SB 1514
INTRODUCER:	Commerce and Tourism Committee and Senator Detert
SUBJECT:	Tax on Sales, Use, and Other Transactions
DATE:	February 2, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	**Fav/CS**
2.			BI	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1514 amends Florida law to require out-of-state retailer that conduct business over the Internet to collect and remit Florida sales tax on sales made to Florida customers.

The CS revises the definition of "dealer." Specifically, the CS creates two new situations under which an out-of-state retailer may be required to collect and remit Florida sales tax:

1. When a person with substantial nexus to Florida does one of a number of acts, including selling a similar line of products as a dealer or operates under the same name and uses similar trademarks as a dealer, then the dealer must collect and remit Florida sales and use tax.
2. If the dealer enters into an agreement with one or more Floridians, under which the person directly or indirectly refers potential customers to the dealer for a commission or other consideration, and the cumulative gross receipts for referrals are in excess of $10,000 during the previous 12 months, then a rebuttable presumption arises that the dealer must collect and remit Florida sales and use tax.

However, the CS bases the requirement to collect sales and use tax on the fact that the activities conducted in Florida on behalf of the dealer are significantly associated with the dealer's ability to establish and maintain a market in Florida.

This CS amends ss. 212.06, 212.0596, and 212.0506, F.S.

II. Present Situation:

Because Florida has no personal state income tax, the state primarily depends on consumption-based taxes for its general revenue. Sales tax collections make up over 70 percent of general revenue.[1] Forty-five states and the District of Columbia impose sales and use taxes.[2] States that do not have a personal income tax – Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming – rely most heavily on sales tax collections.[3]

Florida Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on most tangible personal property, admissions, storage, transient rentals, commercial rentals, motor vehicles, and a limited number of services.[4] The statutes currently provide more than 200 different exemptions.[5]

A sales tax of 6 percent is levied on the sales prices of tangible personal property sold at retail in Florida.[6] Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

A use tax of 6 percent is levied on the cost price of tangible personal property when it is used, consumed, distributed, or stored, rather than sold, in Florida.[7] This tax is levied when sales tax was not paid at the time of purchase. For example, use tax is owed when a person buys:[8]

- A taxable item in Florida and doesn't pay sales tax;
- An item tax-exempt intending to resell it, and then the item is used in a business or for personal use; or
- A taxable item outside Florida and brings or has it delivered into the state within 6 months of the purchase date, and sales tax was not paid on the item.

---

[1] See Florida Revenue Estimating Conference, 2012 Florida Tax Handbook. Revenues from the sales and use tax for FY 2011-12 totaled over $17 billion.

[2] Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose a state sales and use tax, although Alaska permits local governments to impose sales and use taxes.

[3] New Hampshire and Tennessee both have income taxes, but the taxes are not imposed on wages or other income other than dividends and interest.

[4] Of the limited services that are taxable, some, such as cable, are taxed at a higher rate.

[5] For a list of exemptions and history, see REC, 2012 Florida Tax Handbook. Exemptions are estimated to total about $10 billion.

[6] Section 212.05(1)(a)1.a., F.S.

[7] Section 212.05(1)(b), F.S.

[8] DOR, Florida's Sales and Use Tax, GT-800013, last revised 7/2009, available at http://dor.myflorida.com/dor/forms/2009/gt800013.pdf (last visited 1/20/2012).

If the item brought into Florida is subject to tax, a credit is allowed for taxes paid to another state, a U.S. territory, or Washington, D.C. Credit is not given for taxes paid to another country.

The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections of discretionary sales surtaxes received by DOR are returned monthly to the county imposing the tax. Further, there are several state-shared revenue programs that allocate some portion of the state sales and use tax to local governments. A few revenue sharing programs require as a prerequisite that the county or municipality meet eligibility criteria. While general law restricts the use of some shared revenues, proceeds derived from other shared revenues may be used for the general revenue needs of local governments.[9]

Local Discretionary Sales Surtax

A "surtax" is an extra tax or charge.[10] Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax on all transactions subject to the state sales and use tax. Only those surtaxes specifically designated may be levied.

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions and on communications services, defined in ch. 202, F.S. Table 1 identifies the eight taxes, the rate limits, and the number of counties authorized to impose and the number imposing the tax.[11]

Table 1: Local Discretionary Sales Surtaxes

Tax	Authorized Levy (%)	# Counties Authorized to Levy Tax	# Counties Levying Tax
Charter County Transportation System Surtax	up to 1%	31	2
Local Government Infrastructure Surtax	0.5% or 1%	67	18
Small County Surtax	0.5% or 1%	31	28
Indigent Care & Trauma Center Surtax	up to 0.25%, or up to 0.5%	65	1
County Public Hospital Surtax	0.5%	1 (Miami-Dade County)	1
School Capital Outlay Surtax	up to 0.5%	67	15
Voter-Approved Indigent Care Surtax	0.5% or 1%	60	3

[9] For more information see REC, 2012 Florida Tax Handbook.
[10] Black's Law Dictionary (9th ed., 2009), tax.
[11] The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

Emergency Fire Rescue Services and Facilities Surtax	up to 1%	65	0

Source: REC, 2012 Tax Handbook

The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility for the taxes listed in s. 212.055, F.S.; currently, the maximum ranges between 2 percent and 3.5 percent for Florida's 67 counties. In general, the levy of a particular tax is subject to county voter approval.

