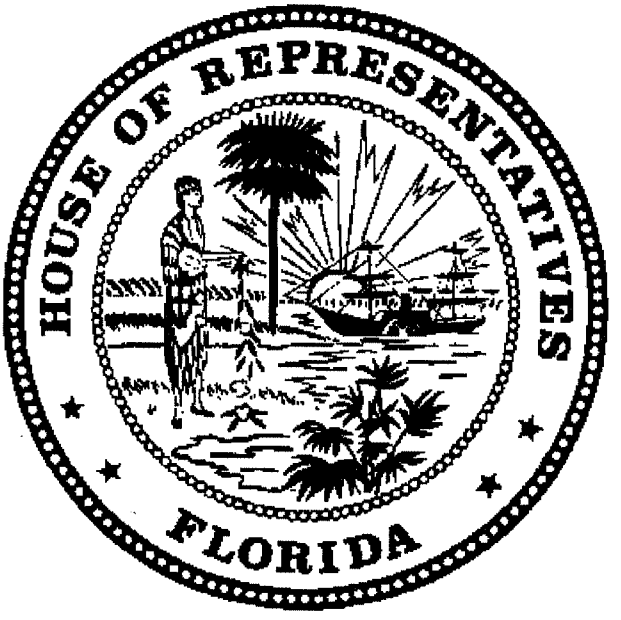

State Affairs Committee

Friday, March 18, 2011
1:00 PM
Morris Hall (17 HOB)

Dean Cannon
Speaker

Seth McKeel
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time: Friday, March 18, 2011 01:00 pm

End Date and Time: Friday, March 18, 2011 04:00 pm

Location: Morris Hall (17 HOB)
Duration: 3.00 hrs

Actionable Items

Recommendation whether to consider the override of the veto of the following bills:

CS/CS/HB 1207 Campaign Finance
CS/HB 7103 Agriculture

NOTICE FINALIZED on 03/16/2011 16:26 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1207 Campaign Financing
SPONSOR(S): Economic Development & Community Affairs Policy Council, Governmental Affairs Policy Committee and McKeel
TIED BILLS: None **IDEN./SIM. BILLS:** SB 880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 4 N, As CS	McDonald	Williamson
2) State Affairs Committee	11 Y, 5 N, As CS	McDonald	Tinker
3) House Vote on Final Passage	73 Y, 42 N	McDonald	Hamby

SUMMARY ANALYSIS

On May 22, 2009, portions of Chapter 106, F.S., regulating "electioneering communications," were held unconstitutional by the United States District Court for the Northern District of Florida in Broward Coalition v. Browning.

The bill reenacts and amends provisions related to electioneering communications and electioneering communication organizations (ECOs) to do the following:

- Redefine "electioneering communication" to remove reference to issues, specify the allowable communication formats, regulate advocacy that is the functional equivalent of express advocacy, and provide timeframes for the communications.
- Remove reference to a specific number of persons who must be targeted in a geographic area in the definition of "electioneering communication" to only refer to targeting to "relevant electorate in the geographic area the candidate would represent if elected."
- Redefine "electioneering communications organization" to clarify that it includes only those organizations with "election-related activities" that are limited to electioneering communications and that its activities would not require the group to register as a political party, political committee, or committee of continuous existence.
- Amend the definition of "political committee" to remove the requirement that an ECO conform to specified requirements of a "political committee" when it is specifically exempt from the definition.
- Provide separate registration and reporting requirements for ECOs.
- Require an organization to register as an ECO upon receipt or expenditure of an aggregate amount exceeding $5,000, rather than when it "anticipates receipt or expenditure of money."
- Increase the amount an individual can expend before being subject to regulation from $100 to $5,000.
- Remove provisions identified as an impermissible burden on speech.

The bill authorizes the leader of each political party conference of the state House of Representatives and Senate to establish a separate, affiliated party committee to support the election of candidates of the leader's political party. Leader is defined as President of the Senate, Speaker of the House of Representatives, or the minority leader of either house of the Legislature, until a person is designated by a political party conference of members of either house to succeed to the position, at which time the designee becomes the leader for purposes of the affiliated party committee. Payment of assessments for candidates for state senator and member of the House of Representatives must be paid to the respective affiliated party committee of the Senate or House of Representatives. The bill provides that specified requirements and exemptions for political parties and state executive committees apply to an affiliated party committee. Finally, the bill removes the 28-day time limitation prior to a general election for contributions from political parties and affiliated party committees to candidates.

See "Fiscal Comments" for details on possible fiscal impacts.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Electioneering Communications and Electioneering Communications Organizations

Summary of Current Law

Federal Law and Regulations

Political speech, political association, and political expression are protected by the First Amendment. Consequently, governments can regulate only those narrow categories of political speech that are "unambiguously related to the campaign of a particular . . . candidate."[1] Two categories fall within that narrow exception: "communications that in express terms advocate the election or defeat of a clearly identifiable candidate for federal office, also referred to as express advocacy"[2]; and communications that constitute "the functional equivalent of express advocacy."[3,4]

The Bipartisan Campaign Reform Act of 2002 ("BCRA") amended the Federal Election Campaign Act by adding a new category of political communications, "electioneering communications," to those communications already governed by the Act. BCRA defines electioneering communications as broadcast, cable, or satellite communications that refer to a clearly identified candidate for Federal office, are publicly distributed within 60 days before a general election or 30 days before a primary election, and are targeted to the relevant electorate. Individuals and entities that make electioneering communications are subject to certain reporting requirements.

