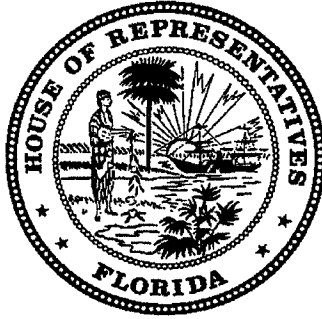




Finance and Tax Committee

Thursday, January 26, 2012
2:30 p.m.
Morris Hall

MEETING PACKET



Finance and Tax Committee

AGENDA

January 26, 2012
2:30 p.m.
Morris Hall

I. Call to Order/Roll Call

II. **Consideration of the following bill(s):**

HB 123 Use of Cigarette Tax Proceeds by Grant
HB 251 Property Assessments by Workman
HB 737 Tax on Sales, Use, and Other Transactions by Porter
HB 859 Florida Tax Credit Scholarship Program by Corcoran
HB 1393 Taxation Of Transient Rentals by Brodeur
HB 7031 Financial Emergencies by Economic Affairs Committee, Hukill

Consideration of the following proposed committee bill(s):

PCB FTC 12-01 -- Property Tax Oversight
PCB FTC 12-02 -- General Tax Administration
PCB FTC 12-03 -- Corporate Income Tax
PCB FTC 12-04 -- Corporate Income Tax
PCB FTC 12-05 -- Communication Services Tax

Consideration of the following proposed committee substitute(s):

PCS for HB 809 -- Communication Services Tax
PCS for HB 1063 -- Local Business Tax

III. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 123 Use of Cigarette Tax Proceeds

SPONSOR(S): Grant and others

TIED BILLS: IDEN./SIM. BILLS: SB 342

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Wilson <i>wuf</i>	Langston <i>BL</i>
2) Health & Human Services Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

Section 1004.43, F.S., establishes the H. Lee Moffitt Cancer Center and Research Institute (Moffitt). A not-for-profit corporation governs Moffitt in accordance with an agreement with the Board of Governors of the State University System for the use of facilities on the campus of the University of South Florida (USF). Moffitt is funded in part through a distribution from the cigarette tax.

HB 123 amends s. 210.20, F.S., to provide that beginning July 1, 2013, through June 30, 2045, the Moffitt funding distribution will increase from 1.47 percent to 4.88 percent of net cigarette tax collections. Also, the bill adds to the list of allowable uses of the funds to include:

- Financing, operating, and maintaining clinical and related facilities;
- Furnishing, equipping, operating, and maintaining other properties owned or leased by Moffitt; and
- Paying costs incurred in connection with purchasing, financing, operating, and maintain such equipment, facilities, and properties.

The bill removes a reference to a cancer research facility at the University of South Florida being adjacent to Moffitt from statute.

The bill provides that any change or repeal of the cigarette tax that adversely affects bonds issued for Moffitt would be provided through an alternative funding source by the Legislature to ensure sufficient debt service.

The bill also amends s. 210.201, F.S., to conform to similar changes in s. 210.20, F.S., related to Moffitt facilities funding proceeds and usage described above.

The Revenue Estimating Conference determined that this bill will have a -\$13.2 Million cash and recurring General Revenue impact beginning in FY 2013-14. See FISCAL COMMENTS.

This act shall take effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The H. Lee Moffitt Cancer Center and Research Institute

Section 1004.43, F.S., establishes the H. Lee Moffitt Cancer Center and Research Institute (Moffitt). A not-for-profit corporation governs Moffitt in accordance with an agreement with the Board of Governors of the State University System for the use of facilities on the USF campus. Moffitt is funded in part through a distribution from the cigarette tax.

Cigarette Tax

Chapter 210, F.S., provides for the tax on tobacco products. Taxes are imposed on the sale of cigarettes and other non-cigar tobacco products in Florida. The cigarette tax is collected by the Department of Business and Professional Regulation (DBPR) and deposited into Cigarette Tax Collection Trust Fund.

Section 210.20(2), F.S. provides for monthly distribution from the cigarette tax as follows:

Distribution from total collections:

- 8 percent to General Revenue Service Charge¹; and
- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund².

Distribution from remaining collections:

- 2.9 percent to Revenue Sharing Trust Fund for Counties;
- 29.3 percent to Public Medical Assistance Trust Fund;
- 1.47 percent to Board of Directors of Moffitt³; and
- The remainder of funds to General Revenue.

Below is the distribution of the cigarette tax by funding source:

Distribution from Cigarette Tax (millions)

Fiscal Year	Total Distribution*	General Revenue**	County Revenue Sharing	Public Medical Assistance Trust Fund	Moffitt
2010-11	308.8	214.1	8.2	80.7	5.6
2009-10	298.2	204.2	8.0	80.3	5.6
2008-09	415.1	208.9	11.1	112.3	5.7
2007-08	406.3	269.2	10.9	110.3	10.8
2006-07	417.4	277.0	11.2	113.2	15.9

* Distributions do not include refunds or administrative costs.

** Includes an 8 percent General Revenue Service Charge⁴.

Use of the Cigarette Tax Distribution to Moffitt

¹ s. 215.20, F.S.

² s. 210.02, F.S.

³ Note: Chapter 98-286, L.O.F., provided for a 10 year cigarette tax distribution of 2.59 percent to Moffitt, beginning in FY 1999-2000. Chapter 2002-393, L.O.F., provided for an additional cigarette tax distribution to Moffitt: 0.2632 percent in FY 2002-03 and 2003-04; and then 1.47 percent beginning in FY 2004-05 through FY 2015-16. Chapter 2009-58, L.O.F., extended the 1.47 percent Moffitt cigarette tax distribution through 2019-20.

⁴ s. 215.20, F.S.

Section 210.20(b)2., F.S., provides that the 1.47 percent distribution to the Board of Directors of Moffitt is to be used for purposes of constructing, furnishing, and equipping a cancer research facility at USF adjacent to Moffitt.

Section 210.201, F.S., further specifies that the distribution to Moffitt provided in 210.20, F.S., must be used to secure financing to pay cost related to constructing, furnishing, and equipping the cancer research facility. The financing may include the issuance of tax-exempt bonds by a local authority, municipality, or county pursuant to parts I and II of chapter 159⁵. The bonds must not constitute state bonds for purposes of s. 11, Art. VII of the State Constitution, but shall constitute bonds of a "local agency"⁶.

Effect of Proposed Changes

The bill amends s. 210.20(2), F.S., to provide that beginning July 1, 2013, through June 30, 2045, the Moffitt funding distribution will increase from 1.47 percent to 4.88 percent of net cigarette tax collections.

Also, the bill adds to the list of allowable uses of the funds to include:

- Financing, operating, and maintaining clinical and related facilities;
- Furnishing, equipping, operating, and maintaining other properties owned or leased by Moffitt; and
- Paying costs incurred in connection with purchasing, financing, operating, and maintain such equipment, facilities, and properties.

The bill removes a reference to a cancer research facility at the University of South Florida being adjacent to Moffitt from statute.

The bill provides that any change or repeal of the cigarette tax that adversely affects bonds issued for Moffitt would be provided through an alternative funding source by the Legislature to ensure sufficient debt service of outstanding bonds.

The bill also amends s. 210.201, F.S., related to Moffitt facilities funding proceeds and usage described above, to conform to similar changes made in s. 210.20, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 210.20, F.S., increasing the Moffitt funding distribution to 4.88 percent of net cigarette tax collections, providing how the funds can be utilized, and further providing an alternative funding source by the Legislature for Moffitt to ensure sufficient debt service on bonds.

Section 2: Amends s. 210.201, F.S., conforming Moffitt facilities funding proceeds and usage to similar provisions found in s. 210.20 F.S.

Section 3: This act shall take effect July, 1, 2012.

⁵ Part I and part II of ch.159, F.S., provides for the type of bond financing under the Florida Industrial Development Financing Act and for Industrial Development Authorities.

⁶ s. 159.27(4), F.S., defines "local agency" as any county or municipality existing or hereafter created pursuant to the laws of the state or any special district or other local governmental body existing or hereafter created pursuant to the laws of the state, the purpose for the creation of which could reasonably be interpreted to be consistent with the issuance of revenue bonds to finance the cost of projects within the meaning of this definition.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference determined that this bill will have a -\$13.2 Million cash and recurring General Revenue impact beginning in FY 2013-14. Also see FISCAL COMMENTS.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Current law provides that beginning in FY 2004-2005, the appropriation to Moffitt authorized under s. 210.20(2), F.S., will not be less than the amount that would have been paid to Moffitt in FY 2001-2002 had the distribution been in effect in that 2001-2002. In FY 2001-2002, the net cigarette tax collected was \$418.2 million. This provision is not changed by the bill. Consequently, the revenue impact is based on the 2001-2002 tax collections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

6

1 A bill to be entitled
 2 An act relating to the use of cigarette tax proceeds;
 3 amending s. 210.20, F.S.; revising the payment and
 4 distribution of funds in the Cigarette Tax Collection
 5 Trust Fund; providing specified purposes for the use
 6 of funds that are appropriated out of the trust fund;
 7 providing legislative intent; amending s. 210.201,
 8 F.S.; authorizing moneys transferred to the Board of
 9 Directors of the H. Lee Moffitt Cancer Center and
 10 Research Institute to be used to secure financing to
 11 pay costs for specified purposes at certain facilities
 12 and other properties; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Paragraph (b) of subsection (2) of section
 17 210.20, Florida Statutes, is amended to read:

18 210.20 Employees and assistants; distribution of funds.—

19 (2) As collections are received by the division from such
 20 cigarette taxes, it shall pay the same into a trust fund in the
 21 State Treasury designated "Cigarette Tax Collection Trust Fund"
 22 which shall be paid and distributed as follows:

23 (b)1. Beginning January 1, 1999, and continuing for 10
 24 years thereafter, the division shall from month to month certify
 25 to the Chief Financial Officer the amount derived from the
 26 cigarette tax imposed by s. 210.02, less the service charges
 27 provided for in s. 215.20 and less 0.9 percent of the amount
 28 derived from the cigarette tax imposed by s. 210.02, which shall

29 | be deposited into the Alcoholic Beverage and Tobacco Trust Fund,
 30 | specifying an amount equal to 2.59 percent of the net
 31 | collections, and that amount shall be paid to the Board of
 32 | Directors of the H. Lee Moffitt Cancer Center and Research
 33 | Institute, established under s. 1004.43, by warrant drawn by the
 34 | Chief Financial Officer upon the State Treasury. These funds are
 35 | hereby appropriated monthly out of the Cigarette Tax Collection
 36 | Trust Fund, to be used for the purpose of constructing,
 37 | furnishing, and equipping a cancer research facility at the
 38 | University of South Florida adjacent to the H. Lee Moffitt
 39 | Cancer Center and Research Institute. In fiscal years 1999-2000
 40 | and thereafter with the exception of fiscal year 2008-2009, the
 41 | appropriation to the H. Lee Moffitt Cancer Center and Research
 42 | Institute authorized by this subparagraph shall not be less than
 43 | the amount that would have been paid to the H. Lee Moffitt
 44 | Cancer Center and Research Institute for fiscal year 1998-1999
 45 | had payments been made for the entire fiscal year rather than
 46 | for a 6-month period thereof.