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state taxes. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. The surtax does not apply to a sales amount above $5,000 on any item of tangible personal property. This $5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

Internet Sales and Out of State Vendors[12]

Under Florida law, each sale is subject to sales tax unless such transaction is specifically exempt. Sales made over the Internet are not exempt from the provisions of ch. 212, F.S. Use taxes are difficult for states to enforce because they must rely on out-of-state vendors to collect the tax money or purchasers must remit the tax themselves.[13] Out-of-state vendors, not wanting to be tax collectors for states and local governments, argue that states have no jurisdiction over them. A state's ability to compel an out-of-state seller to collect and remit sales tax is limited by the Commerce Clause and the Due Process Clause of the U.S. Constitution.[14] The U.S. Supreme Court has held that the state's disparate state and local sales tax systems make collecting taxes an undue burden on out-of-state retailers.[15]

In order for sales occurring over the Internet to be subject to the sales tax, there must be sufficient nexus between the seller and the state. Nexus has been found to exist when a seller:

- Has agents in this state who solicit or transact business on behalf of the seller and as a result receive orders for merchandise to be delivered to the purchaser in this state;
- Has a physical location in this state;
- Delivers merchandise into this state in vehicles which are leased or owned by the seller;
- Owns land or buildings located in this state;
- Stores merchandise in this state for sale or use; or

[12] For an in depth analysis, see Senate Budget Subcommittee on Finance and Tax, Interim Report 2012-107: Application of Florida's Sales Tax to Sales by Out-of-State Retailers (August 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/BFT1072012-107ft.pdf (last visited 1/20/2012).

[13] See DOR, Florida Consumer Information website on remitting use tax for Internet sales, available at http://dor.myflorida.com/dor/taxes/consumer.html (last visited 1/20/2012).

[14] Due Process requires some minimal contact with the taxing state for a taxing statute to be upheld. Upholding a statute against a Commerce Clause challenge is dependent upon satisfaction of a 4-part test: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to a service provided by the taxing state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), rehearing denied, 430 U.S. 976 (1977).

[15] See Closing the Online Tax Loophole, Blackston, Michelle, NCSL's State Legislatures, April 2008.

- Rents or leases merchandise that is located in Florida in the possession of a lessee.[16]

Section 212.0596, F.S., generally imposes tax on a "mail order sale," which is defined to mean "a sale of tangible personal property, ordered by mail or other means of communication, from a dealer who receives the order in another state of the United States, or in a commonwealth, territory, or other area under the jurisdiction of the United States, and transports the property or causes the property to be transported, whether or not by mail, from any jurisdiction of the United States, including this state, to a person in this state, including the person who ordered the property."[17]

Section 212.0596(2), F.S., requires dealers doing mail order business in Florida to collect and remit Florida sales tax if the dealer has nexus with Florida, and provides what activities constitute nexus for purposes of mail order sales. These include when:

- The dealer has agents in Florida who solicit or transact business on behalf of the dealer, whether the resulting mail orders result from or are related to the agent's solicitation or transaction of business;
- The property was delivered in Florida in fulfillment of a sales contract entered into in Florida;
- The dealer creates nexus with Florida by purposefully or systematically exploiting Florida's market by any media assisted, media facilitated, or media solicited means;
- Another U.S. jurisdiction uses its taxing power over the retailer in support of Florida's taxing power;
- The dealer is subject to service of process; or
- The dealer without nexus with Florida is a corporation that is a member of an affiliated group of corporations under s. 1504 of the Internal Revenue Code and whose members are eligible to file a consolidated federal corporate income tax return.

If the person selling the property into this state does not have sufficient nexus or is not registered with DOR as a dealer to collect sales tax, and the goods are delivered in Florida, then use tax applies and is due from the purchaser.

According to the U.S. Census Bureau about 70 percent of U.S. households have Internet access.[18] The U.S. Census Bureau estimated that national e-commerce sales over the last 4 quarters total over $227 billion dollars. However, e-commerce sales make up only about 4.5 percent of total retail sales in the U.S.[19]

The issue of sales and use taxes on e-commerce is important to the states for three main reasons:

- The continued growth in e-commerce points to an increasing number of transactions on which sales and use taxes will not be collected, resulting in sales tax revenue losses for state and local governments;

[16] Depending on the jurisdiction, courts have found that these situations satisfy nexus while others have found that they were insufficient alone.
[17] Section 212.0596(1), F.S.
[18] 2009 data available at http://www.census.gov/population/www/socdemo/computer.html (last visited 1/30/2012).
[19] Quarterly Retail E-Commerce Sales, 3rd Quarter 2011, available at http://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf (last visited 1/30/2021).

- Since out-of-state sellers do not have to collect sales and use taxes, except in states where they have "nexus," they enjoy a competitive advantage over "brick and mortar" businesses; and
- Because of loopholes for on-line retailers, consumers who can afford access to the Internet escape paying sales and use taxes while forcing those without access to shoulder a heavier burden of the sales tax.[20]

While studies estimate differing amounts of loss sales tax revenue, the most recent, a September 2011 report by Arudin, Laffer, and Moore Econometrics, estimated tax revenue losses of $374 million in 2010 and between $449.6 million and $454.0 million in 2012.[21] With 67 different state and local taxing jurisdictions in Florida, an out-of-state retailer may find it difficult to collect and remit sales taxes. There are about 7,500 different taxing jurisdictions at the state and local levels in the U.S.

Internet Tax Freedom Act

In response to the significant growth in the Internet, Congress enacted the Internet Tax Freedom Act in October 1998. This legislation called for a 3-year moratorium, from October 1, 1998, to October 21, 2001, on state and local taxes on Internet access and multiple or discriminatory taxes on electronic commerce. This moratorium has been extended several times and currently expires November 1, 2014.[22]

Streamlined Sales Tax Project

Because of the rise of e-commerce, in 2009 a group was formed to develop a simplified sales tax collection system that could be used by traditional brick-and-mortar businesses and businesses involved in e-commerce. The result of the Streamlined Sales Tax Project is the Streamlined Sales and Use Tax Agreement (SSUTA). It proposes an effort to "modernize" states' sales and use tax structures to create a uniform, simplified taxing system that would apply to all businesses collecting sales and use taxes. Participation in collecting sales tax under the agreement is voluntary for sellers who do not have a physical presence or "nexus" within a state. However, an end goal of the effort is for Congress to require collection from all sellers for all types of commerce.[23]

Currently, 21 states are full members of SSUTA because they have state laws which are in compliance with the agreement.[24] Also, currently, over 1,000 businesses have voluntarily agreed to collect taxes on out-of-state sales.

---

[20] Graham Williams, "Streamlined Sales Tax for the New Economy," National Conference of State Legislatures, Nov./Dec. 2000, Vol. 8, No. 44.

[21] Report on file with the Senate Commerce and Tourism Committee.