In 2007, the Supreme Court reviewed an as-applied challenge to the electioneering communications regulations of BCRA.[5] In WRTLII, Wisconsin Right to Life, a non-profit corporation, sought to use its own general treasury funds to pay for broadcast advertisements that qualified as electioneering communications prohibited by BCRA. The Federal Election Commission contended that the 2003 U.S. Supreme Court decision in McConnell v. Federal Election Commission established the "constitutional test for determining if an ad is the functional equivalent of express advocacy: whether the ad is intended to influence elections and has that effect."[6] The Court held that McConnell did not adopt any test as the standard for future as-applied challenges. The Court went on to reject the adoption of any test for as-applied challenges that depended on the speaker's intent to affect an election. Instead, the Court required that "a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[7]

Florida Law

"Legislatures have the power to regulate elections;"[8] however, there are certain constraints established in federal law and in case law.

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[1] Buckley v. Valeo, 424 U.S. 1, 80 (1976).
[2] Id. at 44.
[3] McConnell v. Fed. Election Comm'n, 540 U.S. 93, 206 (2003).
[4] Citizens United v. Fed. Election Comm'n, 530 F.Supp.2d 274 (D.C.C. 2008)(A film producer challenged provisions of BCRA as unconstitutional. The district court held that a movie about a presidential candidate was the functional equivalent of express advocacy. On September 9, 2009, the Supreme Court heard re-argument on the issue of contribution and expenditure limitations on corporations.)
[5] FEC v. Wisconsin Right to Life, Inc., 551 U.S. 449 (2007) ("WRTL II").
[6] WRTL II, at 465.
[7] In response to WRTL II, the FEC amended its regulations to allow electioneering communications if certain criteria were met.
[8] Buckley v. Valeo, 424 U.S. 1, 13 (1976).

On May 22, 2009, portions of Chapter 106, F.S., regulating "electioneering communications," were held unconstitutional by the United States District Court for the Northern District of Florida.[9] The electioneering communications laws attempted to regulate communication that "refers to or depicts a clearly identified candidate for office or contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the election or defeat of a candidate or the passage or defeat of an issue."[10] Any group that makes an electioneering communication must register as an electioneering communications organization. These organizations were required to register and report expenditures and contributions in the same manner as political committees supporting or opposing an issue or a candidate.

In the Broward Coalition decision, the court explained that there are two factors that must be met before a communication is deemed to be the functional equivalent of express advocacy. First, the speech must be "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[11] Second, the communication must be a "broadcast, cable, or satellite communication that refers to a clearly identified candidate within sixty days of a general election or thirty days of a primary election."[12] Under this criteria, the court found that: 1) none of the plaintiffs issued communication via broadcast, cable, or satellite; 2) all of the speech at issue is susceptible of a reasonable interpretation other than an appeal to vote for or against a candidate; and 3) "plaintiff's speech relating to ballot issues cannot, by definition, be express advocacy for a particular candidate."[13]

Effect of Proposed Changes

The bill reenacts and revises the following provisions of law related to electioneering communications and electioneering communication organizations (ECOs) to address the concerns raised in the Broward Coalition decision:

- Redefines "electioneering communication" to conform with federal law and case law by removing reference to issues; only regulating advocacy that is the functional equivalent of express advocacy and providing guidelines for such advocacy; and providing the timeframes for such communications.
- Removes the reference to electioneering communication in the provision of law relating to telephone solicitations which are express advocacy since such solicitations cannot, by definition, be electioneering communications.
- Removes reference to a specific number of persons who must be targeted[14] in a geographic area (1,000 in current state law, 50,000 in federal law) in the definition of "electioneering communication" to only refer to targeting to "relevant electorate in the geographic area the candidate would represent if elected."
- Redefines "electioneering communications organization" to clarify that it includes only those organizations with "election-related activities" that are limited to electioneering communications and that its activities would not require the group to register as a political party, political committee, or committee of continuous existence.
- Amends the definition of "political committee" to remove caveat on an ECO not being a political committee but having to conform to specified requirements of a "political committee." This was addressed in the Broward Coalition decision as being "confusing" and also that such requirements were too onerous on ECOs.

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[9] Broward Coalition v. Browning, 2009 WL 1457972, at *8.
[10] Section 106.011(1)(a), F.S.
[11] WRTL II, at 470.
[12] Id. at 476.
[13] Broward Coalition, 2009 WL 1457972, at *6.
[14] In the *Order Granting Motion for Preliminary Injunction* issued in Broward Coalition, 2008 WL 4791004, 21 Fla. L. Weekly Fed. D 420 (N.D.Fla., 2008), the court noted it would be impossible for plaintiffs to determine whether certain communications, issued through the internet or print, would be received by 1,000 or more persons. See also Alaska Right to Life Committee v. Miles, 441 F.3d 773, 783 (discussing Alaska electioneering law that required the communication to "address an issue of national, state, or local political importance" instead "targeted to the relevant electorate").