47 | 2. Beginning July 1, 2002, and continuing through June 30,
 48 | 2004, the division shall, in addition to the distribution
 49 | authorized in subparagraph 1., from month to month certify to
 50 | the Chief Financial Officer the amount derived from the
 51 | cigarette tax imposed by s. 210.02, less the service charges
 52 | provided for in s. 215.20 and less 0.9 percent of the amount
 53 | derived from the cigarette tax imposed by s. 210.02, which shall
 54 | be deposited into the Alcoholic Beverage and Tobacco Trust Fund,
 55 | specifying an amount equal to 0.2632 percent of the net
 56 | collections, and that amount shall be paid to the Board of

57 Directors of the H. Lee Moffitt Cancer Center and Research
58 Institute, established under s. 1004.43, by warrant drawn by the
59 Chief Financial Officer. Beginning July 1, 2004, and continuing
60 through June 30, 2013 ~~2020~~, the division shall, in addition to
61 the distribution authorized in subparagraph 1., from month to
62 month certify to the Chief Financial Officer the amount derived
63 from the cigarette tax imposed by s. 210.02, less the service
64 charges provided for in s. 215.20 and less 0.9 percent of the
65 amount derived from the cigarette tax imposed by s. 210.02,
66 which shall be deposited into the Alcoholic Beverage and Tobacco
67 Trust Fund, specifying an amount equal to 1.47 percent of the
68 net collections, and that amount shall be paid to the Board of
69 Directors of the H. Lee Moffitt Cancer Center and Research
70 Institute, established under s. 1004.43, by warrant drawn by the
71 Chief Financial Officer. Beginning July 1, 2013, and continuing
72 through June 30, 2045, the division shall, in addition to the
73 distribution authorized in subparagraph 1., from month to month
74 certify to the Chief Financial Officer the amount derived from
75 the cigarette tax imposed by s. 210.02, less the service charges
76 provided for in s. 215.20 and less 0.9 percent of the amount
77 derived from the cigarette tax imposed by s. 210.02, which shall
78 be deposited into the Alcoholic Beverage and Tobacco Trust Fund,
79 specifying an amount equal to 4.88 percent of the net
80 collections, and that amount shall be paid to the Board of
81 Directors of the H. Lee Moffitt Cancer Center and Research
82 Institute, established under s. 1004.43, by warrant drawn by the
83 Chief Financial Officer. These funds are appropriated monthly
84 out of the Cigarette Tax Collection Trust Fund, to be used for

85 lawful purposes, including the purpose of constructing,
 86 furnishing, and equipping, financing, operating, and maintaining
 87 a cancer research and clinical and related facilities;
 88 furnishing, equipping, operating, and maintaining other
 89 properties owned or leased by facility at the University of
 90 South Florida adjacent to the H. Lee Moffitt Cancer Center and
 91 Research Institute; and paying costs incurred in connection with
 92 purchasing, financing, operating, and maintaining such
 93 equipment, facilities, and properties. In fiscal years 2004-2005
 94 and thereafter, the appropriation to the H. Lee Moffitt Cancer
 95 Center and Research Institute authorized by this subparagraph
 96 shall not be less than the amount that would have been paid to
 97 the H. Lee Moffitt Cancer Center and Research Institute in
 98 fiscal year 2001-2002, had this subparagraph been in effect.

99 3. If the cigarette tax is amended or repealed or this
 100 paragraph is modified in a manner that would adversely affect
 101 bonds issued for the purposes enumerated in subparagraph 2., the
 102 Legislature intends to provide alternative funding sources in an
 103 amount sufficient to pay any deficit in the amount required for
 104 debt service on such bonds.

105 Section 2. Section 210.201, Florida Statutes, is amended
 106 to read:

107 210.201 H. Lee Moffitt Cancer Center and Research
 108 Institute facilities ~~Cancer research facility at the University~~
 109 ~~of South Florida;~~ establishment; funding.—The Board of Directors
 110 of the H. Lee Moffitt Cancer Center and Research Institute shall
 111 construct, furnish, and equip, and shall covenant to complete,
 112 the cancer research and clinical and related facilities of

113 | ~~facility at the University of South Florida adjacent to the H.~~
 114 | Lee Moffitt Cancer Center and Research Institute funded with
 115 | proceeds from the Cigarette Tax Collection Trust Fund pursuant
 116 | to s. 210.20. Moneys transferred to the Board of Directors of
 117 | the H. Lee Moffitt Cancer Center and Research Institute pursuant
 118 | to s. 210.20 may ~~shall~~ be used to secure financing to pay costs
 119 | related to constructing, furnishing, ~~and~~ equipping, operating,
 120 | and maintaining the cancer research and clinical and related
 121 | facilities; furnishing, equipping, operating, and maintaining
 122 | other leased or owned properties; and paying costs incurred in
 123 | connection with purchasing, financing, operating, and
 124 | maintaining such equipment, facilities, and properties as
 125 | provided in s. 210.20 ~~faeility~~. Such financing may include the
 126 | issuance of tax-exempt bonds or other forms of indebtedness by a
 127 | local authority, municipality, or county pursuant to parts II
 128 | and III of chapter 159. Such bonds shall not constitute state
 129 | bonds for purposes of s. 11, Art. VII of the State Constitution,
 130 | but shall constitute bonds of a "local agency," as defined in s.
 131 | 159.27(4). The cigarette tax dollars pledged to facilities ~~this~~
 132 | ~~faeility~~ pursuant to s. 210.20 may be replaced annually by the
 133 | Legislature from tobacco litigation settlement proceeds.

134 | Section 3. This act shall take effect July 1, 2012.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Finance & Tax Committee
Representative Grant offered the following:

Amendment

Remove lines 72-104 and insert:

through June 30, 2020, the division shall from month to month certify to the Chief Financial Officer the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying an amount equal to 2.75 percent of the net collections, and that amount shall be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, established under s. 1004.43, by warrant drawn by the Chief Financial Officer. These funds are appropriated monthly out of the Cigarette Tax Collection Trust Fund, to be used for lawful purposes, including the purpose of constructing, furnishing, and equipping, financing, operating, and maintaining

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 123 (2012)

Amendment No. 1

20 a cancer research and clinical and related facilities;
21 furnishing, equipping, operating, and maintaining other
22 properties owned or leased by ~~facility at the University of~~
23 ~~South Florida adjacent to~~ the H. Lee Moffitt Cancer Center and
24 Research Institute; and paying costs incurred in connection with
25 purchasing, financing, operating, and maintaining such
26 equipment, facilities, and properties. In fiscal years 2004-2005
27 and thereafter, the appropriation to the H. Lee Moffitt Cancer
28 Center and Research Institute authorized by this subparagraph
29 shall not be less than the amount that would have been paid to
30 the H. Lee Moffitt Cancer Center and Research Institute in
31 fiscal year 2001-2002, had this subparagraph been in effect.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 251 Property Assessments
SPONSOR(S): Workman and others
TIED BILLS: IDEN./SIM. BILLS: SB 928

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Aldridge <i>A</i>	Langston <i>DL</i>
2) Community & Military Affairs Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. "Just value" is synonymous with "fair market value" and is defined as what a willing buyer would pay a willing seller for the property in an arm's length transaction.

Section 193.011, F.S., requires property appraisers to take into consideration eight factors in arriving at just valuation. The first factor is the present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length.

The bill amends s. 193.011(1), F.S., the first of eight factors property appraisers are required to take into account in arriving at just value. The bill specifies that the present cash value of the property, which is the amount a willing purchaser would pay a willing seller at arm's length, would include but not be limited to cash values from distress sales, short sales, bank sales, or sales at public auction. The property appraiser shall exercise discretion in using all open market transactions and shall use such transactions only if the transactions, in the opinion of the property appraiser, constitute a sufficient number as to affect market value within any specific geographical area.

The Revenue Estimating Conference estimated that the bill would have a recurring negative indeterminate impact on local government revenues of at least certain amounts. For school levies, the minimum estimated impacts are negative \$10.2 in FY 2012-13 with a recurring negative impact of \$20.8 million. For non-school levies, the minimum estimated impacts are negative \$14.3 million in FY 2012-13 with a recurring negative impact of \$29 million.

The bill is effective upon becoming law and shall apply retroactively to January 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Just Value

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. "Just value" is synonymous with "fair market value" and is defined as what a willing buyer would pay a willing seller for the property in an arm's length transaction.¹

Factors Considered in Deriving Just Valuation

Section 193.011, F.S., requires property appraisers to take into consideration the following factors in arriving at just valuation:

- Present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- Highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any executive order, ordinance, regulation, resolution or proclamation or judicial limitation when it prohibits or restricts the development or improvement of property;
- Location of the property;
- Quantity or size of the property;
- Cost of the property and the present replacement value of any improvements thereon;
- Condition of the property;
- Income from the property; and
- Net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of sale.

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.² Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.³ Land used for conservation purposes must be assessed solely on the basis of character or use.⁴ Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or be totally exempted from taxation.⁵ Counties and

¹ See *Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

² The constitutional provisions in section 4, Art. VII, of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

³ Art. VII, section 4(a) of the Florida Constitution.

⁴ Art. VII, section 4(b) of the Florida Constitution.

⁵ Art. VII, section 4(c) of the Florida Constitution.

municipalities may authorize historic properties to be assessed solely on the basis of character or use.⁶ Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.⁷ The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.⁸ Certain working waterfront property is assessed based upon the property's current use.⁹

Assessment Limitations

Save Our Homes

The "Save Our Homes" provision in Article VII, section 4 of the Florida Constitution, limits the amount a homestead's assessed value can increase annually to the lesser of 3 percent or the inflation rate as measured by the consumer price index (CPI).¹⁰ Homestead property owners that establish a new homestead may transfer up to \$500,000 of their accrued "Save Our Homes" benefit to a new homestead.¹¹

Additional Assessment Limitations

Article VII, sections 4(g) and (h), of the Florida Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units must be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature may provide that such property shall be assessed at just value after a change of ownership or control and must provide for reassessment following a qualifying improvement, as defined by general law.

Exemptions

The Legislature may only grant property tax exemptions that are authorized in the constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹²

Homestead Exemption

Article VII, section 6 of the Florida Constitution, provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

Other Exemptions

Article VII, section 3 of the Florida Constitution, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is

⁶ Art. VII, section 4(e) of the Florida Constitution.

⁷ Art. VII, section 4(f) of the Florida Constitution.

⁸ Art. VII, section 4(i) of the Florida Constitution.

⁹ Art. VII, section 4(j) of the Florida Constitution.

¹⁰ Art. VII, section 4(d) of the Florida Constitution.

¹¹ Art. VII, section 4(d) of the Florida Constitution.

¹² See *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). See also, *Archer v. Marshall*, 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.¹³ Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.¹⁴ A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.¹⁵ A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.¹⁶ Tangible personal property is exempt up to \$25,000 of its assessed value.¹⁷ There is an exemption for real property dedicated in perpetuity for conservation purposes.¹⁸ There is an exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.¹⁹

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes.

Effect of Proposed Changes

The bill amends s. 193.011(1), F.S., the first of eight factors property appraisers are required to take into account in arriving at just value. The bill specifies that the present cash value of the property, which is the amount a willing purchaser would pay a willing seller at arm's length, would include but not be limited to cash values from distress sales, short sales, bank sales, or sales at public auction. The property appraiser shall exercise discretion in using all open market transactions and shall use such transactions only if the transactions, in the opinion of the property appraiser, constitute a sufficient number as to affect market value within any specific geographical area.

B. SECTION DIRECTORY:

Section 1: Amends s. 193.011(1), F.S., as described above.

Section 2: Provides that the bill is effective upon becoming law and shall apply retroactively to January 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimated that the bill would have no impact on state government revenues.

2. Expenditures:

None.

¹³ Art. VII, section 3(a) of the Florida Constitution.

¹⁴ Art. VII, section 3(b) of the Florida Constitution.

¹⁵ Art. VII, section 3(c) of the Florida Constitution.

¹⁶ Art. VII, section 3(d) of the Florida Constitution.

¹⁷ Art. VII, section 3(e) of the Florida Constitution.

¹⁸ Art. VII, section 3(f) of the Florida Constitution.

¹⁹ Art. VII, section 3(g) of the Florida Constitution.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated that the bill would have a recurring negative indeterminate impact on local government revenues of at least certain amounts. For school levies, the minimum estimated impacts are negative \$10.2 in FY 2012-13 with a recurring negative impact of \$20.8 million. For non-school levies, the minimum estimated impacts are negative \$14.3 million in FY 2012-13 with a recurring negative impact of \$29 million.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue's analysis of the bill done October 20, 2011 identified the following concerns:

The proposed language creates an internal conflict in section 193.011, F.S., by including distress-type transfers as a component of open market, arm's length sales involving a willing seller. By definition, such distress-type transfers are not open market or arm's length sales involving a willing seller (market sales).

This bill language would change the meaning of market sales as provided in subsections 193.011(1) and 195.096(2)(c), F.S., leading to increased assessment variation and decreased assessment uniformity. This would create a different standard for "market sales" and would present substantial difficulty for the Department in performing its oversight duties under sections 193.1142, 195.0012, 195.096, 195.0995, and 195.097, F.S. Subsection 195.096(2)(d), F.S., states: "*In the conduct of these reviews, the department shall adhere to all standards to which the property appraisers are required to adhere.*"

Section 195.0012, F.S., states the following: "*It is declared to be the legislative purpose and intent in this entire chapter to recognize and fulfill the state's responsibility to secure a just valuation for ad valorem tax purposes of all property and to provide for a uniform assessment as between property within each county and property in every other county or taxing district.*"

Using distress-type transfers as “market sales” would increase assessment variation and impede the legislative intent for the Department to secure just valuations and assessment uniformity.

Section 195.096(5), F.S., states the following: *“It is the legislative intent that the department utilize to the fullest extent practicable objective measures of market value in the conduct of reviews pursuant to this section.”* The distress-type sales contemplated in this bill would not give objective measures of value as provided by statute.