[22] Created by Pub. L. No. 105-277; Extended to November 2003 by Pub. L. No. 107-75; Extended to November 2007 by Pub. L. No. 108-435; Extended to November 2014 by Pub. L. No. 110-108.

[23] Florida legislative action in response to this project includes s. 213.27, F.S., which grants DOR authority to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration (ch. 2000-355, L.O.F.), and ch. 2001-225, L.O.F., which among other things, created the Simplified Sales and Use Tax Act, authorizing Florida to participate in the next phase of discussions with other states for the purposes of developing the project.

[24] Three additional states are associate members, which are states that are in compliance with SSUTA, but their laws have not yet taken effect. See the SSUTA website for more information: http://www.streamlinedsalestax.org/.

Federal Involvement in the Issue

Since the power to regulate interstate commerce resides at the federal level, federal legislation appears to be the only comprehensive solution for states to have the authority to require out-of-state retailers to collect sales tax. Multiple bills have been filed in Congress over the years to try to address the issue, but none have been voted on by either the House or Senate.[25]

Actions of Other States

Other states have attempted to address the issue of taxing sales by out-of-state retailers. Twelve states have enacted laws which take different approaches to a solution.[26] Generally it appears that there are four approaches:

1. Establish nexus through affiliates of an out-of-state retailer. When a state resident is an "affiliate" of an out-of-state retailer and the total sales by the out-of-state retailer that result from all referrals from affiliates in the state exceed a certain total (generally $10,000), then the retailer must collect and remit state sales tax. Total sales by the out-of-state retailer as a result of referrals must exceed the threshold before tax is required to be collected by the out-of-state retailer.
2. Establish nexus through commission arrangements by Internet retailers with other websites owned by state residents for referring sales (also known as "click-through"). Similar to the affiliate relationship with out-of-state retailers, this approach also requires sales of a certain amount before liability for collection of state sales tax arises.
3. Require the retailer to notify the customer that sales and use tax may be due in the customer's state. This approach does not require collection of sales tax by the retailer. Instead the retailer is required to provide notice to the consumer, and in one state is required to also remit information to the state department of revenue related to sales to that state's residents.
4. Exempt certain retailers from collecting and remitting sales tax if the seller agrees to make a substantial investment in the state in the form of a distribution center and create a certain number of jobs. For example, South Carolina's statute requires a $125 million investment and 2,000 new jobs in exchange for exemption from sales tax collections until 2016. However, Internet retailers must notify a purchaser in a confirmation email that the purchaser may owe South Carolina use tax on the total sales price.

Some states have enacted one approach or a hybrid of the ideas. A fifth approach may be establishing nexus through existing state laws related to mail order sales. Pennsylvania is attempting to require out-of-state retailers to collect sales tax under the state's existing law.[27]

States that have enacted these laws or taken these approaches have been challenged by out-of-state retailers for violation of the U.S. Constitution. While some retailers have been awarded an

[25] The most recent filed legislation is titled the "Main Street Fairness Act," and authorizes states who are members of the SSUTA to require out-of-state retailers to collect and remit state sales and use tax. See H.R. 2701 and S. 1452 (112th Congress).

[26] New York (2008), North Carolina (2009), Rhode Island (2009), Colorado (2010), Oklahoma (2010), Arkansas (2011), California (2011), Connecticut (2011), Illinois (2011), South Dakota (2011), and Vermont (2011) enacted legislation aimed at taxing the out of state sales; Texas (2011) passed similar legislation but it was vetoed by the Governor. South Carolina (2011) enacted legislation taking the opposite approach. See Interim Report 2012-107.

[27] See Pennsylvania Department of Revenue, Nexus Resources for Retailers, available at http://www.revenue.state.pa.us/portal/server.pt/community/nexus_resources/20610 (last visited 1/20/2012).

injunction from enforcement of the state's statutes, there have been no final decisions affording a resolution of the issues.

III. Effect of Proposed Changes:

SB 1514 amends Florida law to require out-of-state vendors that conduct business over the Internet to collect and remit Florida sales tax on sales made to Florida customers.

Section 1 amends s. 212.06, F.S., relating to the definition of "dealer." Specifically the CS repeals the portion of the definition of dealer which relates to persons who solicit business through representatives, by distribution of catalogs or other advertising, or by other means to receive orders from Floridians for use or consumption of the property in this state.

The CS exempts common carriers from the definition of dealer.

Section 2 amends s. 212.0596, F.S., to provide that a "mail order sale" includes the sale of tangible personal property over the Internet.

The CS revises provisions related to when dealers who make mail order sales are required to collect and remit Florida sales and use tax.

Under current law, a dealer who is a corporation doing business in Florida or a person domiciled in Florida is required to collect and remit sales and use tax; the CS amends this provision to remove the limitation to corporations.

The CS provides that a representative of a dealer, in addition to an agent, soliciting or transacting business in the state may cause the dealer to have nexus for mail order sales.

Additionally, the CS creates two new situations:

Affiliates
When a person with substantial nexus to Florida sells a similar line of products as a dealer; does business under the same name and uses similar trademarks; maintains an office, warehouse, or similar place of business to facilitate the delivery of property sold by the dealer; facilitates delivery or pick-up of the property in Florida; assembles, installs, or performs maintenance services for the dealer in Florida; or conducts other activities in Florida that are "significantly associated with the dealer's ability to establish and maintain a market in Florida," then the dealer must collect and remit Florida sales and use tax.

The CS provides that a dealer is required to collect and remit sales and use tax if the dealer:

- Has a physical presence in the state, or
- The activities conducted in Florida on behalf of the dealer are significantly associated with the dealer's ability to establish and maintain a market in Florida.

Commission Arrangements
If the dealer enters into an agreement with one or more Floridians, under which the person directly or indirectly refers potential customers to the dealer for a commission or other consideration, and the cumulative gross receipts for referrals are in excess of $10,000 during the previous 12 months, then a rebuttable presumption arises that the dealer must collect and remit Florida sales and use tax. Such referrals may be made by a link on a website, an in-person presentation, telemarketing, or otherwise. This presumption is effective on October 1, 2012.