- Amends political committee registration provisions to specifically and separately address registration of ECOs.[15]
- Narrows the requirement for an organization to register as an ECO to once an organization receives or expends an aggregate amount exceeding $5,000,[16] rather than "anticipates receipt or expenditure of money."[17]
- Increases the amount an individual can expend before being subject to regulation from $100 to $5,000.[18]
- Places in one section of law all provisions relating to reporting requirements for ECOs and tailors certain provisions to ECOs. This, in part, addresses concerns of the court that ECOs are treated like political committees when they are not political committees and that such treatment is onerous for such organizations.
- Removes provisions stricken by the Broward Coalition decision (ss. 106.08(4)(b) and (5)(d), F.S.) because of probable challenge as a regulation on contributions that is too far removed from the candidate to prevent corruption and, therefore, is an impermissible burden on speech.[19]
- Reenacts other provisions because of changes made in the definitions and other changes in the proposal that seem to negate concerns raised by the court.

The bill differs from the Broward Coalition decision and from current law in the following ways:

- In redefining the term "electioneering communication", the bill retains certain print media (newspaper, magazine, or direct mail) and adds telephone.
- A statement to be read by someone who places an electioneering communication telephone call is provided in a separate section of law from that for express advocacy telephone solicitations.

Affiliated Party Committees

Present Situation

Chapter 103, F.S., requires each political party of the state to be represented by a state executive committee. County executive committees and other committees may be established in accordance with the rules of the state executive committee. The selection of membership to executive committees is provided as well as the responsibilities. Certain information relating to officers, membership, bylaws, and rules and regulations must be filed by the state executive committees with the Department of State. County executive committees file officer and membership information with the state executive committee and with the respective supervisor of elections.[20] Responsibility for maintaining records on receipt and disbursement of all party funds is delineated as well as penalties for misappropriation of funds, unlawful expenditure of funds, or false or improper accounting for committee funds.[21]

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[15] Section 106.03(1)(b), F.S., requires an ECO to register; however, other provisions in the registration requirements under s. 106.03, F.S., refer to political committees even though they are used for ECOs. The caveat in the exception of ECOs from the definition of "political committee" is used as authority for implementation of requirements under this section and other sections of ch. 106, F.S., as they would apply to ECOs.

[16] Federal case law has established a "major purpose" test to determine whether an organization's campaign activity should be regulated. However, basing regulation on an organization's *relative* amount of activity may encourage advocacy groups to circumvent the law by hiding their electoral activity from view. In addition, such regulation would discriminate against small organizations, because advocacy "that would constitute a small organization's major purpose might only be considered one of several primary purposes at a larger entity." Human Life of Washington v. Brumsickle, 2009 WL 62144 (W.D.Wash., 2009).

[17] Broward Coalition held that regulation based on an organizations anticipation of receiving or expending contributions constituted a prior restraint on the organizations communication. The amount of money specified brings the requirement more in line with federal requirements.

[18] 2 U.S.C. s. 434(f) places the threshold for an individual at an amount of greater than $10,000.

[19] See e.g. Emily's List v. Federal Election Com'n, --- F.3d ----, 2009 WL 2972412 (D.C.Cir., 2009)(discussing the First Amendment right of individuals to spend funds to express their views about policy issues and the corresponding right of those individuals to band together and pool their resources as a non-profit organization to express their views).

[20] Section 103.091, F.S.

[21] Section 103.121, F.S.

Unless excluded in law, the state executive committee receives payment of assessments for candidates for office, including state senators and members of the House of Representatives.[22]

No person or group of persons can use the name, abbreviation, or symbol of any political party or name of groups or committees associated with the political party that is filed by the political party with the Department of State.[23]

Effect of Proposed Changes

The bill establishes the mechanism for the leader of each political party conference of the Florida House of Representatives and Senate to establish a separate, affiliated party committee to support the election of candidates of the leader's political party.[24] An affiliated party committee shall adopt bylaws to include, at a minimum, the designation of a treasurer; conduct campaigns for candidates who are members of the leader's political party; and establish an account to raise and expend funds. Such funds may not be expended or committed for expenditure unless authorized by the leader.

Payment of assessments for candidates for state senator and member of the House of Representatives must be paid to the respective affiliated party committee of the Florida Senate or Florida House of Representatives, if such a committee has been established.

An affiliated party committee is entitled to use the name, abbreviation, or symbol of the political party of its leader.

Chapter 106, F.S., is amended to provide that an affiliated party committee is required to file specified reports like an executive committee of a political party or a political party. Additionally, provisions relating to contributions and expenditures; disposition of surplus funds by candidates; requirements for political advertisements; use of closed captioning and descriptive narrative in all television broadcasts, telephone solicitation, polls and surveys relating to candidacies; and penalties that relate to state executive committees and political parties are amended to include an affiliated party committee. Funds contributed to an affiliated party committee cannot be deemed as designated for the partial or exclusive use of a leader of an affiliated party committee.

Section 11.045, F.S., is amended to exclude contributions or expenditures made by or to an affiliated party committee, just as is done for a political party, from the definition of "expenditure" under this provision.