The Department’s sale qualification reviews under section 195.0995, F.S., rely upon arm’s length, market sales as objective measures of whether particular sales should be qualified or disqualified consistent with the statutory scheme for just valuation. Including non-market, distress-type sales in the pool of market sales would impede the Department’s ability to objectively and reliability [sic] evaluate the decisions of the property appraiser in qualifying or disqualifying sales. this would lead to difficulty in the Department’s ability to perform its duties under section 195.097, F.S. (all emphasis contained in original)

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to property assessments; amending s.
 3 193.011, F.S.; revising the factors that a property
 4 appraiser must consider when deriving the just
 5 valuation of property; providing conditions and
 6 limitations relating to a property appraiser's use of
 7 certain property transactions to arrive at just
 8 valuation of property; providing for retroactive
 9 application; providing an effective date.

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

Section 1. Subsection (1) of section 193.011, Florida Statutes, is amended to read:

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

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in open market transactions or transactions a transaction at arm's length which have occurred in good faith between unrelated or unaffiliated parties, including, but not limited to, a distress sale, short sale, bank sale, or sale at public auction. The property appraiser shall exercise discretion in using all open market transactions and shall use such transactions only if the transactions, in the

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29 | opinion of the property appraiser, constitute a sufficient
30 | number as to affect market value within any specific
31 | geographical area;

32 | Section 2. This act shall take effect upon becoming a law
33 | and shall apply retroactively to January 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 737 Tax on Sales, Use, and Other Transactions

SPONSOR(S): Porter

TIED BILLS: IDEN./SIM. BILLS: SB 982

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Flieger <i>BF</i>	Langston <i>AL</i>
2) Appropriations Committee			

SUMMARY ANALYSIS

HB 737 establishes a pair of 3 day periods during which certain items will be exempt from sales tax (commonly called a "sales tax holiday"), the first beginning on August 10, 2012 and lasting through August 12, 2012, and the second from August 17, 2012, through August 19, 2012. During the sales tax holiday, clothing, footwear, wallets, and bags that cost \$75 or less, and school supplies that cost \$15 or less are exempt from the state sales tax and county discretionary sales surtaxes (commonly called "local option sales taxes").

The bill specifies that the exemption during the period does not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport.

The 2012 Revenue Estimating Conference estimates that this bill would have negative, nonrecurring impacts of \$39.8 million to General Revenue and \$9 million to local governments in Fiscal Year 2011-12.

The Department of Revenue is given authority to adopt emergency rules.

The bill will take effect upon becoming a law.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 212, F.S, imposes a 6 percent tax on the retail sale of tangible personal property,¹ which includes books, clothing, footwear, wallets, bags, school supplies, and computers.

In addition, county governments may impose discretionary sales surtaxes (e.g., indigent care and trauma center surtax, county public hospital surtax, school capital outlay surtax).² County discretionary sales surtaxes (commonly called “local option sales taxes”) apply to all transactions in the county which are subject to the state sales tax.³

History of Sales Tax Holidays:

Since 1998, the Legislature has enacted ten temporary periods (commonly called “sales tax holidays”) during which certain clothing, footwear, books and school supply items were exempted from the state sales tax and county discretionary sales surtaxes.⁴

The length of the exemption periods has varied from 3 to 10 days. The type and value of exempt items has also varied. Clothing and footwear has always been exempted. In seven of the nine holidays such items valued at \$50 or less were exempted. Twice, items valued at \$100 or less were exempt. Books valued at \$50 or less were exempt in five periods. School supplies were included in the most recent six holidays, with the value threshold increasing from \$10 to \$15 in the most recent holiday.

The following table summarizes the history of the “back to school” sales tax holidays:

Dates	Length	TAX EXEMPTION THRESHOLDS				Appropriation/ DOR
		Clothing/ Footwear	Wallets/ Bags	Books	School Supplies	
August 15-21, 1998	7 days	\$50 or less	N/A	N/A	N/A	\$200,000
July 31-August 8, 1999	9 days	\$100 or less	\$100 or less	N/A	N/A	\$200,000
July 29-August 6, 2000	9 days	\$100 or less	\$100 or less	N/A	N/A	\$215,000
July 28-August 5, 2001	9 days	\$50 or less	\$50 or less	N/A	\$10 or less	\$200,000
July 24-August 1, 2004	9 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$206,000
July 23-31, 2005	9 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$206,000
July 22-30, 2006	9 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$206,000
August 4-13, 2007	10 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$224,110
August 13-15, 2010	3 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$250,304
August 12-14, 2011	3 days	\$75 or less	\$75 or less	N/A	\$15 or less	\$218,905

¹ Sections 212.02(19) and 212.05(1)(a)1.a., Florida Statutes.

² Section 212.055, Florida Statutes.

³ Section 212.054(2)(a), Florida Statutes.

⁴ Chapters 98-341, 99-229, 2000-175, 2001-148, 2004-73, 2005-271, 2006-63, 2007-144, and 2010-93, Laws of Florida.

Tax Information Publications:

Since 2004, the Department of Revenue has published a Tax Information Publication (“TIP”) for each sales tax holiday.⁵ A TIP provides detailed information about the sales tax holiday, including instructions and specific examples, for dealers who collect the tax.

Proposed Changes

The bill provides for a pair of nonconsecutive 3 day sales tax holidays to cover 2 weekends near the beginning of the school year, the first beginning August 10, 2012, at 12:01 a.m. and ending August 12, 2012, at 11:59 p.m. and the second beginning August 17, 2012, at 12:01 a.m. and ending August 19, 2012, at 11:59 p.m. During the sales tax holiday, the following items that cost \$75 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags)

During the sales tax holiday, the bill also exempts “school supplies” that cost \$15 or less per item. “School supplies” are defined as pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

The bill provides that the sales tax holiday does not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport. Thus, sales in these locations will be subject to taxation during the sales tax holiday.

The bill gives the Department of Revenue authority to adopt emergency rules.

The bill will take effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1 provides for a sales tax holiday, identifies exempt items, provides exceptions from the holiday, and grants emergency rule authority.

Section 2 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The 2012 Revenue Estimating Conference estimates that this bill will have a negative, nonrecurring impact of \$39.8 million to General Revenue for FY 2012-13 and a negative insignificant impact to state trust funds.

⁵ See, e.g. Florida Department of Revenue, *2004 Sales Tax Holiday*, TIP# 04A01-05 (June 10, 2004); *2005 Sales Tax Holiday*, TIP# 05A01-02 (June 1, 2005), *2006 Sales Tax Holiday*, TIP# 06A01-04 (June 9, 2006), and *2007 Sales Tax Holiday*, TIP# 07A01-07 (June 15, 2007).

2. Expenditures:

The bill does not currently contain an appropriation, but the Department of Revenue estimates that it will cost the state \$226,284 to administer the holiday. That estimate is based on the cost of printing and postage for a Tax Information Publication for the sales tax holiday to be mailed to the state's approximately 556,000 active sales tax accounts each year.

Printing 556,000 x \$0.14239 per personalized TIP	\$ 75,128
Printing 5,000 x \$0.17741 per non-personalized TIP	\$845
<u>Postage 556,000 x \$0.263 per personalized TIP</u>	<u>\$142,932</u>
Total	\$226,284

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenue

The 2012 Revenue Estimating Conference estimates that this bill will have a negative, nonrecurring impact of \$9 million to local governments for FY 2012-13.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Due to the timing of the sales tax holiday, families will be able to save money on clothing, footwear, wallets, bags, computers, computer software, and school supplies. In addition, the tax exemption may increase the sales of non-exempt items during the sales tax holiday.

Although retail sellers may incur costs reprogramming cash registers and accounting systems, those costs would likely be mitigated by the use of existing procedures developed for previous sales tax holidays.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill is expected to result in a reduction in local option sales taxes on those items included in the sales tax holiday. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants emergency rulemaking authority to the Department of Revenue.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the tax on sales, use, and other
 3 transactions; specifying periods during 2012 when the
 4 sale of clothing, wallets, bags, and school supplies
 5 are exempt from the sales tax; providing definitions;
 6 providing exceptions; authorizing the Department of
 7 Revenue to adopt emergency rules; providing an
 8 effective date.

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

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 12 Section 1. (1) The tax levied under chapter 212, Florida
 13 Statutes, may not be collected during the periods from 12:01
 14 a.m. on August 10, 2012, through 11:59 p.m. on August 12, 2012,
 15 and 12:01 a.m. on August 17, 2012, through 11:59 p.m. on August
 16 19, 2012, on the sale of:

17 (a) Clothing, wallets, or bags, including handbags,
 18 backpacks, fanny packs, and diaper bags, but excluding
 19 briefcases, suitcases, and other garment bags, having a sales
 20 price of \$75 or less per item. As used in this paragraph, the
 21 term "clothing" means:

22 1. Any article of wearing apparel intended to be worn on
 23 or about the human body, excluding watches, watchbands, jewelry,
 24 umbrellas, or handkerchiefs; and

25 2. All footwear, excluding skis, swim fins, roller blades,
 26 and skates.

27 (b) School supplies having a sales price of \$15 or less
 28 per item. As used in this paragraph, the term "school supplies"

29 | means pens, pencils, erasers, crayons, notebooks, notebook
 30 | filler paper, legal pads, binders, lunch boxes, construction
 31 | paper, markers, folders, poster board, composition books, poster
 32 | paper, scissors, cellophane tape, glue or paste, rulers,
 33 | computer disks, protractors, compasses, and calculators.

34 | (2) The tax exemptions in this section do not apply to
 35 | sales within a theme park or entertainment complex as defined in
 36 | s. 509.013(9), Florida Statutes, a public lodging establishment
 37 | as defined in s. 509.013(4), Florida Statutes, or an airport as
 38 | defined in s. 330.27(2), Florida Statutes.

39 | (3) The Department of Revenue may, and all conditions are
 40 | deemed met to, adopt emergency rules pursuant to ss. 120.536(1)
 41 | and 120.54, Florida Statutes, to administer this section.

42 | Section 2. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 737 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
2 Representative Porter offered the following:

3
4 **Amendment**

5 Remove lines 14-16 and insert:

6
7 a.m. on August 10, 2012, through 11:59 p.m. on August 12, 2012,
8 on the sale of:
9

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
 2 Representative Porter offered the following:

Amendment (with title amendment)

Remove line 42 and insert:

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 5
 6 Section 2. For the 2011-2012 fiscal year, the sum of \$226,
 7 284 is appropriated from the General Revenue Fund to the
 8 Department of Revenue for the purposes of administering section
 9 1. Funds remaining unexpended or unencumbered from this
 10 appropriation as of June 30, 2012 shall revert and be
 11 reappropriated for the same purpose in the 2012-2013 fiscal
 12 year.

13 Section 3. This act shall take effect upon becoming a law.

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 18 **T I T L E A M E N D M E N T**

19 Remove lines 7-8 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 737 (2012)

Amendment No. 2

20

21 Revenue to adopt emergency rules; providing an appropriation;

22 providing an effective date.

23

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 859 Florida Tax Credit Scholarship Program

SPONSOR(S): Corcoran

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Wilson <i>WW</i>	Langston <i>BL</i>
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

The Florida Tax Credit Scholarship Program (program) provides private school scholarships to students from families that meet specified income limitations. The program is funded with contributions to eligible nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for:

- Corporate income tax,
- Insurance premium tax,
- Severance taxes on oil and gas production,
- Self-accrued sales tax liabilities of direct pay permit holders, or
- Alcoholic beverage taxes on beer, wine, and spirits.

HB 859 removes certain eligibility requirements for the program. A student that meets the requirements related to household income will no longer be subject to the following additional requirements:

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Received a scholarship from an eligible nonprofit scholarship-funding organization or from the State of Florida during the previous year; or
- Is eligible to enter kindergarten or first grade.

The bill increases the cap on the amount of tax credits available to the program that may be approved in a fiscal year from \$175 million to \$250 million for FY 2012-13. For FY 2013-14 and thereafter, the cap will increase by 25% whenever tax credits approved in the prior fiscal year are equal to or greater than 90% of the tax credit cap amount for that year.

The bill also amends certain responsibilities and obligations of parents and students, private schools, the Department of Education, school districts, and the Commissioner of Education regarding the program.

The bill further clarifies that the parents of a public school student may seek private school choice options under the program if a student is currently placed, or during the previous state fiscal year was placed, in foster care as provided by law.

The Revenue Estimating Conference estimates that this bill will have a -\$31.3 million cash impact in FY 2012-13 (-\$76.3 million recurring) to various General Revenue taxes. The bill is also expected to result in increased expenditure savings as fewer students will require funding within the Florida Education Finance Program (FEFP). The revenue impacts are expected to be greater than the expenditure savings attributable to the bill. Also see FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Program Overview

The Florida Tax Credit Scholarship Program (program) provides private school scholarships to students from families that meet specified income limitations. The program is funded with contributions to private nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for:

- Corporate income tax,
- Insurance premium tax,
- Severance taxes on oil and gas production,
- Self-accrued sales tax liabilities of direct pay permit holders, or
- Alcoholic beverage taxes on beer, wine, and spirits.