The dealer may rebut the presumption by submitting evidence the Floridians which with the dealer has agreements did not engage in activity that was significantly associated with the dealer's ability to establish and maintain a market in Florida for the previous 12 months. Such evidence may include sworn affidavits from the Floridians attesting that they did not engage in any solicitation in Florida on the dealer's behalf in the previous year.

Section 3 amends s. 212.0506, F.S., to correct a cross-reference.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This CS does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art VII, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As discussed above in the Present Situation, a state's ability to compel an out-of-state seller to collect and remit sales tax is primarily limited by the Commerce Clause of the U.S. Constitution.[28]

Upholding a statute against a Commerce Clause challenge is dependent upon satisfaction of a 4-part test: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against

[28] See AMJUR STATELOCL s. 175; 71 A.L.R.5th 671.

interstate commerce; and (4) the tax is fairly related to a service provided by the taxing state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

The nexus requirement outlined in Complete Auto has generally been interpreted to require that in order to require an out-of-state retailer to collect sales and use tax, the retailer must have a "physical presence" in the state.[29]

In Scripto, Inc. v. Carson, the U.S. Supreme Court held that an out-of-state retailer with agents in Florida was a dealer required to collect and remit Florida sales tax.[30] The agents of the out-of-state retailer represented the retailer pursuant to a contract that authorized the Florida merchants to solicit orders and otherwise obtain business for the retailer in Florida in return for compensation to be paid in the form of a commission.

The U.S. Supreme Court held in Tyler Pipe Industries, Inc., v. Washington State Dept. of Revenue, that "the crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sales."[31] The Court found that this standard was satisfied because of the activities of the business's sales representatives in the state.

Many of the cases related to this issue were decided before the emergence of the Internet, and thus it is unclear how the case law should be applied to sales over the Internet. While some provisions of the CS would likely be held to meet the constitutional requirements of nexus, others are more questionable. The provisions of the CS seem to take an approach that follows applying "agency nexus."

Many of the states who have enacted similar laws have become involved in lawsuits challenging the constitutionality of their laws. There have been no final decisions affording a resolution of the issues.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the impact of this CS.

B. Private Sector Impact:

Dealers meeting the requirements of this CS would be required to collect and remit sales and use tax. Dealers may incur costs to update their systems to collect and remit such taxes.

[29] See Quill Corporation v. North Dakota, 504 U.S. 298 (1992).
[30] Scripto, Inc., v. Carson, 362 U.S. 207, 211 (1960).
[31] Tyler Pipe Industries, Inc., v. Washington State Dept. of Revenue, 483 U.S. 232, 250 – 251 (1987).

C. Government Sector Impact:

DOR indicated that this CS would have an insignificant fiscal impact on its operations.

VI. Technical Deficiencies:

DOR indicated the following issues:

- The changes on lines 225 – 255 delete the provision to levy and collect tax from a dealer having nexus through an affiliate. The deleted affiliate language is replaced with a provision granting the state the power to levy and collect tax from a person with substantial nexus who in addition engages in one of a list of additional activities. Courts have held in the past that once substantial nexus has been established, states may impose their tax on the dealer's activities. Therefore, the additional list of activities added in lines 235 – 253 may not be necessary and may actually limit accounts having to register once a dealer has established substantial nexus.
    - Additionally, there does not appear to be any replacement language for a dealer having nexus through an affiliate.

- Line 255 refers to "person," while other provisions in the section refer to "dealer." The intent of using the two terms is not known.

- Addition of the word "and" on line 236 and the flush left language on lines 263 – 268 and the deletion of lines of 226 – 234, inhibit DOR's ability to enforce collection of sales tax from out-of-state sellers. The language narrows the scope of current statutory provisions.

- The flush left language only requires a dealer to collect and remit tax if it has a "physical presence" in Florida, or if activities conducted on the dealer's behalf in Florida are "significantly associated with the dealer's ability to establish and maintain a market for sales in this state."

VII. Related Issues:

Many of the states who have enacted similar laws have become involved in lawsuits challenging the constitutionality of their laws; it is likely that if this CS were to become law, Florida may be subject to such lawsuits.

VIII. Additional Information:

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

CS by Commerce and Tourism on February 2, 2012:
The committee substitute removed the provision from the bill which provided that certain rulings, agreements, or contracts which state that a person is not a dealer were void unless approved by a majority vote of the Senate and the House of Representatives.

B. Amendments:

None.

127680

LEGISLATIVE ACTION

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

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete lines 142 - 158.

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

And the title is amended as follows:

Delete lines 6 - 11

and insert:

transactions;

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/2/2012
Date

1514
Bill Number

Barcode

Name Jeffrey L. Evans

Phone 904-887-0542

Address 3724 Montclair Drive
Street

E-mail jeff.evans@colliers.com

Jacksonville Fla. 32217
City *State* *Zip*

Job Title Broker Associate

Speaking: ☒ For ☐ Against ☐ Information

Appearing at request of Chair ☐

Subject Sales Tax Collection

Representing Colliers International

Lobbyist registered with Legislature: ☐ Yes ☒ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___.m. to _____ ___.m.

S-001 (04/14/10)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/1/12
Meeting Date

Topic Online Sales Tax

Bill Number SB 1514 *(if applicable)*

Name Jennifer Martin

Amendment Barcode *(if applicable)*

Job Title Governmental Affairs Coordinator

Address 136 South Bronough Street
Street

Phone 850-544-6880

Tallahassee FL 32301
City *State* *Zip*

E-mail jmartin@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)

2/2/12
Meeting Date

Topic Sales Tax

Bill Number SB 1514 *(if applicable)*

Name Brewster Bevis

Amendment Barcode *(if applicable)*

Job Title VP - External Relations

Address 516 N. Adams St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 224-7173

E-mail bbevis@aificom

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries 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.