Sections 112.312 and 112.3215, F.S., are amended to exclude from the definition of "gift" contributions or expenditures by an affiliated party committee and to exclude from the definition of "expenditure," in the latter section, contributions or expenditures made by or to an affiliated party committee, just as is done for a political party in both of those sections.

Contributions by Political Parties to Candidates / Non-allocables

Present Situation

A candidate is limited to accepting an aggregate of $50,000 ($250,000 for a statewide candidate) from a political party, no more than half of which can be accepted before the 28-day period immediately preceding the general election.[25] The following items, known as "non-allocables," are excluded from

[22] Section 103.121(1)(b), F.S., provides that all party assessments are 2 percent of the annual salary of the office sought by the respective candidate.
[23] Section 103.081, F.S.
[24] The term "leader" means the President of the Senate, Speaker of the House of Representatives, or the minority leader of either house of the Legislature, until a person is designated by a political party conference of members of either house to succeed to the position, at which time the designee becomes the leader for purposes of the affiliated party committee.
[25] Section 106.08(2), F.S.

the aggregate $50,000 contribution limit ($250,000 limit for statewide candidates): polling services, research services, costs for campaign staff, professional consulting services, and telephone calls.

Effect of Proposed Change

The bill includes affiliated party committee along with political party in the list from which the aggregate funds can be accepted by a candidate. It removes the 28-day time limitation prior to a general election for candidates to accept contributions from political parties and affiliated party committees.

B. SECTION DIRECTORY:

Section 1. Amends s. 103.081, F.S., to allow an affiliated party committee to use the name, abbreviation, or political party symbol of the party to which its leader belongs.

Section 2. Creates s. 103.092, F.S., to define the term "leader," provide for the establishment of affiliated party committees, and delineate duties and responsibilities of an affiliated party committee.

Section 3. Amends s. 103.121, F.S., to require that certain assessments going to the party county or state executive committees be redirected to the appropriate affiliated party committee.

Section 4. Amends s. 106.011, F.S., to revise the definition of "political committee," "independent expenditure," "person," "filing officer," "electioneering communication," and "electioneering communications organization;" and to re-enact "contribution" and "expenditure."

Section 5. Amends s. 106.021, F.S., to provide that certain expenditures by an affiliated party committee are not considered a contribution or expenditure to or for a candidate.

Section 6. Reenacts s. 106.022(1), F.S., relating to appointment of a registered agent; duties.

Section 7. Amends s. 106.025, F.S., to exempt an affiliated party committee from certain campaign fund raising requirements.

Section 8. Amends s. 106.03, F.S., to provide separate, distinct registration requirements for electioneering communications organizations.

Section 9. Amends s. 106.04, F.S., to require a committee of continuous existence to report receipts from and transfers to an affiliated party committee.

Section 10. Amends s. 106.0701, F.S., to exempt affiliated party committees from certain filing requirements.

Section 11. Reenacts and amends s. 106.0703, F.S., to consolidate into one section reporting requirements for an electioneering communications organization.

Section 12. Amends s. 106.0705, F.S., to reenact a provision, add a reference to affiliated party committee, add cross-references, and add reference to "leader and treasurer" for required reports filed under the section.

Section 13. Reenacts and amends s. 106.071(1), F.S., to increase the aggregate amount of expenditures required for filing certain reports related to independent expenditures or electioneering communications.

Section 14. Amends s. 106.08, F.S., to remove certain limitations on contributions received by an electioneering communications organization, provide that an affiliated party committee is treated like a political party regarding limitations on contributions, delete the 28-day restriction on acceptance of certain funds preceding a general election, place certain restrictions on solicitation for and making of

contributions, provide guidelines for acceptance of in-kind contributions, and add an affiliated party committee to entities subject to penalties.

Section 15. Creates s. 106.088, F.S., to require an oath or affirmation by the leader or treasurer of an affiliated party committee as a condition of receipt of a rebate of party assessments and to provide penalties for violation of oath or affirmation.

Section 16. Amends s. 106.141, F.S., to add affiliated party committee to the groups that can receive not more than a specified amount of surplus funds being disposed of by any candidate.

Section 17. Amends s. 106.143, F.S., to require that an affiliated party, like a political party, must have a political advertisement offered by or on behalf of a candidate approved in advance by the candidate and the advertisement must contain certain information.

Section 18. Reenacts s. 106.1437, F.S., relating to miscellaneous advertisements.

Section 19. Reenacts and amends s. 106.1439, F.S., to provide disclaimers for electioneering communication telephone calls.

Section 20. Amends s. 106.147, F.S., to delete references to electioneering communication telephone calls and to add affiliated party committee to the list of entities included in the definition of "person."

Section 21. Amends s. 106.165, F.S., to add affiliated party committee to the list of entities that must use closed captioning and descriptive narratives in all television broadcasts.

Section 22. Amends s. 106.17, F.S., to add affiliated party committee to the list of entities that can authorize or conduct polls, surveys, and other such instruments relating to public office candidacy.

Section 23. Amends s. 106.23, F.S., to add affiliated party committee to the list of persons and organizations that may request and be provided with advisory opinions by the Division of Elections.

Section 24. Amends s. 106.265, F.S., to authorize the imposition of civil penalties by the Florida Elections Commission for certain violations by an affiliated party committee.