The tax credit is equal to 100% of the eligible contributions made. The SFOs administer the receipt of contributions and scholarship awards. The amount of credits that may be approved in a fiscal year was set at \$140 million in FY 2010-11. For FY 2011-12 and thereafter, the cap will increase by 25% whenever tax credits approved in the prior fiscal year are equal to or greater than 90% of the tax credit cap amount for that year.¹ The cap amount for current FY 2011-12 is \$175 million.

As of November 2011, there were 1,181 schools participating in the program and scholarships were awarded to 37,578 students.²

Scholarship Funding Organizations

An SFO is a charitable organization exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code. Scholarships must be provided for eligible students on a first-come, first-serve basis, unless the student qualifies for priority consideration. An SFO may not restrict or reserve scholarships for use at a particular private school or for the child of an operator or owner of a private school or SFO. A taxpayer making the contribution may not designate a specific child or group of children as the beneficiaries of the scholarship. If the SFO has been in operation for three years and does not have any negative financial findings, the SFO may use up to three percent of the contributions received for reasonable and necessary administrative expenses. No more than one-third of the funds available for administrative expense may be used for expenses related to recruitment of contributions.

Private School Participants

Private schools participating in the program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private schools.³ To be eligible for participation in the FTC program, a private school must demonstrate fiscal soundness, provide academic accountability, and meet reporting requirements of the SFOs and Department of Education (DOE).⁴ The inability to meet the various requirements will cause DOE to declare the private school ineligible to participate in the program.

¹ Section 1002.395(5), F.S.

² Florida Tax Credit Scholarship Program, November 2011 Quarterly Report, Florida Department of Education. Available at http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2011.pdf (last visited January 20, 2012)

³ s. 1002.421, F.S.

⁴ s. 1002.395(8), F.S.

Student Eligibility

Under the program, SFOs provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act⁵ or who qualifies for the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance to Needy Families Program (TANF), or the Food Distribution Program on Indian Reservations (FDPIR) and.⁶

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Is eligible to enter kindergarten or the first grade;
- Received a scholarship under the program or from the state the previous school year; or
- Is placed, or during the previous state fiscal year was placed in foster care.

Contingent upon available funds, a student would not lose his or her scholarship due to a change in the economic status of the student's parents unless the parent's economic status exceeds 230% of the federal poverty guidelines.⁷ A sibling of a scholarship student who continues to participate in the program and resides in the same household as the student is considered to be a first-time scholarship recipient, as long as the student's and the sibling's household income level does not exceed 230% of the federal poverty level.

Student Scholarships

The maximum scholarship award to each individual student is set at a percentage of the unweighted Florida Education Finance Program (FEFP) student funding in the General Appropriations Act. The percentage for FY 2011-12 is 64%, or \$4,111 per student.⁸ Thereafter, the percentage increases by four percentage points each fiscal year the tax credit cap increases (when the approved tax credits in the prior fiscal year equal or exceed 90% of the applicable tax credit cap). The percentage will stop increasing upon reaching 80%, and from that year forward, the scholarship limit will be 80% of the unweighted FEFP funding amount.⁹

50% of that scholarship amount is available for students with household income that is more than 215% but less than 230% of the federal poverty level, increasing to 75% for students with household income that is more than 200% but less than 215% of the federal poverty level. For students with a household income of 200% of the federal poverty level or below, the full scholarship award is available.

History of the Tax Credit

The Legislature initially capped the program at \$50 million in tax credits per state fiscal year¹⁰, but subsequently expanded the cap to \$88 million in 2003.¹¹ Beginning in FY 2008-2009, the cap was increased by \$30 million to \$118 million.¹² Until 2009, tax credits under the scholarship were only available against the state's corporate income tax under s. 220.1875, F.S.

⁵ s. 220.187(3), F.S. The eligibility guidelines for 2009-2010 are published in the Federal Register, March 27, 2009. <http://www.fns.usda.gov/CND/Governance/notices/iegs/IEGs09-10.pdf> (last visited January 20, 2012)

⁶ Children from households that receive benefits under the Supplemental Nutrition Assistance Program (SNAP – formerly the Food Stamp Program), TANF, or the FDPIR, are deemed “categorically eligible” for free school meals, thereby eliminating the need for households to submit an application for meal benefits. *Direct Certification in the National School Lunch Program: State Progress in Implementation, Report to Congress – Summary*, U.S. Department of Agriculture (USDA), December 2008. <http://www.fns.usda.gov/ora/MENU/published/CNP/FILES/DirectCert08-Sum.pdf> (last visited January 20, 2012)

⁷ s. 1002.395(3)(b)2., F.S.

⁸ Florida Tax Credit Scholarship Program, November 2011 Quarterly Report, Florida Department of Education. Available at http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2011.pdf (last visited January 20, 2012)

⁹ s. 1002.395(12)(a), F.S.

¹⁰ ch. 2001-225, L.O.F.

¹¹ ch. 2003-391, L.O.F.

¹² ch. 2008-241, L.O.F.

In 2009, the Legislature expanded the revenue sources against which tax credits can be claimed to include the premium tax under s. 624.509, F.S.¹³ The premium tax is imposed on insurance premiums written in Florida and paid by insurance companies.

In 2010, the revenue sources against which tax credits can be claimed were further expanded to include severance taxes on oil and gas production,¹⁴ self-accrued sales tax liabilities of direct pay permit holders,¹⁵ and alcoholic beverage taxes on beer, wine, and spirits.^{16,17} The Legislature also increased the tax credit cap to \$140 million, beginning in 2010-11, and authorized the cap to increase by 25% whenever credits approved by DOR in the prior fiscal year exceed 90% of the tax credit cap for that year, beginning in 2011-12.¹⁸

The following table summarizes information related to the tax credits approved by DOR:¹⁹

Tax Year	Number of Approved Tax Credit Allocation Applications	Number of Taxpayers	Total Amount of Tax Credit Allocations Approved for All Taxpayers	Number of Small Businesses Approved for Tax Credit Allocations	Total Amount of Tax Credit Allocations Approved for Small Businesses²⁰
2002-03	77	48	\$47,686,000	4	\$186,000
2003-04	114	56	\$47,579,000	3	\$79,000
2004-05	102	58	\$47,560,000	2	\$60,000
2005-06	126	79	\$80,323,071	2	\$4,000
2006-07	94	65	\$87,123,000	1	\$3,000
2007-08 ²¹	106	62	\$85,611,140	0	\$0
2008-09	125	75	\$97,415,847	0	\$0
2009-10	121	83	\$111,773,617 ²²	0	\$0
2010-11	128	100	\$136,321,200	0	\$0
2011-12	134	116	\$171,928,768	0	\$0

Since the tax credit amount allocated for FY 2011-2012 exceeded 90 percent of the \$175 million credit cap, the tax credit cap amount will increase to \$218,750,000 in FY 2012-2013.²³

¹³ ch. 2009-108, L.O.F.

¹⁴ s. 211.0251, F.S.

¹⁵ s. 212.1831, F.S.

¹⁶ s. 561.1211, F.S.

¹⁷ ss. 211.0251, 212.1831, and 561.1211, F.S. directs DOR and the Department of Business and Professional Regulation to disregard tax credits accordingly for purposes of the distributions of tax revenue under ss. 211.06, 212.20, 561.12(1)(a) and 564.06(10), F.S., so that only amounts distributed to the General Revenue Fund are reduced.

¹⁸ ch. 2010-24, L.O.F.

¹⁹ DOR, January 23, 2012. (On file with the Finance & Tax Committee)

²⁰ Until 2006, s. 220.187(3)(a), F.S., provided that five percent of the tax credit was reserved for small businesses as defined under s. 288.703(1), F.S. Chapter 2006-75, L.O.F., reduced the small business cap to one percent. The cap was subsequently repealed by chapter 2008-241, L.O.F.

²¹ Effective for tax years beginning January 1, 2006, section 220.187(5)(d), F.S., permits a taxpayer to rescind all or part of its previously allocated tax credit. When approved, the rescinded allocation can be allocated to another taxpayer.

²² Of the total amount of the allocation of tax credits, \$21,899,000 was allocated to insurance companies based on 39 approved applications.

²³ Department of Revenue Tax Information Publication. No. 11ADM-03. August 25, 2011.

<https://taxlaw.state.fl.us/wordfiles/CIT%20TIP%2011ADM-03.pdf> (last visited January 20, 2012)

Proposed Changes

Scholarship Eligibility

The bill amends s. 1002.395(3)(b), F.S., to remove certain eligibility requirements for the program, including if a student:

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Received a scholarship from an eligible nonprofit scholarship-funding organization or from the State of Florida during the previous year; and
- Is eligible to enter kindergarten or first grade.

Scholarship Funding Tax Credits

The bill amends s. 1002.395(5), F.S., to increase the cap on the amount of credits available to the program that may be approved in a fiscal year from \$140 million to \$250 million for FY 2012-13. Current law provisions for the cap to increase by 25% whenever tax credits approved in the prior fiscal year are equal to or greater than 90% of the tax credit cap amount or that year will continue to apply thereafter.

Participant Responsibilities and Obligations

Parents and Students

The bill amends s. 1002.395(7)(e), F.S. to clarify that if a parent requests that a student participating in the program take statewide assessments and the private school has not chosen to offer and administer the statewide assessments²⁴, the parent is responsible for transporting the student to the assessment site designated by the school district.

Private Schools

The bill amends s. 1002.395(8)(c)2., F.S., to provide that a participating private school annually report the scores of all participating students to an independent research organization designated by DOE by a date established by DOE. The bill also amends s. 1002.395(8)(c)3., F.S., to provide that if a participating private school chooses to offer the statewide assessments²⁵, that the private school administer the assessments at the school.

Department of Education

The bill adds s. 1002.395(9)(j)1., F.S., to provide that DOE establish a date by which participating private schools report the scores of students to the independent research organization. The bill also amends s. 1002.395(9)(n)1., F.S., to clarify that DOE conduct site visits to participating private schools as necessary, and removes the restriction that DOE may not make more than seven random site visits each year and may not make more than one random site visit each year to the same private school.

School Districts

The bill adds s. 1002.395(10)(b), F.S., that upon request of a private school participating in the program, a school district will provide to the school the statewide assessments²⁶ and any related materials for administering the assessments.

Commissioner of Education

The bill amends s. 1002.395(11)(a)2., F.S., to clarify that the Commissioner of Education can consider various additional factors when determining a denial, suspension, or revocation of a private school's participation in the program, including, but not limited to:

²⁴ Pursuant to s. 1008.22, F.S.

²⁵ *Id.*

²⁶ *Id.*

- a private school owner's or operator's failure to reimburse an SFO for scholarship funds improperly received or retained by a school; and
- the imposition of a prior criminal sanction, civil fine, administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation related to an owner's or operator's management or operation of an educational institution.

The bill adds s. 1002.395(11)(c)2., F.S., to provide that the commissioner can immediately suspend payment of scholarship funds if it is determined that there is probable cause to believe that there is a previous pattern of failure to comply with the eligibility requirements of the program or accountability provisions²⁷ for participating private schools.

K-12 Student and Parent Rights

The bill amends s. 1002.20, F.S., F.S., to clarify that the parent of a public school student may seek private school choice options under the program to include a student who is currently placed, or during the previous state fiscal year was placed, in foster care²⁸. This provision conforms to current scholarship eligibility under s. 1002.395(b)1.d., F.S.²⁹

B. SECTION DIRECTORY:

Section 1: Amends s. 1002.395, F.S., removing certain program eligibility requirements, increases the tax credit cap to \$250 million in FY 2012-13, and clarifies and adds various participant responsibilities and obligations for the program.

Section 2: Amends s. 1002.20, F.S., clarifying the private school choice options under the program include a student currently, or placed during the previous fiscal year in foster care.

Section 3: Provides the bill shall take effect July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On January 13, 2012, the Revenue Estimating Conference (REC) estimated the impact on General Revenue Fund receipts of the additional tax credits authorized by the bill to be -\$31.3 million in fiscal year 2012-13, with a recurring impact of -\$76.3 million, reflecting the estimated cash revenue impact in fiscal year 2016-17.

2. Expenditures:

The tax credit program is expected to result in expenditure savings as fewer students will require funding within the FEFP. At the January 13, 2012 REC impact conference, the Office of Economic and Demographic Research presented, for informational purposes, an estimate of FEFP savings under the provisions of this bill.³⁰ As shown in Table 2 below the estimates indicate a continued total savings at slightly higher levels than under current law as fewer students will require funding within the FEFP as the program is expanded. The estimated total FEFP savings are expected to

²⁷ s. 1002.421, F.S.