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)

2-2-12
Meeting Date

Topic Internet Sales tax

Bill Number SB 1514 *(if applicable)*

Name Jim BRAINEAD

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 2814 Rebbet Hill Rd
Street
Tallahassee, FL 32308
City *State* *Zip*

Phone (850) 385 5944

E-mail Brainedlaw@Comcast.Net

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

Representing Polk County

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

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

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

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

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 /2012
Meeting Date

Topic _____ Bill Number 1514 *(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

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)

2/2/2012
Meeting Date

Topic MAINSTREET FAIRNESS

Bill Number SB 1514 *(if applicable)*

Name RANDY MILLER

Amendment Barcode *(if applicable)*

Job Title EXECUTIVE V.P.

Address 227 S. ADAMS ST
Street

Phone 850-222-4082

TALLAHASSEE FL 32301
City *State* *Zip*

E-mail rmiller@FRF.ORG

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA RETAIL FEDERATION

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)

2/2/12
Meeting Date

Topic Taxes on Sales, Use, other

Bill Number 1514 *(if applicable)*

Name Mark Jeffries

Amendment Barcode *(if applicable)*

Job Title Public Affairs Director

Address 201 S. Rosalind
Street
Orlando FL 32801
City *State* *Zip*

Phone 407-836-5909

E-mail mark.jeffries@ocfl.net

Speaking: ☑ For ☐ Against ☐ Information

Representing Orange County Commission

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 Commerce and Tourism Committee

BILL:	CS/CS/SB 842
INTRODUCER:	Commerce and Tourism Committee, Community Affairs Committee, and Senator Bennett
SUBJECT:	Growth Management
DATE:	February 3, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.	Hrdlicka/Philo	Hrdlicka	CM	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 842 makes a number of non-substantive modifications and clarifications to ch. 2011-139, L.O.F., the Community Planning Act (act) that were compiled through various discussions and feedback received by the Senate Committee on Community Affairs from stakeholders, including the state land planning agency and local governments.

Modifications include fixing cross-references, updating outdated language, and removing provisions throughout the statutes that the act made obsolete such as references to the twice-a-year limitation on adopting plan amendments that no longer exists and references to the evaluation and appraisal report that no longer is required.

This committee substitute (CS) requires a regional planning council to determine, before accepting a grant, that the purpose of the grant is in furtherance of its functions. Also the CS prohibits a regional planning council from providing consulting services for a fee to any local government for a project for which the council will serve in a review capacity, as well as prohibits a regional planning council from providing consulting services to a private developer or landowner for a project for which the council may serve in a review capacity in the future.

This CS also addresses items that, although stemming from technical glitches, may have limited policy implications. These include:

- Grandfathering of local government charter provisions in effect on June 1, 2011, relating to a local initiative or referendum process for the approval of development orders and comprehensive plan or map amendments;
- Requiring comments by military installations to be considered by local governments in a manner consistent with s. 163.3184, F.S.;
- Removing criteria that exempts certain municipalities from being signatories to the school interlocal agreement as a prerequisite to implementing school concurrency, because school concurrency is now optional, and restoring criteria to exempt certain municipalities from being a party to the school interlocal agreement;
- Extending the time for the state land planning agency and the Administration Commission to issue recommended and final orders, since the current time requirement is unworkable, and providing a time requirement for the state land planning agency to issue a notice of intent for a plan amendment adopted pursuant to a compliance agreement; and
- Deleting a required annual report by the Department of Economic Opportunity related to the optional sector plan pilot program.

This CS substantially amends the following sections of the Florida Statutes: ss. 163.3167, 163.3174, 163.3175, 163.3177, 163.31777, 163.3178, 163.3180, 163.3184, 163.3191, 163.3245, 186.002, 186.007, 186.505, 186.508, 189.415, 288.975, 380.06, 380.115, 1013.33, 1013.35, 1013.351, and 1013.36, F.S.

II. Present Situation:

The Community Planning Act (ch. 2011-139, L.O.F.)
During the 2011 Regular Session, the Legislature enacted HB 7207, the Community Planning Act (act), which substantially reformed Florida's growth management system.

Part II of ch. 163, F.S., provides the minimum standards for Florida's comprehensive growth management system. Local governments are now primarily responsible for decisions relating to the future growth of their communities, and the state is now focused on protecting important state resources and facilities.

Local governments have the option to decide whether or not to continue implementing, pursuant to state guidelines, concurrency for transportation, school, and parks and recreation. A local government may continue applying concurrency in these areas without taking any action. If local governments wish to remove one of these forms of concurrency, a comprehensive plan amendment must be adopted, but it is not subject to state review. The act also modified and attempted to clarify many of the provisions related to proportionate-share payments that local governments implementing transportation concurrency are required to implement.

Local governments must evaluate their comprehensive plans once every 7 years and notify the state land planning agency, via a letter, whether or not updated amendments are necessary. Local governments have the flexibility to adopt amendments to their comprehensive plan as needed,

since there is no limit on the frequency in which plan amendments may be adopted. Local governments are required to list their funded and unfunded capital improvements in the comprehensive plan.

The act streamlined the comprehensive plan amendment process while maintaining public participation in the local government planning process. The act focuses the state oversight role in growth management on protecting important state resources and facilities. State agencies, when reviewing plan amendments, may comment on adverse impacts to important state resources or facilities as they relate to areas within their jurisdiction. Further, the state land planning agency when challenging most plan amendments may only challenge based on an adverse impact to an "important state resource or facility."

SB 2156, which was signed into law as ch. 2011-142, L.O.F., created the Department of Economic Opportunity (DEO) that now serves as the state land planning agency. The act requires the state land planning agency to provide direct and indirect technical assistance to help local governments find creative solutions to foster vibrant, healthy communities, while protecting the functions of important state resources and facilities.

If a plan amendment may adversely impact an important state resource or facility, upon request by the local government, the state land planning agency must coordinate multi-agency assistance, if needed, to develop an amendment to minimize any adverse impacts. The act changed the requirements associated with the large-scale planning tools of sector plans and rural land stewardship areas.