Section 25. Amends s. 106.27, F.S., to add affiliated party committee to the list of groups subject to certain civil actions by the Florida Elections Commission.

Section 26. Amends s. 106.29, F.S., to require filing of certain reports by an affiliated party committee, provide restrictions on certain expenditures and contributions, and to provide penalties.

Section 27. Amends s. 11.045, F.S., to exclude contributions or expenditures made by or to an affiliated party committee from the definition of "expenditure."

Section 28. Amends s. 112.312, F.S., to exclude from the definition of "gift" contributions or expenditures by an affiliated party committee.

Section 29. Amends s. 112.3215, F.S., to exclude contributions or expenditures made by or to an affiliated party committee from the definition of "expenditure."

Section 30. Provides a July 1, 2010 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Assessments for candidates for the state Senate and state House of Representatives that currently go to the respective political parties instead would go to an affiliated party committee if one has been created pursuant to the bill.

D. FISCAL COMMENTS:

Any state government costs associated with requirements for affiliated party committees are estimated by the Department of State to be minimal. The provisions would entail only coding an entry for receiving such electronic reports and receiving and processing the reports as is currently done for other committees, candidates, and parties. The payment of the assessment to the applicable leader likewise would be minimal as the Department of State currently pays the political parties their assessment.

According to the Department of State, any litigation relating to the provisions in HB 1207 relating to electioneering communications and electioneering communications organizations largely depends upon the issue litigated and whether appeals would be taken. The department stated estimates would range from about $50,000 at trial court level to upwards of $300,000 for defense; plus, if the department loses and has to pay attorney fees, it could easily go upwards of over $2 million. The department also noted that the plaintiff's attorney fees in Broward Coalition were slightly over $140,000.[26]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

   On May 22, 2009, portions of Chapter 106, F.S., regulating "electioneering communications" were held to be unconstitutional by the United States District Court for the Northern District of Florida in Broward Coalition v. Browning. The court stated "because the Court has never held that the regulation of 'electioneering communications' beyond how that term is defined in [BCRA] is permissible, the outer limit of regulation tracks BCRA's definition: a broadcast, cable, or satellite communication that refers to a clearly identified candidate within sixty days of a general election or thirty days of a primary election."[27]

[26] Information on estimated fiscal impact of HB 1207 was provided by the Department of State, February 25, 2010.
[27] Broward Coalition, 2009 WL 1457972, at *6, citing, N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 282 (4th Cir. 2008).

The definition of "electioneering communication" contained in section 4 of HB 1207 includes types of communication beyond that in the definition in BCRA.

Under section 5 of the Voting Rights Act, new legislation that implements a voting change including but not limited to a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe. The legislation is unenforceable if the Attorney General objects to the voting change.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Review of ECO Communications

ECO reports filed at the state level for the 2008 general election cycle (1/1/07 - 12/31/08) in which the Division of Elections could determine that the ECO spent money for or against candidates were reviewed by Governmental Affairs Policy Committee staff.[28] Reports from 32 different ECOs were reviewed to determine the expenditures for the various categories of communication (broadcast, print, telephone, etc.). Some reports broadly categorized expenditures as media, media buy, media placement, advertising, communication, or a combination; therefore, since those expenditures could possibly belong in a number of specific categories they were left as separate categories. Other reports were very explicit as to the type of communication. The following is a summary of the expenditure information:

• Print (mailers, newspapers, leaflets, etc.)	$2,002,366.48
• Television Ads	$ 922,816.35
• Radio Ads	$ 88,442.50
• Phone Banks	$ 77,051.68
• Billboard	$ 600.00
• Media/Media Buy/Media Placement	$ 705,316.18
• Advertising	$ 104,393.10
• Communication	$ 87,572.00

From the information provided, the expenditure for print is more than twice that for television and is more than all other categories combined.

[28] The information provided by the Division of Elections includes most of the reported ECO expenditures in support or opposition to candidates prior to the November 4, 2008 general election. The Broward Coalition court issued a preliminary injunction against enforcement of Florida's electioneering communication laws on October 29, 2008, so some ECO expenditures for or against candidates close to election day or thereafter before the end of the quarter were not included by all ECOs.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, the Governmental Affairs Policy Committee adopted six amendment to HB 1207 and reported the bill favorably as a committee substitute. The committee substitute differs from the original bill as follows:

- Amends requirements for the registration of electioneering communications organizations (ECOs) to clarify that an ECO files a statement of organization with the Division of Elections only when it is involved with elections at the state level and local level. Otherwise, the ECO files with the local government.
- Amends ECO reporting requirements to:
  - Clarify that if an ECO registered with the Department of State makes a contribution or expenditure to influence results of a county or municipal race that is not held when state and federal elections are being held, then the ECO must file reports with the local filing officer.
  - Authorize the filing officer to post the reporting schedule on its webpage.
  - Provide that the registered agent of an ECO, like the treasurer, is included as a possibility for service of process.
  - Update language to reflect current bank practices regarding statements versus cancelled checks.
  - Clarify that an ECO must file a report even when no contributions or expenditures are made during a reporting period.
- Adds the term "affiliated party committee" to three provisions of law that had not been included in the original bill.