²⁸ As defined in s. 39.01, F.S.

²⁹ s. 1002.395(3)(b)1.d., F.S., provides a student is eligible for the program if student qualifies for free or reduced-price school lunches under the National School Lunch Act, or who qualifies for SNAP, TANF, or FDPIR, and is currently placed, or during the previous state fiscal year was placed in foster care as defined in s. 39.01, F.S.

³⁰ The FEFP cost saving estimates for the provisions of this bill were presented to the REC on January 13, 2012. The estimate adjusted for the student eligibility requirements changes in the program and the higher tax credit cap provided under the bill.

<http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page228-238.pdf>

continue to exceed the total revenue impacts attributable to increased tax credits through FY 2014-15. However, under the estimate assumptions, the revenue impacts of the program will exceed the FEFP cost savings in FY 2015-16. Table 3 below shows estimated differences in FEFP savings, revenue reductions, and net savings under the bill compared to current law.

Table 1. Program Impacts under the Current Law (Baseline)

(\$Millions)	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
FEFP Savings	197.6	275.3	329.3	390.3	464.2
Revenue Impact	-175.0	-218.8	-273.4	-341.8	-427.2
Net Savings	22.6	56.5	55.8	48.5	37.0

Table 2. Program Impacts under the Proposed Bill

(Millions)	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
FEFP Savings	197.6	279.6	335.2	396.6	470.8
Revenue Impact	-175.0	-250.0	-312.5	-390.6	-488.3
Net Savings	22.6	29.6	22.7	6.0	-17.5

Table 3. Program Impacts: Proposed vs. Current.

(\$Millions)	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
FEFP Savings		4.3	5.9	6.3	6.6
Revenue Impact		-31.3	-39.1	-48.8	-61.0
Net Savings		-26.9	-33.1	-42.5	-54.5

Also see FISCAL COMMENTS below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax cap increase will allow taxpayers who make eligible contributions to SFOs to see a dollar for dollar reduction in their state tax liabilities.

D. FISCAL COMMENTS:

A recent report has discussed the difficulty in communicating to Legislators the full budgetary implications of changes to the Tax Credit Scholarship Program.³¹ The report points out that

³¹ "The Need to Tailor Revenue Conventions to the Unique Characteristics of the Tax Credit Scholarship Program," Alan Johansen, Capital Analytics, January 11, 2012.

conventions and practices in the Revenue Estimating Conference (REC) and the budgeting process result in estimates of recurring revenue losses (mostly in future years) for which the expected offsetting expenditure savings are not recognized when the budget is formulated. Consequently, policymakers often see only the revenue losses. The report suggests that REC and/or budgeting conventions and practices could be changed solely with respect to this particular program, given the unique characteristic that "future revenue impacts will create offsetting budget savings that are at least equal to, and in every case to date, greater than, the revenue impacts."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Florida Tax Credit Scholarship
 3 Program; amending s. 1002.395, F.S.; revising student
 4 eligibility requirements for participation in the
 5 program; increasing the tax credit cap amount
 6 applicable to the program; revising provisions
 7 relating to the reporting of test scores by private
 8 schools participating in the program; providing that a
 9 private school may choose to offer and administer
 10 statewide assessments at the school; revising
 11 Department of Education duties relating to the
 12 reporting of test scores and site visits; requiring a
 13 school district to provide statewide assessments and
 14 related materials to a school that makes such request;
 15 revising the conditions upon which the Commissioner of
 16 Education may base the denial, suspension, or
 17 revocation of a private school's participation in the
 18 program or the suspension of scholarship fund payment;
 19 amending s. 1002.20, F.S.; conforming provisions to
 20 changes made by the act; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsection (3), paragraph (a) of subsection
 25 (5), paragraph (e) of subsection (7), paragraph (c) of
 26 subsection (8), paragraphs (j) and (n) of subsection (9),
 27 subsection (10), and paragraphs (a) and (c) of subsection (11)
 28 of section 1002.395, Florida Statutes, are amended to read:

29 1002.395 Florida Tax Credit Scholarship Program.—

30 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

31 (a) The Florida Tax Credit Scholarship Program is
32 established.

33 (b) Contingent upon available funds:

34 1. A student is eligible for a Florida tax credit
35 scholarship under this section if the student:

36 a. Qualifies for free or reduced-price school lunches
37 under the National School Lunch Act or is on the direct
38 certification list; or and:

39 ~~a. Was counted as a full-time equivalent student during~~
40 ~~the previous state fiscal year for purposes of state per student~~
41 ~~funding;~~

42 ~~b. Received a scholarship from an eligible nonprofit~~
43 ~~scholarship funding organization or from the State of Florida~~
44 ~~during the previous school year;~~

45 ~~c. Is eligible to enter kindergarten or first grade; or~~

46 b.d. Is currently placed, or during the previous state
47 fiscal year was placed, in foster care as defined in s. 39.01.

48 2. A student may continue in the scholarship program as
49 long as the student's household income level does not exceed 230
50 percent of the federal poverty level.

51 3. A sibling of a student who is continuing in the
52 scholarship program and who resides in the same household as the
53 student shall also be eligible as a first-time tax credit
54 scholarship recipient if the sibling meets at least one ~~or more~~
55 of the criteria specified in subparagraph 1. and as long as the
56 student's and sibling's household income level does not exceed

57 230 percent of the federal poverty level.

58 (c) Household income for purposes of a student who is
 59 currently in foster care as defined in s. 39.01 shall consist
 60 only of the income that may be considered in determining whether
 61 he or she qualifies for free or reduced-price school lunches
 62 under the National School Lunch Act.

63 (5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

64 (a)1. The tax credit cap amount is \$250 ~~\$140~~ million in
 65 the 2012-2013 ~~2010-2011~~ state fiscal year.

66 2. In the 2013-2014 ~~2011-2012~~ state fiscal year and each
 67 state fiscal year thereafter, the tax credit cap amount is the
 68 tax credit cap amount in the prior state fiscal year. However,
 69 in any state fiscal year when the annual tax credit amount for
 70 the prior state fiscal year is equal to or greater than 90
 71 percent of the tax credit cap amount applicable to that state
 72 fiscal year, the tax credit cap amount shall increase by 25
 73 percent. The department shall publish on its website information
 74 identifying the tax credit cap amount when it is increased
 75 pursuant to this subparagraph.

76 (7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM
 77 PARTICIPATION.—

78 (e) The parent shall ensure that the student participating
 79 in the scholarship program takes the norm-referenced assessment
 80 offered by the private school. The parent may also choose to
 81 have the student participate in the statewide assessments
 82 pursuant to s. 1008.22. If the parent requests that the student
 83 participating in the scholarship program take statewide
 84 assessments pursuant to s. 1008.22 and the private school has

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85 not chosen to offer and administer the statewide assessments,
86 the parent is responsible for transporting the student to the
87 assessment site designated by the school district.

88 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An
89 eligible private school may be sectarian or nonsectarian and
90 must:

91 (c) Be academically accountable to the parent for meeting
92 the educational needs of the student by:

93 1. At a minimum, annually providing to the parent a
94 written explanation of the student's progress.

95 2. Annually administering or making provision for students
96 participating in the scholarship program in grades 3 through 10
97 to take one of the nationally norm-referenced tests identified
98 by the Department of Education. Students with disabilities for
99 whom standardized testing is not appropriate are exempt from
100 this requirement. A participating private school must report a
101 student's scores to the parent. A participating private school
102 must annually report the scores of all participating students
103 ~~and~~ to the independent research organization ~~selected~~ by the
104 date established by the Department of Education as described in
105 paragraph (9)(j).

106 3. Cooperating with the scholarship student whose parent
107 chooses to have the student participate in the statewide
108 assessments pursuant to s. 1008.22 or, if a private school
109 chooses to offer the statewide assessments, administering the
110 assessments at the school.

111
112 The inability of a private school to meet the requirements of

113 | this subsection shall constitute a basis for the ineligibility
 114 | of the private school to participate in the scholarship program
 115 | as determined by the Department of Education.

116 | (9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of
 117 | Education shall:

118 | (j) Select an independent research organization, which may
 119 | be a public or private entity or university, to which
 120 | participating private schools must report the scores of
 121 | participating students on the nationally norm-referenced tests
 122 | administered by the private school in grades 3 through 10.

123 | 1. The Department of Education shall establish a date by
 124 | which participating private schools must report the scores of
 125 | students to the independent research organization.

126 | ~~2.1.~~ The independent research organization must annually
 127 | report to the Department of Education on the year-to-year
 128 | learning gains of participating students:

129 | a. On a statewide basis. The report shall also include, to
 130 | the extent possible, a comparison of these learning gains to the
 131 | statewide learning gains of public school students with
 132 | socioeconomic backgrounds similar to those of students
 133 | participating in the scholarship program. To minimize costs and
 134 | reduce time required for the independent research organization's
 135 | analysis and evaluation, the Department of Education shall
 136 | conduct analyses of matched students from public school
 137 | assessment data and calculate control group learning gains using
 138 | an agreed-upon methodology outlined in the contract with the
 139 | independent research organization; and

140 | b. According to each participating private school in which

141 | there are at least 30 participating students who have scores for
 142 | tests administered during or after the 2009-2010 school year for
 143 | 2 consecutive years at that private school.

144 | 3.2- The sharing and reporting of student learning gain
 145 | data under this paragraph must be in accordance with
 146 | requirements of 20 U.S.C. s. 1232g, the Family Educational
 147 | Rights and Privacy Act, and shall be for the sole purpose of
 148 | creating the annual report required by subparagraph 2. ~~1-~~ All
 149 | parties must preserve the confidentiality of such information as
 150 | required by law. The annual report must not disaggregate data to
 151 | a level that will identify individual participating schools,
 152 | except as required under sub-subparagraph 2.b. ~~1.b-~~, or disclose
 153 | the academic level of individual students.

154 | 4.3- The annual report required by subparagraph 2. ~~1-~~
 155 | shall be published by the Department of Education on its
 156 | website.

157 | (n)1. Conduct ~~random~~ site visits, as necessary, to private
 158 | schools participating in the Florida Tax Credit Scholarship
 159 | Program. The purpose of the site visits is solely to verify the
 160 | information reported by the schools concerning the enrollment
 161 | and attendance of students, the credentials of teachers,
 162 | background screening of teachers, and teachers' fingerprinting
 163 | results. ~~The Department of Education may not make more than~~
 164 | ~~seven random site visits each year and may not make more than~~
 165 | ~~one random site visit each year to the same private school.~~

166 | 2. Annually, by December 15, report to the Governor, the
 167 | President of the Senate, and the Speaker of the House of
 168 | Representatives the Department of Education's actions with

169 respect to implementing accountability in the scholarship
 170 program under this section and s. 1002.421, any substantiated
 171 allegations or violations of law or rule by an eligible private
 172 school under this program concerning the enrollment and
 173 attendance of students, the credentials of teachers, background
 174 screening of teachers, and teachers' fingerprinting results and
 175 the corrective action taken by the Department of Education.

176 (10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

177 (a) Upon the request of any eligible nonprofit
 178 scholarship-funding organization, a school district shall inform
 179 all households within the district receiving free or reduced-
 180 priced meals under the National School Lunch Act of their
 181 eligibility to apply for a tax credit scholarship. The form of
 182 such notice shall be provided by the eligible nonprofit
 183 scholarship-funding organization, and the district shall include
 184 the provided form, if requested by the organization, in any
 185 normal correspondence with eligible households. If an eligible
 186 nonprofit scholarship-funding organization requests a special
 187 communication to be issued to households within the district
 188 receiving free or reduced-price meals under the National School
 189 Lunch Act, the organization shall reimburse the district for the
 190 cost of postage. Such notice is limited to once a year.

191 (b) Upon the request of a private school participating in
 192 the scholarship program, a school district shall provide to the
 193 school the statewide assessments required under s. 1008.22 and
 194 any related materials for administering the assessments.

195 (11) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

196 (a)1. The Commissioner of Education shall deny, suspend,

197 or revoke a private school's participation in the scholarship
 198 program if it is determined that the private school has failed
 199 to comply with the provisions of this section. However, in
 200 instances in which the noncompliance is correctable within a
 201 reasonable amount of time and in which the health, safety, or
 202 welfare of the students is not threatened, the commissioner may
 203 issue a notice of noncompliance that shall provide the private
 204 school with a timeframe within which to provide evidence of
 205 compliance prior to taking action to suspend or revoke the
 206 private school's participation in the scholarship program.