Local Referendums and Initiatives

The act modified current law to prohibit a local government from adopting any initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment. Prior to this, a local government was prohibited only from adopting an initiative or referendum process for approval of development orders or comprehensive plan amendments or future land use map amendments that affected five or fewer parcels of land. There were a number of already existing local government referendum processes that the act made invalid.[1]

Town of Yankeetown, FL v. Department of Economic Opportunity

In August of 2011, the town of Yankeetown, FL, filed a complaint for declaratory judgment in Leon County Circuit Court naming the former Department of Community Affairs (DCA), then-DCA Secretary Billy Buzzett, and the Administration Commission as defendants.[2] In September 2011, Yankeetown and DEO reached a proposed settlement that was contingent on a legislative amendment to the Community Planning Act becoming law that would grandfather in local referendum or initiative requirements in regard to development orders or in regard to local

[1] In addition to Yankeetown, other local governments with a referendum or initiative process that were reportedly affected by the prohibition include Longboat Key, Key West, and Miami Beach.

[2] *See Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.*, Case No. 37 2011 CA 002036 (Fla. 2d Cir. Ct. 2011). The complaint alleged that ch. 2011-139, L.O.F., violated the single subject provision in Article III, s. 6 of the Florida Constitution, and that it was read by a misleading, inaccurate title. Yankeetown also alleged that the law contained unconstitutionally vague terms and contained an unlawful delegation of legislative authority. The city of St. Pete Beach has also filed a motion to intervene as a defendant in the case, on the same side as the state.

comprehensive plan amendments or map amendments that were in existence on June 2, 2011, when the act became law.

Military Compatibility

There are several sections of law that deal with military compatibility with local land uses. Military bases can interfere with local land uses, and conversely, local land uses can interfere with the proper functioning of military bases. Section 163.3175, F.S., requires the exchange of information between local communities and military installations when land use decisions may affect operations at an installation. Section 163.3175, F.S., also specifies issues that the installation's commanding officer may address in commenting on a proposed land use change and requires a local government to consider the commanding officer's comments. It also requires a representative of the military installation to be included as an ex-officio, nonvoting member of the affected local government's land planning or zoning board.

The act modified current law regarding the military base commander's comments to the local government. Section 163.3175, F.S., now states that commanding officer's comments, underlying studies, and reports are not binding on the local government. The affected local government shall take into consideration any comments provided by the commanding officer or his or her designee and must also be sensitive to private property rights and not be unduly restrictive on those rights. The affected local government shall forward a copy of any comments regarding comprehensive plan amendments to the state land planning agency.

School Interlocal Agreement

Interlocal agreements between a county, the municipalities within, and a school board exist in order to coordinate plans and processes of the local governments and school boards. Section 163.31777, F.S., provides that "[t]he county and municipalities located within the geographic area of a school district shall enter into an interlocal agreement with the district school board which jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated." The act removed state oversight and review of the interlocal agreements while maintaining certain minimum issues that the interlocal agreement must address. If a local government chooses to maintain optional school concurrency within its jurisdiction, the interlocal agreement must also meet additional requirements. Certain outdated provisions relating to state oversight and review of interlocal agreements inadvertently still remain in ss. 1013.33 and 1013.51, F.S.

The act inadvertently removed the provision that exempted certain municipalities from entering into the school interlocal agreement.[3] However the act maintained the language in s. 163.3180(6)(i), F.S., which provided that municipalities meeting certain criteria for having no significant impact on school attendance are not required to be a signatory to the interlocal agreement, as a prerequisite for imposition of school concurrency.

[3] The act inadvertently removed s. 163.31777(6), F.S. (2010), which provided: "Except as provided in subsection (7), municipalities meeting the exemption criteria in s. 163.3177(12) are exempt from the requirements of subsections (1), (2), and (3)." The provisions within s. 163.3177(12), F.S. (2010), were also removed by the act. The end result created a conflict with language in s. 163.3180(6)(i), F.S. (2011), and required every municipality to enter into an interlocal agreement.

Concurrency[4]

Concurrency requires public facilities and services to be available concurrent with the impacts of development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, and potable water. Concurrency is tied to provisions requiring local governments to adopt level-of-service standards, address existing service deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan. The act removed the mandatory requirement for transportation facilities, public education facilities, and parks and recreation to be available concurrent with development impacts, and a local government now has the flexibility to decide whether or not to maintain these forms of concurrency. If a local government chooses to remove any optional concurrency provisions from its comprehensive plan, an amendment is required. An amendment removing any optional concurrency is not subject to state review.

Regional Planning Councils

A regional planning council exists in each of the several comprehensive planning districts of the state. Only one agency shall exercise the responsibilities within the geographic boundaries of any one comprehensive planning district. Membership on the regional planning council shall be as follows:

> (a) Representatives appointed by each of the member counties in the geographic area covered by the regional planning council.
> (b) Representatives from other member local general-purpose governments in the geographic area covered by the regional planning council.
> (c) Representatives appointed by the Governor from the geographic area covered by the regional planning council, including an elected school board member from the geographic area covered by the regional planning council, to be nominated by the Florida School Board Association.[5]

Any regional planning council has the power to accept and receive, in furtherance of its functions, funds, grants, and services from the federal government or its agencies, from departments, agencies, and instrumentalities of state, municipal, or local government, or from private or civic sources. Each regional planning council shall render an accounting of the receipt and disbursement of all funds received by it, pursuant to the federal Older Americans Act, to the Legislature no later than March 1 of each year.[6] Also, the regional planning council has the power to provide technical assistance to local governments on growth management matters.[7]

Coordination of Planning with Local Governing Bodies[8]

Currently the policy for the State of Florida is to require the coordination of planning between boards and local governing bodies to ensure that plans for the construction and opening of public educational facilities are facilitated and coordinated in time and place with plans for residential development, concurrently with other necessary services. Such planning must include the integration of the educational facilities plan and applicable policies and procedures of a board with the local comprehensive plan and land development regulations of local governments. The

[4] Section 163.3180, F.S.
[5] Section 186.504(2), F.S.
[6] Section 186.505(8), F.S.
[7] Section 186.505(20), F.S.
[8] Section 1013.33, F.S.

planning must include the consideration of allowing students to attend the school located nearest their homes when a new housing development is constructed near a county boundary and it is more feasible to transport the students a short distance to an existing facility in an adjacent county than to construct a new facility or transport students longer distances in their county of residence. The planning must also consider the effects of the location of public education facilities, including the feasibility of keeping central city facilities viable, in order to encourage central city redevelopment and the efficient use of infrastructure and to discourage uncontrolled urban sprawl. In addition, all parties to the planning process must consult with state and local road departments to assist in implementing the Safe Paths to Schools program administered by the Department of Transportation.