On March 10, 2010, the Economic Development & Community Affairs Policy Council adopted one technical amendment to CS/HB 1207 and reported the bill favorably as a committee substitute. The amendment corrected an inadvertent omission of a reference to the treasurer of an ECO in certain electronic filing requirements for reports.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7103 Agriculture
SPONSOR(S): General Government Policy Council, Agriculture and Natural Resources Policy Committee
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 2074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Policy Committee	11 Y, 0 N	Kaiser	Reese
2) Natural Resources Appropriations Committee	9 Y, 0 N	Bellflower	Dixon
3) General Government Policy Council	14 Y, 0 N, As CS	Kaiser	Hamby
4) House Vote on Final Passage	115 Y, 0 N	Kaiser	Hamby

SUMMARY ANALYSIS

CS/HB 7103 addresses various issues relating to agriculture. The bill prohibits, with some limited exceptions, counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the agricultural operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit, or implements best management practices (BMPs)[1]. The bill also prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by BMPs, interim measures or regulations.[2] The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003, are not limited by the provisions of the bill. Additional exceptions are provided for areas located in the Wekiva River Protection Area and where a program is operated under a delegation agreement from a state agency or a water management district.

The bill creates the "Agricultural Land Acknowledgement Act" (act), which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land. The bill provides that the acknowledgement is a public record and must be maintained by the political subdivision as a permanent record. Additionally, a copy of the Acknowledgement of Agricultural Land must be presented to prospective buyers at or before the execution of a contract for sale. The Department of Agriculture and Consumer Services is granted rule-making authority to implement the provisions of the act.

The bill exempts any person, rather than any "natural person" as in current law, involved in the sale of agricultural products that were grown by said person in the state, from obtaining a local business tax receipt. The bill amends the definition of "farm tractor" to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

The bill reverses legislation enacted in 2005 and returns tropical foliage to exempt status from the provisions of the License and Bond law[3]. The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations. The definition of "nonresidential farm building" is clarified to more accurately define what types of buildings are exempt from county or municipal codes and fees.

The bill allows multi-peril crop insurers to meet the statutorily required capital and surplus to do business in the state, providing agricultural producers with increased insurance options offered by fiscally sound insurers. And lastly, the bill amends Chapter 823, F.S., to mirror the language in Chapter 403, F.S., regarding the materials used in agricultural production that may be burned in the open.

This legislation was reviewed by the Revenue Estimating Conference (conference) on March 19, 2010. The conference determined that this bill has an indeterminate and insignificant fiscal impact on state and local revenues.

The effective date of this legislation is July 1, 2010.

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[1] The BMPs interim measures or regulations must have been adopted as rules under Chapter 120, F.S. by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.
[2] *Id*
[3] Sections 604.15-604.34, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1:
In 2003, the Legislature passed CS/CS/SB 1660, which prohibited counties from adopting any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm or farm operation on land that is classified as agricultural[4], if such activity is regulated through best management practices (BMPs) or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, several counties had proposed regulations on various agricultural operations in the state that were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The bill did not explicitly prohibit the enforcement of existing measures. Some counties are imposing stormwater utility fees on agricultural lands where the farm operation has an agricultural discharge permit or implements BMPs.

This bill prohibits counties from enforcing regulations on activities currently meeting state, regional or federal regulations on a bona fide farm operation on land classified as agricultural. The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003, are not limited by the provisions of the bill. Additional exceptions are provided for areas located in the Wekiva River Protection Area and when a program is operated under a delegation agreement from a state agency and a water management district. The bill provides that a local government may not impose an assessment or fee for stormwater management on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit or implements BMPs[5].

The bill permits counties that adopted ordinances prior to March 1, 2009, to continue to charge an assessment or fee for stormwater management on agricultural land as long as the ordinance or resolution provides credits against the assessment or fee for the water quality or flood control benefit of implementation of BMPs[6]; stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or implements BMPs, which are demonstrated to be of equivalent or greater stormwater benefit than the BMPs implemented pursuant to Chapter 120, F.S.

Section 2:
Current law[7] states that if a farm operation has been operating for one year or more and was not a nuisance at the time it was established, it cannot be considered a nuisance thereafter as long as it conforms to generally accepted agricultural and management practices. Florida law further states that the farm operation does not become a nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with BMPs adopted by local, state or federal agencies.

Conditions that invalidate the nuisance protection include:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases that are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets or privies.
- The keeping of diseased animals that is dangerous to human health, unless such animals are kept in accordance with current state or federal disease control programs.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases harmful to human or animal life.

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[4] Section 193.461, F.S.
[5] The BMPs interim measures or regulations must have been adopted as rules under Chapter 120, F.S. by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.
[6] *Id*
[7] Section 823.14(4), F.S.

In 2007, a developer in Polk County built a housing development next to an established blueberry grower. The entrances to the development and the grower's operation were adjacent. The grower posted a "buyers beware" sign at the entrance to his farm stating that he used propane cannons to scare birds from his blueberry bushes. The developer sued the blueberry farmer stating that the sign was hindering the sales of homes in the development. The case was eventually dropped.

The Department of Agriculture & Consumer Services (department) states that it receives 8-12 complaints per year regarding the "nuisance" law and speculates there are at least 10 times as many that are never brought to the attention of the department.

The bill creates the "Agricultural Land Acknowledgement Act", which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant for the permit or certificate sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land.