207 2. The Commissioner of Education may deny, suspend, or
 208 revoke a private school's participation in the scholarship
 209 program if the commissioner determines that an owner or operator
 210 of the private school is operating or has operated an
 211 educational institution in this state or another state or
 212 jurisdiction in a manner contrary to the health, safety, or
 213 welfare of the public. In making this determination, the
 214 commissioner may consider factors that include, but are not
 215 limited to, acts or omissions by an owner or operator that led
 216 to a previous denial or revocation of participation in an
 217 education scholarship program; an owner's or operator's failure
 218 to reimburse the Department of Education or an eligible
 219 nonprofit scholarship-funding organization for scholarship funds
 220 improperly received or retained by a school; imposition of a
 221 prior criminal sanction, ~~or~~ civil fine, administrative fine,
 222 license revocation or suspension, or program eligibility
 223 suspension, termination, or revocation ~~sanction~~ related to an
 224 owner's or operator's management or operation of an educational

225 institution; or other types of criminal proceedings in which the
 226 owner or operator was found guilty of, regardless of
 227 adjudication, or entered a plea of nolo contendere or guilty to,
 228 any offense involving fraud, deceit, dishonesty, or moral
 229 turpitude.

230 (c) The commissioner may immediately suspend payment of
 231 scholarship funds if it is determined that there is probable
 232 cause to believe that there is:

233 1. An imminent threat to the health, safety, and welfare
 234 of the students;

235 2. A previous pattern of failure to comply with this
 236 section or s. 1002.421; or

237 3.2. Fraudulent activity on the part of the private
 238 school. Notwithstanding s. 1002.22, in incidents of alleged
 239 fraudulent activity pursuant to this section, the Department of
 240 Education's Office of Inspector General is authorized to release
 241 personally identifiable records or reports of students to the
 242 following persons or organizations:

243 a. A court of competent jurisdiction in compliance with an
 244 order of that court or the attorney of record in accordance with
 245 a lawfully issued subpoena, consistent with the Family
 246 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

247 b. A person or entity authorized by a court of competent
 248 jurisdiction in compliance with an order of that court or the
 249 attorney of record pursuant to a lawfully issued subpoena,
 250 consistent with the Family Educational Rights and Privacy Act,
 251 20 U.S.C. s. 1232g.

252 c. Any person, entity, or authority issuing a subpoena for

253 law enforcement purposes when the court or other issuing agency
 254 has ordered that the existence or the contents of the subpoena
 255 or the information furnished in response to the subpoena not be
 256 disclosed, consistent with the Family Educational Rights and
 257 Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

258
 259 The commissioner's order suspending payment pursuant to this
 260 paragraph may be appealed pursuant to the same procedures and
 261 timelines as the notice of proposed action set forth in
 262 paragraph (b).

263 Section 2. Paragraph (b) of subsection (6) of section
 264 1002.20, Florida Statutes, is amended to read:

265 1002.20 K-12 student and parent rights.—Parents of public
 266 school students must receive accurate and timely information
 267 regarding their child's academic progress and must be informed
 268 of ways they can help their child to succeed in school. K-12
 269 students and their parents are afforded numerous statutory
 270 rights including, but not limited to, the following:

271 (6) EDUCATIONAL CHOICE.—

272 (b) Private school choices.—Parents of public school
 273 students may seek private school choice options under certain
 274 programs.

275 1. Under the McKay Scholarships for Students with
 276 Disabilities Program, the parent of a public school student with
 277 a disability may request and receive a McKay Scholarship for the
 278 student to attend a private school in accordance with ~~the~~
 279 ~~provisions of~~ s. 1002.39.

280 2. Under the Florida Tax Credit Scholarship Program, the

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281 | parent of a student who qualifies for free or reduced-price
 282 | school lunch or who is currently placed, or during the previous
 283 | state fiscal year was placed, in foster care as defined in s.
 284 | 39.01 may seek a scholarship from an eligible nonprofit
 285 | scholarship-funding organization in accordance with ~~the~~
 286 | ~~provisions of~~ s. 1002.395.

287 | Section 3. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 859 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
2 Representative Corcoran offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (3), paragraph (a) of subsection (5),
7 paragraph (e) of subsection (7), paragraph (c) of subsection
8 (8), paragraphs (j) and (n) of subsection (9), subsection (10),
9 and paragraphs (a) and (c) of subsection (11) of section
10 1002.395, Florida Statutes, are amended, and paragraph (p) is
11 added to subsection (9) of that section, to read:

12 1002.395 Florida Tax Credit Scholarship Program.—

13 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

14 (a) The Florida Tax Credit Scholarship Program is
15 established.

16 (b) Contingent upon available funds, ~~÷~~

17 ~~÷~~ A student is eligible for a Florida tax credit
18 scholarship under this section if:

COMMITTEE/SUBCOMMITTEE AMENDMENT

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Amendment No. 1

19 1. The student qualifies for free or reduced-price school
20 lunches under the National School Lunch Act or is on the direct
21 certification list and:

22 a. Was counted as a full-time equivalent student during the
23 previous state fiscal year for purposes of state per-student
24 funding;

25 b. Received a scholarship from an eligible nonprofit
26 scholarship-funding organization or from the State of Florida
27 during the previous school year; or

28 c. Is eligible to enter kindergarten through fifth ~~or first~~
29 grade. ~~or~~

30 ~~2.~~ d. The student is currently placed, or during the
31 previous state fiscal year was placed, in foster care as defined
32 in s. 39.01.

33 ~~3.2.~~ A student may continue in the scholarship program as
34 long as the student's household income level does not exceed 230
35 percent of the federal poverty level.

36 ~~4.3.~~ A sibling of a student who is continuing in the
37 scholarship program and who resides in the same household as the
38 student shall also be eligible as a first-time tax credit
39 scholarship recipient if the sibling meets one or more of the
40 criteria specified in subparagraphs ~~subparagraph~~ 1. and 2. and
41 as long as the student's and sibling's household income level
42 does exceed not 230 percent of the federal poverty level.

43 (c) Household income for purposes of a student who is
44 currently in foster care as defined in s. 39.01 shall consist
45 only of the income that may be considered in determining whether

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 859 (2012)

Amendment No. 1

46 he or she qualifies for free or reduced-price school lunches
47 under the National School Lunch Act.

48 (5) SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS.—

49 (a)1. The tax credit cap amount is \$229 ~~\$140~~ million in the
50 2012-2013 ~~2010-2011~~ state fiscal year.

51 2. In the 2013-2014 ~~2011-2012~~ state fiscal year and each
52 state fiscal year thereafter, the tax credit cap amount is the
53 tax credit cap amount in the prior state fiscal year. However,
54 in any state fiscal year when the annual tax credit amount for
55 the prior state fiscal year is equal to or greater than 90
56 percent of the tax credit cap amount applicable to that state
57 fiscal year, the tax credit cap amount shall increase by 25
58 percent. The department shall publish on its website information
59 identifying the tax credit cap amount when it is increased
60 pursuant to this subparagraph.

61 (7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM
62 PARTICIPATION.—

63 (e) The parent shall ensure that the student participating
64 in the scholarship program takes the norm-referenced assessment
65 offered by the private school. The parent may also choose to
66 have the student participate in the statewide assessments
67 pursuant to s. 1008.22. If the parent requests that the student
68 participating in the scholarship program take statewide
69 assessments pursuant to s. 1008.22 and the private school has
70 not chosen to offer and administer the statewide assessments,
71 the parent is responsible for transporting the student to the
72 assessment site designated by the school district.

Amendment No. 1

73 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An eligible
74 private school may be sectarian or nonsectarian and must:

75 (c) Be academically accountable to the parent for meeting the
76 educational needs of the student by:

77 1. At a minimum, annually providing to the parent a written
78 explanation of the student's progress.

79 2. Annually administering or making provision for students
80 participating in the scholarship program in grades 3 through 10
81 to take one of the nationally norm-referenced tests identified
82 by the Department of Education or the statewide assessments
83 pursuant to s. 1008.22. Students with disabilities for whom
84 standardized testing is not appropriate are exempt from this
85 requirement. A participating private school must report a
86 student's scores to the parent. A participating private school
87 must annually report the scores of all participating students
88 and to the independent research organization by August 15
89 selected by the Department of Education as described in
90 paragraph (9)(j).

91 3. Cooperating with the scholarship student whose parent
92 chooses to have the student participate in the statewide
93 assessments pursuant to s. 1008.22 or, if a private school
94 chooses to offer the statewide assessments, administering the
95 assessments at the school.

96 a. A participating private school must submit a request in
97 writing to the Department of Education by March 1 each year in
98 order to administer the statewide assessments in the subsequent
99 school year.

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100 b. A participating private school may choose to offer and
101 administer the statewide assessments to all students who attend
102 the private school in grades 3 through 10.

103
104 The inability of a private school to meet the requirements of
105 this subsection shall constitute a basis for the ineligibility
106 of the private school to participate in the scholarship program
107 as determined by the Department of Education.

108 (9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of
109 Education shall:

110 (j) Select an independent research organization, which may
111 be a public or private entity or university, to which
112 participating private schools must report the scores of
113 participating students on the nationally norm-referenced tests
114 or the statewide assessments administered by the private school
115 in grades 3 through 10.

116 1. The independent research organization must annually
117 report to the Department of Education on the year-to-year
118 learning gains of participating students:

119 a. On a statewide basis. The report shall also include, to
120 the extent possible, a comparison of these learning gains to the
121 statewide learning gains of public school students with
122 socioeconomic backgrounds similar to those of students
123 participating in the scholarship program. To minimize costs and
124 reduce time required for the independent research organization's
125 analysis and evaluation, the Department of Education shall
126 conduct analyses of matched students from public school
127 assessment data and calculate control group learning gains using

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128 an agreed-upon methodology outlined in the contract with the
129 independent research organization; and

130 b. According to each participating private school in which
131 there are at least 30 participating students who have scores for
132 tests administered during or after the 2009-2010 school year for
133 2 consecutive years at that private school.

134 2. The sharing and reporting of student learning gain data
135 under this paragraph must be in accordance with requirements of
136 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy
137 Act, and shall be for the sole purpose of creating the annual
138 report required by subparagraph 1. All parties must preserve the
139 confidentiality of such information as required by law. The
140 annual report must not disaggregate data to a level that will
141 identify individual participating schools, except as required
142 under sub-subparagraph 1.b., or disclose the academic level of
143 individual students.

144 3. The annual report required by subparagraph 1. shall be
145 published by the Department of Education on its website.

146 (n)1. Conduct ~~random~~ site visits to private schools
147 participating in the Florida Tax Credit Scholarship Program. The
148 purpose of the site visits is solely to verify the information
149 reported by the schools concerning the enrollment and attendance
150 of students, the credentials of teachers, background screening
151 of teachers, and teachers' fingerprinting results. The
152 Department of Education may not make more than seven ~~random~~ site
153 visits each year; however, the Department of Education may make
154 additional site visits at any time to any school that has
155 received a notice of noncompliance or a notice of proposed

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156 action within the previous two years and may not make more than
157 one random site visit each year to the same private school.

158 2. Annually, by December 15, report to the Governor, the
159 President of the Senate, and the Speaker of the House of
160 Representatives the Department of Education's actions with
161 respect to implementing accountability in the scholarship
162 program under this section and s. 1002.421, any substantiated
163 allegations or violations of law or rule by an eligible private
164 school under this program concerning the enrollment and
165 attendance of students, the credentials of teachers, background
166 screening of teachers, and teachers' fingerprinting results and
167 the corrective action taken by the Department of Education.

168 (p) Upon the request of a participating private school,
169 provide at no cost to the school the statewide assessments
170 required under s. 1008.22 and any related materials for
171 administering the assessments.

172 (10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

173 (a) Upon the request of any eligible nonprofit scholarship-
174 funding organization, a school district shall inform all
175 households within the district receiving free or reduced-priced
176 meals under the National School Lunch Act of their eligibility
177 to apply for a tax credit scholarship. The form of such notice
178 shall be provided by the eligible nonprofit scholarship-funding
179 organization, and the district shall include the provided form,
180 if requested by the organization, in any normal correspondence
181 with eligible households. If an eligible nonprofit scholarship-
182 funding organization requests a special communication to be
183 issued to households within the district receiving free or

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184 reduced-price meals under the National School Lunch Act, the
185 organization shall reimburse the district for the cost of
186 postage. Such notice is limited to once a year.

187 (b) Upon the request of the Department of Education, a
188 school district shall coordinate with the Department of
189 Education to provide the statewide assessments required under s.
190 1008.22 and any related materials for administering the
191 assessments to a participating private school.

192 (11) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.-

193 (a)1. The Commissioner of Education shall deny, suspend, or
194 revoke a private school's participation in the scholarship
195 program if it is determined that the private school has failed
196 to comply with the provisions of this section. However, in
197 instances in which the noncompliance is correctable within a
198 reasonable amount of time and in which the health, safety, or
199 welfare of the students is not threatened, the commissioner may
200 issue a notice of noncompliance that shall provide the private
201 school with a timeframe within which to provide evidence of
202 compliance prior to taking action to suspend or revoke the
203 private school's participation in the scholarship program.