State Coordinated Review Process

Section 163.3184, F.S., provides the processes for review of comprehensive plans and most plan amendments.[9] The "expedited state review process" is the process that most plan amendments are reviewed under. The expedited state review process requires two public hearings, one at the proposed phase and one at the adopted phase, and plan amendments are transmitted to reviewing agencies including the state land planning agency that may provide comments on the proposed plan amendment to the local government. The process may be used for all plan amendments except those that are specifically required to undergo the state coordinated review process. After adopting an amendment, the local government must transmit the 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 with the plan amendment within 5 working days. Unless timely challenged, an amendment adopted under the expedited state review process does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete.

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 also requires two public hearings and a proposed plan or plan amendment is transmitted to the reviewing agencies 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 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

[9] Section 163.3187, F.S., provides the review process for small-scale amendments, and s. 163.3246, F.S., provides the review process for local governments eligible for the Local Government Comprehensive Planning Certification Program.

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 both the expedited state review process and 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 DOAH within 30 days after the local government adopts the plan or plan amendment. Section 163.3184(5), F.S., provides the process for administrative challenges to adopted plans and plan amendments. If the administrative law judge (ALJ), after a hearing, recommends that the plan or plan amendment be found "not in compliance" the recommended order is submitted to the Administration Commission, comprised of the Governor and the Cabinet, which has 45 days to issue a final order on whether or not the plan or plan amendment is in compliance. If the ALJ, after a hearing, recommends that the plan or plan amendment be found "in compliance" the recommended order is submitted to the state land planning agency. The state land planning agency then has 30 days to refer the recommended order to the Administration Commission if the agency finds the plan or plan amendment to be not in compliance or 30 days to enter a final order if the state land planning agency finds the plan or plan amendment in compliance. According to the state land planning agency, the current timing requirements for issuance of a recommended and final order are largely unworkable given the size and complexity of some cases, the other timing requirements that govern administrative hearings within ch. 120, F.S.,[10] and the limited number of meetings of the Administration Commission.

The standard timing requirements for issuing a final order in an administrative hearing are found in s. 120.569(2)(l), F.S., which requires the final order to be entered within 90 days from the time the hearing is concluded (if conducted by an agency) or after a recommended order is submitted to the agency and mailed to the parties (if the hearing is conducted by an ALJ). This time period can be waived or extended with the consent of all parties.

Section 163.3184(6), F.S., also provides a procedure after the filing of a challenge, for the state land planning agency and the local government to voluntarily enter into a compliance agreement to resolve one or more of the issues raised in the challenge. An affected person involved in a challenge may also enter into the compliance agreement with the local government.

Sector Plan Report

Section 163.3245(7), F.S., requires DEO to provide a status report annually on December 1st to the Senate President and Speaker of the House of Representatives regarding existing optional sector plans. The annual report was first required in December of 1999, when the optional sector plan was a pilot program. The act removed the pilot program status of the sector plan process and streamlined it so that more local governments are able to efficiently use this long-term planning

[10] For example s. 120.57(k), F.S., requires an agency to allow each party 15 days to submit written exceptions to the recommended order.

tool. The requirement for this report was removed by the act, however other legislation passed during the 2011 Regular Session inadvertently amended and retained the requirement, and therefore the requirement remains.[11]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3167(8), F.S., to authorize a local government to retain certain charter provisions that were in effect as of June 1, 2011, and that relate to an initiative or referendum process. This will grandfather in local government referendums and initiative processes that existed when the Community Planning Act (act) took effect while still prohibiting local governments from adopting new initiative or referendum processes regarding approval of development orders or local comprehensive plan amendments or map amendments.

Section 2 amends s. 163.3174(4)(b), F.S., to require a local land planning agency to periodically evaluate and appraise a comprehensive plan.

Section 3 amends s. 163.3175, F.S., requiring comments by military installations to be considered by local governments in a manner consistent with s. 163.3184, F.S. Local governments are directed to take into consideration comments, data, and analysis, as they relate to the strategic mission of the base, public safety, and the economic vitality associated with the base's operation, while also respecting private property rights. This section also updated references to the expired Council on Military Base and Mission Support to the more recent Florida Defense Support Task Force.

Section 4 amends s. 163.3177(6)(h), F.S., to revise the intergovernmental coordination elements of comprehensive plans.

Section 5 creates s. 163.31777(3) and (4), F.S., to exempt certain municipalities from the interlocal school agreement. This restores the four criteria, inadvertently removed in the act, which a municipality must meet to show that it has no significant impact on school attendance. If a municipality meets all four criteria, it is exempt from the requirements of the school interlocal agreement.

Section 6 amends s. 163.3178(3) and (6), F.S., to update a reference to the Department of Community Affairs and to delete provisions relating to the Coastal Resources Interagency Management Committee, a committee that no longer exists.

Section 7 amends s. 163.3180, F.S., relating to concurrency, to revise and provide requirements relating to public facilities and services, public education facilities, and local school concurrency system requirements; and to delete provisions excluding a municipality that is not a signatory to a certain interlocal agreement from participating in school concurrency. These four criteria are no longer needed since school concurrency is now implemented at the option of the local government.

[11] The optional sector plan report was repealed by s. 28, ch. 2011-139, L.O.F., however, s. 21, ch. 2011-34, L.O.F., amended the requirement and redesignated the subsection causing the report requirement to remain in statute.

Section 8 amends s. 163.3184, F.S., to revise provisions relating to the expedited state review process for adoption of comprehensive plan amendments; clarify the time in which a local government must transmit an amendment to a comprehensive plan and supporting data and analyses to the reviewing agencies; delete the deadlines in administrative challenges to comprehensive plans and plan amendments for the entry of final orders and referrals of recommended orders; and to specify a deadline for the state land planning agency to issue a notice of intent after receiving a complete comprehensive plan or plan amendment adopted pursuant to a compliance agreement.