The bill provides specific information to be included in the acknowledgement and provides that such acknowledgement is a public record and must be maintained by the political subdivision as a permanent record. The bill also requires that a copy of the Acknowledgement of Neighboring Agricultural Land be presented to prospective purchasers of residential property contiguous to sustainable agricultural land prior to or at the time the contract for sale is signed.

The department, in cooperation with the Department of Revenue, is granted rule-making authority to administer the provisions of this section of law.

Georgia has similar language in the Georgia Department of Community Affairs' "Model Land Use Management Code."

Section 3:
Florida law[8] exempts any natural person from obtaining an occupational license to sell agricultural products[9] that were grown in the state by said natural person. While the statutes provide a definition for "person," no definition is provided for "natural person." Hence, the statute is interpreted differently in different counties in regards to the exemption. The bill strikes the word "natural" to exempt any "person" from obtaining an occupational license.

Section 4:
Florida law provides various exemptions from obtaining a driver's license, one of those being "...any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway."[10] Currently, a farm tractor is defined in statute[11] as "a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry."

When this term was codified in statute several years ago, there was no other motor vehicle able to pull wagons and other farm machinery, other than a truck. In the past several years, farmers have begun using utility-type vehicles, such as ATVs, John Deere Gators, golf carts and others, as well as tractors, in agricultural operations. While these utility vehicles are generally used in the fields and around the agricultural production areas, it is necessary at times to gain access to state roadways for a brief distance to get from one field to another or to the production area.

[8] Section 205.064, F.S.
[9] Agricultural products include grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, with the exception of intoxicating liquors, wine or beer.
[10] Section 322.04 (1)(b), F.S.
[11] Section 322.01(20), F.S.

The bill amends the definition to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

Section 5:
The Florida License and Bond Law (law) [12] was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 Legislative Session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term "agricultural products" to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups of growers selling their own product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than $1,000 in product per month from Florida producers.

Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry and the industry has requested a reenactment of the exemption. This bill reverses the legislation enacted in 2005 to return tropical foliage to exempted status from the provisions of the law.

Section 6:
Nonresidential farm buildings have always maintained exempt status from building codes except for a brief period in 1998 when the statewide building code was amended and the exemption was inadvertently left out. In the recent past, some counties and municipalities have started assessing impact fees and/or requiring permits for nonresidential farm buildings, even though the buildings are never inspected and are exempt from building codes.

In October 2001, then-Attorney General Bob Butterworth wrote in an opinion to Nicolas Camuccio, Gilchrist Assistant County Attorney, "*...The plain language of sections 553.73(7)(c)[13] and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm...*"

The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations.

The definition of "nonresidential farm building" is amended to clarify that it may a temporary or permanent structure and is not intended to be used as a residential dwelling. The definition includes examples of types of buildings that are exempt from county or municipal codes and fees.

Section 7:
Crop insurance is purchased by agricultural producers for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430).

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[12] Sections 604.15-604.34, F.S.
[13] This cite has changed to s. 553.73(9)(c), F.S., since the opinion was written.

Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs regarding gross writing ratios.

The bill allows insurance companies, when calculating their gross writing ratio, to not include gross written premiums for federal multi-peril crop insurance that is ceded to the Federal Crop Insurance Cooperation (FCIC) and authorized reinsurers. The bill requires liabilities for ceded reinsurance premiums payable to the FCIC and authorized reinsurers to be netted against the asset for amounts recoverable from reinsurers. Insurers who write other insurance products along with federal multi-peril crop insurance must disclose, either in the notes to the annual and quarterly financial statement or as a supplement to the financial statement, a breakout of the gross written premiums for federal multi-peril crop insurance.

Section 8:
There are currently two sections in statute[14] that address open burning of materials used in agricultural production. They differ only in the products listed as approved for open burning. The bill amends the language in Chapter 823, F.S., to mirror the language in Chapter 403, F.S., which is the most recent expression of the Legislature.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3162, F.S.; prohibits a county from enforcing certain ordinances and/or resolutions relating to land classified as agricultural under certain circumstances; and, prohibits the county from imposing a tax, assessment or fee for stormwater management in certain circumstances.

Section 2: Creates s. 163.3163, F.S.; creates the "Agricultural Land Acknowledgement Act"; provides legislative findings and intent; provides definitions; requires applicants for certain development permits to sign and submit an acknowledgement of neighboring sustainable agricultural land; provides for such acknowledgement to become a public record and permanently maintained by the political subdivision; and, allows the Department of Agriculture and Consumer Services to adopt rules to administer the provisions of this section.

Section 3: Amends s. 205.064, F.S.; revises exemption eligibility for a local business tax receipt.

Section 4: Amends s. 322.01, F.S.; revises the definition of "farm tractor."

Section 5: Amends s. 604.15, F.S.; revises the definition of "agricultural products."

Section 6: Amends s. 604.50, F.S.; provides an exemption for farm fences from the Florida Building Code; provides an exemption for nonresidential farm buildings and farm fences from any county or municipal code or fee; and, revises the definition of "nonresidential farm building."