204 2. The Commissioner of Education may deny, suspend, or
205 revoke a private school's participation in the scholarship
206 program if the commissioner determines that:

207 a. An owner or operator of a private school has exhibited a
208 previous pattern of failure to comply with the provisions of
209 this section or s. 1002.421, or;

210 b. An owner or operator of the private school is operating
211 or has operated an educational institution in this state or

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212 another state or jurisdiction in a manner contrary to the
213 health, safety, or welfare of the public. In making the ~~this~~
214 determination under this subparagraph, the commissioner may
215 consider factors that include, but are not limited to, acts or
216 omissions by an owner or operator that led to a previous denial
217 or revocation of participation in an education scholarship
218 program; an owner's or operator's failure to reimburse the
219 Department of Education or a scholarship-funding organization
220 for scholarship funds improperly received or retained by a
221 school; imposition of a prior criminal sanction, ~~or~~ civil fine,
222 administrative fine, license revocation or suspension, or
223 program eligibility suspension, termination, or revocation
224 ~~sanction~~ related to an owner's or operator's management or
225 operation of an educational institution; or other types of
226 criminal proceedings in which the owner or operator was found
227 guilty of, regardless of adjudication, or entered a plea of nolo
228 contendere or guilty to, any offense involving fraud, deceit,
229 dishonesty, or moral turpitude.

230 (c) The commissioner may immediately suspend payment of
231 scholarship funds if it is determined that there is probable
232 cause to believe that there is:

233 1. An imminent threat to the health, safety, and welfare of
234 the students;

235 2. A previous pattern of failure to comply with this
236 section or s. 1002.421; or

237 3.2.—Fraudulent activity on the part of the private school.
238 Notwithstanding s. 1002.22, in incidents of alleged fraudulent
239 activity pursuant to this section, the Department of Education's

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240 Office of Inspector General is authorized to release personally
241 identifiable records or reports of students to the following
242 persons or organizations:

243 a. A court of competent jurisdiction in compliance with an
244 order of that court or the attorney of record in accordance with
245 a lawfully issued subpoena, consistent with the Family
246 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

247 b. A person or entity authorized by a court of competent
248 jurisdiction in compliance with an order of that court or the
249 attorney of record pursuant to a lawfully issued subpoena,
250 consistent with the Family Educational Rights and Privacy Act,
251 20 U.S.C. s. 1232g.

252 c. Any person, entity, or authority issuing a subpoena for
253 law enforcement purposes when the court or other issuing agency
254 has ordered that the existence or the contents of the subpoena
255 or the information furnished in response to the subpoena not be
256 disclosed, consistent with the Family Educational Rights and
257 Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.
258 The commissioner's order suspending payment pursuant to this
259 paragraph may be appealed pursuant to the same procedures and
260 timelines as the notice of proposed action set forth in
261 paragraph (b).

262 Section 2. Paragraph (b) of subsection (6) of section
263 1002.20, Florida Statutes, is amended to read:
264 1002.20 K-12 student and parent rights.—Parents of public school
265 students must receive accurate and timely information regarding
266 their child's academic progress and must be informed of ways
267 they can help their child to succeed in school. K-12 students

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268 and their parents are afforded numerous statutory rights
269 including, but not limited to, the following:

270 (6) EDUCATIONAL CHOICE.—

271 (b) Private school choices.—Parents of public school
272 students may seek private school choice options under certain
273 programs.

274 1. Under the McKay Scholarships for Students with
275 Disabilities Program, the parent of a public school student with
276 a disability may request and receive a McKay Scholarship for the
277 student to attend a private school in accordance with ~~the~~
278 ~~provisions of~~ s. 1002.39.

279 2. Under the Florida Tax Credit Scholarship Program, the
280 parent of a student who qualifies for free or reduced-price
281 school lunch or who is currently placed, or during the previous
282 state fiscal year was placed, in foster care as defined in s.
283 39.01 may seek a scholarship from an eligible nonprofit
284 scholarship-funding organization in accordance with ~~the~~
285 ~~provisions of~~ s. 1002.395.

286 Section 3. This act shall take effect upon becoming a law.
287
288

289 -----

290 **T I T L E A M E N D M E N T**

291 Remove lines 12-14 and insert:
292 reporting of test scores and site visits; requiring the
293 Department of Education to provide at no cost statewide
294 assessments and related materials to a school that makes such a
295 request; requiring a school district to coordinate with the

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296 Department of Education to provide statewide assessments and
297 related materials to a participating private school;

° 298

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1393 Taxation Of Transient Rentals

SPONSOR(S): Brodeur

TIED BILLS: IDEN./SIM. BILLS: SB 1888

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Flieger <i>BF</i>	Langston <i>[Signature]</i>
2) Business & Consumer Affairs Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill clarifies the meaning of several terms used in the taxation of transient rental accommodations by the state and local governments. The bill amends s. 212.03, F.S., to clarify that the terms "total rental charged" as used in s. 212.03, F.S., "total consideration" as used in ss. 125.0104 and 125.0108, F.S., "consideration" as used in s. 212.0305, F.S., and "rent" as used in ch. 67-930, L.O.F., as amended, have the same meaning and that meaning includes the total amount a person licensed pursuant to ss. 509.241 and 509.242, F.S., or regulated by the Department of Business and Professional Regulation receives from a customer for the right to occupy that person's transient accommodations. Licensing pursuant to ss. 509.241 and 509.242, F.S., relates to public lodging establishments.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Taxation of Transient Rentals

Transient rentals are rentals or leases of accommodations for 6 months or less and include stays in hotels, apartment houses, roominghouses, tourist or trailer camps, mobile home parks or recreational vehicle parks.¹

Currently, transient rentals are potentially subject to the following taxes:

1. Local Option Tourist Development Taxes: Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(a), F.S., provides that the local option tourist development tax is levied on the "total consideration charged for such lease or rental."
 - a. The tourist development tax may be levied at the rate of 1 or 2 percent.² Currently, 60 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.³
 - b. An additional tourist development tax of 1 percent may be levied.⁴ Currently 43 counties levy this tax; only 56 counties are currently eligible to levy this tax.⁵
 - c. A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.⁶ Currently 35 counties levy this additional tax; all 67 counties are eligible to levy this tax.⁷
 - d. A high tourism impact county may levy an additional 1 percent on transient rental transactions.⁸ Only Broward, Monroe, Orange, Osceola and Walton counties have been designated as high tourism impact counties eligible to impose this tax, but only Orange, Osceola and Monroe counties impose the tax.⁹
 - e. An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.¹⁰ Out of 65 eligible counties, 20 levy this tax.¹¹
2. Local Option Tourist Impact Tax: The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total consideration charged. Only Monroe County is eligible and does levy this tax in areas designated as areas of critical state concern because they created a land authority pursuant to s. 380.0663(1), F.S.¹²
3. Local Convention Development Tax: The convention development tax under s. 212.0305, F.S., is imposed on the total consideration charged for the transient rental. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3

¹ These accommodations are defined in s. 212.02(10), F.S. See also Rule 12A-1.061(2)(f), F.A.C.

² Section 125.0104(3)(c), F.S.

³ Florida Legislative Committee on Intergovernmental Relations.

⁴ Section 125.0104(3)(d), F.S.

⁵ See fn. 3, supra.

⁶ Section 125.0104(3)(l), F.S.

⁷ See fn. 3, supra.

⁸ Section 125.0104(3)(m), F.S.

⁹ See fn. 3, supra.

¹⁰ Section 125.0104(3)(n), F.S.

¹¹ See fn. 3, supra.

¹² Id.

percent (Volusia County).¹³ No county authorized to levy this tax can levy more than 2 percent of the tourist development tax, excluding the professional sports franchise facility tax.¹⁴

4. **Municipal Resort Tax:** Certain municipalities may levy the municipal resort tax at a rate of up to 4 percent on transient rental transactions.¹⁵ The tourist development tax may not be levied in any municipality imposing the municipal resort tax. The tax is collected by the municipality. Currently only three municipalities in Miami-Dade County are eligible to impose the tax.
5. **State Sales Tax:** The state sales tax on transient rentals under s. 212.03, F.S., is levied in the amount of 6 percent of the "total rental charged" for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.

In general, the local taxes are adopted by ordinance, some of which must be approved by a referendum election of the voters of the county or area where the tax is to be levied. The local taxes on transient rentals are required to be remitted to the Department of Revenue by the person receiving the consideration, unless a county has adopted an ordinance providing for local collection and administration of the tax.¹⁶ Further, the use of the proceeds from each tax may only be used as set forth in the authorizing statute.

Certain rentals or leases are exempt from the taxes; these include rentals to active-duty military personnel, full-time students, bona fide written leases for continuous residence longer than 6 months, and accommodations in migrant labor camps.¹⁷

Every person desiring to engage in or conduct business in this state as a dealer or to lease, rent, or let or grant licenses to use accommodations that are subject to tax under s. 212.03, F.S., must file with DOR an application for a certificate of registration for each place of business prior to engaging in such business.¹⁸ A separate application is required for each county where property is located. Agents, representatives, or management companies that collect and receive rent as the accommodation owner's representative are required to register as a dealer and collect and remit the applicable tax due on such rentals to the proper taxing authority.¹⁹

In addition to the certificate of registration, each newly registered dealer also receives an initial resale certificate from DOR. The resale certificate is renewed annually for dealers with an active sales tax account, and expires on December 31 each year.²⁰ An annual resale certificate allows registered dealers to make tax-exempt purchases or rentals of property or services for resale, including re-rental of transient rental property and resale of tangible personal property. The annual resale certificate may not be used to make tax-exempt purchases or rentals of property or services that:

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

*Rental of Accommodations Online*²²

Some companies have websites that specialize in offering reservations of transient rental accommodations. These are generally independent third parties who act either as an agent or a merchant and are often referred to as "internet intermediaries" or some similar term. Travel agents

¹³ Id.

¹⁴ Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.

¹⁵ Chapter 67-930, L.O.F., amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.

¹⁶ See e.g., ss. 125.0104(10) and 212.0305(5), F.S. Also known as "self-administering."

¹⁷ Section 212.03(7), F.S. See also ss. 125.0104(3)(a), 125.0108(1)(b), 212.0305(3)(a), F.S.

¹⁸ Section 212.18(3)(a), F.S.

¹⁹ Rule 12A-1.061(7), F.A.C.

²⁰ Section 212.18(3)(c), F.S.

²¹ Annual Resale Certificate for Sales Tax (Guidelines), at <http://dor.myflorida.com/dor/taxes/resale.html> (last visited 03/02/2011).

²² Information for this section was obtained from Interim Project 2005-131, Senate Committee on Government Efficiency Appropriations (Nov. 2004); and Issue Brief 2009-320, Senate Committee on Finance and Tax (Oct. 2008).

have been allowed computerized access to search hotel room inventories and to book discounted hotel rooms in the name of, and for the account of, other people (i.e., as intermediaries) since the 1970s.

When an internet intermediary facilitates accommodation reservations acting as an agent, the intermediary is acting as a middle-man between the customer and the accommodation owner to reserve a room. Generally, the customer reserves a room with a credit card, and does not pay the hotel bill until check-out, at which point taxes are charged. In these circumstances, at the time of reservation online, the customer is typically advised that taxes may or may not be included in the total cost listed on the website. The accommodation owner compensates the agent with a commission based on the room rate set by the hotel. With this method, the room rate is subject to tax without any reduction for the commission paid. Agents do not arrange in advance of the customer's transaction to purchase room inventory at the hotel.

Generally speaking, when an internet intermediary acts as a merchant, it enters into a contract with an accommodation owner to offer rooms to the public. The accommodation owner agrees to make rooms available for reservation at a negotiated rate.²³ The merchant agrees to pay the owner the negotiated room rate and to also forward money it collects from the customer to pay applicable taxes. The merchant advertises a room rate on the website with disclosures for separate charges for "taxes and service fees" or some similar designation. The internet intermediary is the merchant of record for reservation of the room, and it initiates a charge to the customer's credit card for the full room rate plus the disclosed line items. The consumer receives confirmation of the reservation from the merchant. When the accommodation owner sends the merchant an invoice for the room after the consumer's stay, the merchant pays the negotiated room rate and the tax due on that amount.

The issue of on-line reservations of accommodations by internet intermediaries has surfaced as a result of two main factors: 1) the increase in reservations of accommodations through websites; and 2) tax laws that were adopted before the existence of internet intermediaries. There has been some dispute and question as to the proper amount against which state and local transient rental taxes are levied.