Section 9 amends s. 163.3191(3), F.S., to conform a cross-reference to changes made by the act.

Section 10 amends s. 163.3245, F.S., to delete an obsolete cross-reference; and to delete a required report relating to optional sector plans.

Section 11 amends s. 186.002(2)(d), F.S., to conform to changes made by the act regarding the evaluation and appraisal process.

Section 12 amends s. 186.007(8), F.S., to conform to changes made by the act regarding the evaluation and appraisal process.

Section 13 amends s. 186.505, F.S., to require a regional planning council to determine, before accepting a grant, that the purpose of the grant is in furtherance of its functions. Additionally, a regional planning council is prohibited from providing consulting services for a fee to any local government for a project for which the council will serve in a review capacity and from providing consulting services to a private developer or landowner for a project for which the council may serve in a review capacity in the future.

Section 14 amends s. 186.508(1), F.S., to conform to changes made by the act regarding the evaluation and appraisal process.

Section 15 amends s. 189.415(2) and (3), F.S., to conform to changes made by the act regarding the evaluation and appraisal process.

Section 16 amends s. 288.975(2), F.S., to conform to changes made by the act regarding the limitation on the frequency of plan amendments.

Section 17 amends s. 380.06, F.S., to correct cross-references.

Section 18 amends s. 380.115(1), F.S., to add a cross-reference for exempt developments.

Section 19 amends s. 1013.33, F.S, to delete obsolete requirements for school interlocal agreements and update cross-references.

Section 20 amends s. 1013.35(2)(b), F.S., to update a cross-reference to conform to changes made by the act.

Section 21 amends s. 1013.351, F.S., to delete redundant requirements for the submission of certain interlocal agreements with the Office of Educational Facilities and the state land planning agency and for review of the interlocal agreement by the office and the agency.

Section 22 amends s. 1013.36(6), F.S., to delete an obsolete cross-reference.

Section 23 provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Commerce and Tourism on February 2, 2012:
This CS amended s. 163.3175, F.S., to update references to the expired BRAC Council on Military Base and Mission Support to the more recent BRAC Florida Defense Support Task Force, and make additional changes based upon comments by the base commander and interested parties.

CS by Community Affairs on January 23, 2012.
This CS removes all of the sections of the bill that update cross-references to the former Department of Community Affairs. The CS adds a provision regarding the base commander's comments as they pertain to local governments.

B. Amendments:

None.

966796

LEGISLATIVE ACTION

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

The Committee on Commerce and Tourism (Lynn) recommended the following:

Senate Amendment (with title amendment)

Delete lines 119 - 155
and insert:
Section 3. Subsections (3), (5), and (6) of section 163.3175, Florida Statutes, are amended to read:
163.3175 Legislative findings on compatibility of development with military installations; exchange of information between local governments and military installations.—
(3) The Florida Defense Support Task Force ~~Council on Military Base and Mission Support~~ may recommend to the Legislature changes to the military installations and local

966796

governments specified in subsection (2) based on a military base's potential for impacts from encroachment, and incompatible land uses and development.

(5) The commanding officer or his or her designee may provide advisory comments to the affected local government on the impact such proposed changes may have on the mission of the military installation. Such advisory comments shall be based on data and analyses provided with the comments and may include:

(a) If the installation has an airfield, whether such proposed changes will be incompatible with the safety and noise standards contained in the Air Installation Compatible Use Zone (AICUZ) adopted by the military installation for that airfield;

(b) Whether such changes are incompatible with the Installation Environmental Noise Management Program (IENMP) of the United States Army;

(c) Whether such changes are incompatible with the findings of a Joint Land Use Study (JLUS) for the area if one has been completed; and

(d) Whether the military installation's mission will be adversely affected by the proposed actions of the county or affected local government.

The commanding officer's comments, underlying studies, and reports shall be considered by the local government in the same manner as the comments received from other reviewing agencies pursuant to s. 163.3184 ~~are not binding on the local government~~.

(6) The affected local government shall take into consideration any comments and accompanying data and analyses provided by the commanding officer or his or her designee

966796

pursuant to subsection (4) as they relate to the strategic mission of the base, public safety, and the economic vitality associated with the base's operations, while also respecting ~~and must also be sensitive~~ to private property rights and not being ~~be~~ unduly restrictive on those rights. The affected local government shall forward a copy of any comments regarding comprehensive plan amendments to the state land planning agency.

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

And the title is amended as follows:

Delete line 9

and insert:

plan; amending s. 163.3175, F.S.; amending provisions related to growth management; requiring comments

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Banking and Insurance
Budget - Subcommittee on Criminal and Civil Justice Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Criminal Justice
Military Affairs, Space, and Domestic Security

SENATOR MICHAEL S. "MIKE" BENNETT
President Pro Tempore
21st District

January 25, 2012

RECEIVED
JAN 25 2012
COMMERCE

The Honorable Nancy Detert
Chair, Commerce Committee
310 Knott Building
404 S. Monroe St.
Tallahassee, Fl 32399

Dear Chairman Detert:

I am requesting that you place S842, relating to Growth Management, on your committee agenda as soon as possible.

If you have any questions, please let me know. Thank you for your consideration.

Sincerely,

Michael S. "Mike" Bennett
/cre

Cc: Jennifer Hrdlicka, Staff Director
Patty Blackburn Administrative Assistant
Charlie Anderson

posted 1/25/12
psh

REPLY TO:
☐ Wildewood Professional Park, Suite 90, 3653 Cortez Road West, Bradenton, Florida 34210 (941) 727-6349
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5078

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/2/2012
Meeting Date

Topic Growth Management

Bill Number 842 *(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)

2-2-2012
Meeting Date

Topic Growth Mngt. Bill Number SB-842 *(if applicable)*

Name Richard Gentry Amendment Barcode *(if applicable)*

Job Title

Address 2305 BRAEBURN CIR. Phone 850-251-1837
Street

TLH 32309 E-mail
City *State* *Zip*

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

Representing AIF

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

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

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

S-001 (10/20/11)