Section 7: Amends s. 624.4095, F.S.; requires that gross written premiums not be included when calculating the insurer's gross ratio; requires liabilities for ceded reinsurance premiums be netted against the asset for amounts recoverable from reinsurers; and, requires insurer writing other insurance products together with federal multi-peril crop insurance to disclose a breakout of the gross written premiums for multiple-peril crop insurance.

[14] Sections 403.707(2)(e) and 823.145, F.S.

Section 8: Amends s. 823.145, F.S.; revises the agricultural materials that are allowed to be openly burned.

Section 9: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	(FY 10-11) Amount/FTE	(FY 11-12) Amount/FTE
1. Revenues:		
Agricultural Products Dealers License (General Inspection Trust Fund)	$ (22,800)	$ (22,800)
2. Expenditures:		
None		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference (conference) reviewed this legislation on March 19, 2010. The conference determined that the provisions of this bill would have a negative indeterminate impact on local government revenues. See "Fiscal Comments" section below.

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being assessed with assessments, fees and/or business tax receipts by counties or municipalities.

The bill also exempts dealers who sell tropical foliage from the requirement to be licensed and bonded. According to the Department of Agriculture and Consumer Affairs, it will decrease the protection provided by the agricultural bond and create a financial vulnerability for those growers who no longer have the protection of ensuring they are paid for their product.

D. FISCAL COMMENTS:

The Division of Marketing (division) within the Department of Agriculture and Consumer Services reports that there are approximately 598 tropical foliage dealers who are currently licensed by the division. Of the 598 who have tropical foliage licenses, only 76 deal in tropical foliage alone. By exempting tropical foliage dealers from the definition of agricultural products, the division will experience a loss of revenue in the General Inspection Trust Fund of $22,800 for FY 2010-11 and a loss of $22,800 for FY 2011-12. The loss of revenue is insignificant.

The Revenue Estimating Conference (conference) made the following comments related to identical legislation filed during the 2009 Legislative Session.

Provisions of this bill that (1) prohibit a county or municipality from imposing an assessment or fee for storm water management on certain lands, and (2) exempt nonresidential farm buildings and fences from county or municipal codes or fees will have a negative indeterminate impact on local government revenues as determined by the Revenue Estimating Conference.

In 2008, the Office of Economic and Demographic Research (EDR) was able to identify eleven county stormwater utilities. Of those, six indicated that they exempted agricultural parcels from paying any

assessment or fee and five indicated that they did not provide such an exemption. In March of 2008, EDR conducted a telephone survey of the five county stormwater utilities that had indicated that they did not fully exempt agricultural lands. The purpose of the survey was to attempt to identify the potential revenue that might be lost if the provisions of the proposed legislation relating to stormwater management assessments or fees were enacted. Two of the five counties responded to the survey as follows:

County	Potential Lost Revenue
Sarasota	$118,500
Pasco	$ 71,924
Total	**$190,424**

The amendment to s. 604.50, F.S., expands the exemption afforded to nonresidential farm buildings from the state, city and county building codes to any nonresidential farm building or farm fence from any county or municipal code or fee. This would appear to include land use planning, environmental and virtually any local code or fee, including locally imposed impact fees.

According to a survey conducted by the Legislative Committee on Intergovernmental Relations in 2006, no local governments reported imposing impact fees specifically on agricultural buildings. In a limited telephone survey conducted in March 2008, respondents indicated that local construction projects were typically evaluated for infrastructure impacts, such as public safety or transportation, at the time of plan review and permitting. Since nonresidential farm buildings are not subject to state and local building codes, they often escape this scrutiny. Only one county, Jefferson County, reported imposing a fee on a nonresidential farm building in the past. According to Jefferson County staff, they imposed a public safety impact fee on a 4,650 square foot nonresidential agricultural building due to its intended office and warehouse uses. The fee was believed to be $1,488.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandate provision appears to apply because the bill reduces the authority that counties have to raise revenues. The bill prohibits a county from imposing an assessment or fee for stormwater management on certain lands and exempts non-residential farm buildings and fences from fees.

   The Revenue Estimating Conference (conference) determined that the provisions of this legislation would have had a negative indeterminate impact on local government revenues. Staff anticipated that the impact would not exceed $1.9 million statewide. Therefore, the bill should be exempt from the mandates provision because the fiscal impact is insignificant.

   Additionally, the mandate provision may apply because the bill prohibits local cities and counties from imposing a local business tax on persons engaged in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom. The Revenue Estimating Conference has determined that the fiscal impact is insignificant.

   In the absence of an applicable exemption or exception, Article VII, section 18(b) of the Florida Constitution prohibits the legislature from enacting, amending or repealing a law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989, unless the law is approved by a two-thirds vote of the membership of each house.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, is granted rule-making authority to implement the provisions of the "Agricultural Land Acknowledgement Act."

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services (department) states that, in July 2007, a firm dealing in tropical foliage was ordered to pay over $97,000 to a South Florida nursery for tropical foliage it purchased but failed to pay for. During the 2008-09 FY, the department processed claims totaling $13,325 filed by Florida producers against agricultural dealers listing tropical foliage among the commodities handled.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 14, 2010, the General Government Policy Council amended and passed HB 7103 as a Committee Substitute (CS). The amendment, relating to stormwater management, clarifies that the credits relate to the water quality or flood control benefits of the best management practices.