The Markup/Facilitation Fee/Service Fee

Internet intermediaries argue that the tourist development tax is measured by the amount paid to the accommodation owner or operator for the right to use the transient accommodation (negotiated rate) and that the facilitation fee²⁴ is not subject to tax because it is not an amount paid to the owner (generally the difference between the retail rate paid by the customer and the negotiated rate paid by the internet intermediary). They argue that the taxable incident is not the isolated receipt of the rental payment, but the exercise of the privilege – the assemblage of activities consistent with ownership. Under this line of reasoning, money received to facilitate a booking, process a reservation application, or provide a similar service, is not subject to tax when a company lacks an ownership interest in the accommodation. This position extends to the tax treatment of customer charges variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees."

Local governments interpret the law such that internet intermediaries acting as merchants are sales tax dealers and that the total amount of each transaction is taxable. The internet intermediary acts in place of the accommodation owner in renting, leasing, or letting the real property, tangible personal property, and services as part of the accommodation. Local governments contend that dividing the sale of an accommodation reservation into discrete transactions ignores the sale's singular nature. They are concerned that allowing intermediaries to shoehorn customary accommodation services into the non-taxable category will erode the tax base.

When Taxes Should Be Remitted

Internet intermediaries argue that the tax is not due at the time money is paid by the consumer. Instead, it should be remitted by the hotel or facility, as owner of the accommodation, once the

²³ The negotiated rate is also referred to as a discounted or wholesale price or rate.

²⁴ Also known as the "markup" or a "service fee." A facilitation fee generally involves money received to facilitate a booking, process a reservation application, or provide a similar service.

negotiated room charge is forwarded to the owner after the consumer's stay. Local governments argue that transient rental tax is due at the time of collection, not later when the accommodation owner is paid the negotiated rate.

Florida Department of Revenue

DOR has not taken an official position on whether tax is due on the amount collected and retained by internet intermediaries. The department has not taken a position on whether tax is due on the additional charges variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees." Additionally, DOR has not take a position on whether tax should be remitted at the time the customer pays for the reservation.

Local Litigation

In August 2010, Monroe County entered into a settlement agreement on behalf of 32 counties²⁵ in a federal class-action suit against certain online travel companies. As a result of the settlement order, the online travel companies paid \$6.5 million to the counties, and in return the counties released Orbitz, Expedia, and Travelocity from any obligation to pay or remit tourist development taxes on the full retail price for hotel accommodations from July 1, 2010 until July 1, 2012 (Priceline negotiated that they would have no obligation until July 1, 2013).²⁶ The participating counties agreed to dismiss all current claims against the online travel companies with prejudice, and are further precluded from suing or making attempt to collect such taxes from Expedia, Travelocity, and Orbitz until after July 1, 2012, and from Priceline until July 1, 2013.

In October 2011, Orange County approved a confidential settlement they reached with Expedia. Based on review of the county's finances, media estimates place the settlement at roughly \$9 million. While the terms are confidential, reports indicate that the settlement was similar to that of the Monroe County, in that without admitting liability Expedia received an agreement that the county not assess tax for an agreed upon grace period.²⁷

Several other local jurisdictions have open litigation pending against online travel companies.²⁸

Department of Business and Professional Regulation

Section 509.241, F.S., provides that each public lodging establishment is required to obtain a license from the Department of Business and Professional Regulation. License classifications for public lodging establishment are set out in s. 509.242, F.S., and include hotels, motels, nontransient apartments, transient apartments, roominghouses, bed and breakfast inns, and vacation rentals. The Department of Business and Professional Regulation regulates additional locations and professions related to transient rental accommodations such as condominiums, timeshares, mobile homes, and real estate agents.

Proposed Changes

The bill clarifies the meaning of several terms used in the taxation of transient rental accommodations by the state and local governments. The bill amends s. 212.03, F.S., to clarify that the terms "total rental charged" as used in s. 212.03, F.S., "total consideration" as used in ss. 125.0104 and 125.0108,

²⁵ The class action suit represented the following counties: Baker, Bradford, Citrus, Clay, Collier, Columbia, Duval, Franklin, Gadsden, Gilchrist, Glades, Hamilton, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lake, Levy, Madison, Martin, Miami-Dade, Monroe, Okeechobee, Putnam, St. Lucie, Santa Rosa, Sarasota, Sumter, Suwannee, and Taylor. The 15 defendants included: Expedia, Inc., Hotels.com, L.P., Hotwire, Inc., Hotels.com, and TravelNow.com, Inc. (the "Expedia parties"); priceline.com incorporated and Travelweb LLC (the "Priceline parties"); Travelocity.com LP and Site59.com (the "Travelocity parties"); and Orbitz, LLC and Trip Network Inc. d/b/a Cheaptickets.com (the "Orbitz parties").

²⁶ *Monroe County v. Priceline, Inc. et al.* Master Settlement Agreement (Case No. 09-10004-CIV-MOORE/SIMONTON)(S.D. Fla. 2010) (on file with the Finance and Tax Committee, Florida House of Representatives).

²⁷ "Expedia details might stay secret from Orange taxpayers", Orlando Sentinel, December 6, 2011, http://articles.orlandosentinel.com/2011-12-06/business/os-mystery-settlement-expedia-20111206_1_expedia-settlement-talks-tax-information (accessed January 24, 2012)

²⁸ See, e.g., *Leon County vs. Expedia Inc.* (Case No. 37 2009 CA 004319); *Priceline.com Inc. vs. Osceola County*, (Case No: 37 2011 CA 000192); *Hotwire Inc. vs. Miami Dade County*, (Case No. 37 2009 CA 004977)

F.S., "consideration" as used in s. 212.0305, F.S., and "rent" as used in ch. 67-930, L.O.F., as amended, have the same meaning and that meaning includes the total amount a person licensed pursuant to ss. 509.241 and 509.242, F.S., or regulated by the Department of Business and Professional Regulation receives from a customer for the right to occupy that person's transient accommodations.

B. SECTION DIRECTORY:

Section 1 amends s. 212.03, F.S. to consolidate the definition of several terms.

Section 2 provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue does not believe the bill provides sufficient clarification on this issue to enable the Department to determine what amounts are subject to tax as the use of the word "include" in the bill does not act to exclude consideration received by parties not licensed or regulated by the Department of Business and Professional Regulation from the definitions of the relevant terms.²⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁹ Department of Revenue 2012 Bill Analysis *HB 1393*, January 13, 2012.
STORAGE NAME: h1393.FTC.DOCX
DATE: 1/19/2012

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A bill to be entitled
 An act relating to taxation of transient rentals;
 amending s. 212.03, F.S.; defining the terms "total
 rental charged," "total consideration,"
 "consideration," and "rent" for purposes relating to
 the tax on sales, use, and other transactions, the
 tourist development tax, the tourist impact tax, the
 convention development tax, and the municipal resort
 tax on the rental of transient accommodations;
 providing an effective date.

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

Section 1. Subsection (8) is added to section 212.03,
 Florida Statutes, to read:



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

(8) The terms "total rental charged" as used in this
 section, "total consideration" as used in ss. 125.0104 and
 125.0108, "consideration" as used in s. 212.0305, and "rent" as
 used in chapter 67-930, Laws of Florida, as amended, have the
 same meaning and include the total amount that a person licensed
 pursuant to ss. 509.241 and 509.242 or regulated by the
 Department of Business and Professional Regulation receives for
 the right to occupy the person's transient accommodations.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7031 PCB EAC 12-01 Financial Emergencies
SPONSOR(S): Economic Affairs Committee, Hukill
TIED BILLS: **IDEN./SIM. BILLS:** SB 368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Affairs Committee	13 Y, 3 N	Rojas	Tinker
1) Finance & Tax Committee		Wilson 	Langston 
2) State Affairs Committee			

SUMMARY ANALYSIS

The bill makes several changes in ch. 218, F.S., which in part controls determination and treatment of financial emergencies in local governments and district school boards.

The bill deletes one of the statutory triggers for financial emergency specified in s.218.503(1)(e), F.S., relating to a deficit fund balance or net assets balance, and amends s. 218.39(5), F.S., to require auditors to consider that same condition in determining whether deteriorating financial conditions exist that are required to be discussed with the entity's governing body.

The bill amends s. 218.503(3), F.S., to create a timeframe of 45 days after the date of a request for information which entities must respond to requests for information by the Executive Office of the Governor or the Commissioner of Education. If the entity does not comply with the request, the Governor, or the Commissioner of Education, or their respective designee then notifies the Legislative Auditing Committee who may take action pursuant to s. 11.40, F.S.

The bill further amends s. 218.503(3), F.S., regarding measures to resolve financial emergencies. This section authorizes financial emergency boards appointed by the Governor or Commissioner of Education to consult with other governmental entities for the consolidation of administrative direction and support services. Such services include, but are not limited to, services for:

- asset sales,
- economic and community development,
- building inspections,
- parks and recreation,
- facilities management,
- engineering and construction,
- insurance coverage,
- risk management,
- planning and zoning,
- information systems,
- fleet management, and
- purchasing.

The bill also creates s. 218.503(6), F.S., clarifying the constitutional ability of the Governor to suspend and recommend the removal of members of governing bodies for failure to resolve a state financial emergency. This failure constitutes malfeasance, misfeasance, and neglect of duty for purposes of Article IV, s. 7 of the Florida Constitution.

This bill does not have an impact on state or local government revenues. See FISCAL COMMENTS.

The bill has an effective date of July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7031.FTC

DATE: 1/24/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Local Government Entity and District School Board Financial Emergencies

Part V of Ch. 218, F.S., comprises the Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergency Act (Act). The purpose of the Act is to preserve the fiscal solvency of local government entities,¹ charter schools, charter technical career centers, and district school boards that are in a state of financial emergency. Under the Act's provisions, those bodies that meet one of the statutory indicators of financial distress are required to notify the Governor or Commissioner of Education and the Legislative Auditing Committee.²

Conditions Indicating Financial Distress

Subsections (a)-(e) of s. 218.503(1), F.S., provide indicators of financial distress which include any one of the following conditions based on lack of funds:

- Failure to pay short-term loans or failure to make bond debt service or other long-term debt payments within the same fiscal year in which due.
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented.
- Failure to transfer taxes withheld on the income of employees, failure to transfer employer and employee contributions for Federal social security, or failure to transfer any pension, retirement, or benefit plan of an employee at the appropriate time.
- Failure to pay wages and salaries owed to employees or retirement benefits owed to former employees for one pay period.
- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, for which sufficient resources of the entity are not available to cover the deficit.³

The Auditor General recently recommended in a report⁴ on the Local Government Financial Reporting System, that the condition specified in s.218.503(1)(e), F.S., regarding a deficit fund balance or net assets balance has not been an effective indicator of a state of financial emergency. The report recommended eliminating that provision of law and revising s. 218.39(5), F.S., to require auditors to consider that same provision in determining whether deteriorating financial conditions exist that are required to be discussed with the governing body.

Determination of Financial Emergency

Upon notification that one or more of these conditions is met, the Governor or Commissioner of Education, as appropriate, must determine whether state assistance is needed to resolve or prevent the

¹ s. 218.502, F.S., defines local government entity to mean "a county, municipality, or special district".

² s. 218.503(1)-(2), F.S. Note: a charter school must notify the charter school sponsor, the Commissioner of Education, and the Legislative Auditing Committee; a charter technical career center must notify the charter technical career center sponsor, the Commissioner of Education, and the Legislative Auditing Committee; and the district school board shall notify the Commissioner of Education and the Legislative Auditing Committee.

³ Section 1011.051, F.S., provides additional insufficient resource conditions for school districts. If the unreserved general fund balance in a district's approved operating budget is projected to drop below 3 percent and 2 percent of projected general fund revenues, the school board superintendent is required to provide written notice to the district school board and the Commissioner of Education. Florida Auditor General Report No. 2012-023 cited three school districts in the state that met this condition in FY 2009-10.

⁴ Florida Auditor General Report No. 2011-196

financial deterioration. The entity is determined to be in a state of financial emergency if state assistance is needed.⁵

Once a determination is made, the Governor or Commissioner of Education has the power to implement certain remedial measures to resolve the financial emergency. Pursuant to s. 218.503(3), F.S., the Governor or Commissioner of Education may:

- require the local governmental entity or district school board's budget to be approved by the Governor or Commissioner of Education, respectively;
- authorize and provide for repayment of a state loan to the local governmental entity;
- prohibit issuance of bonds, notes, certificates of indebtedness, or any other form of debt while in a state of financial emergency;
- inspect and review the entity's records, information, reports, and assets;
- consult with local governmental entity and district school board officials and auditors to discuss necessary procedures to bring accounting books, systems, financial procedures, and reports into state compliance;
- provide technical assistance;
- establish a financial emergency board to oversee local government or district school board activities, appointed by the Governor or State Board of Education as appropriate; and
- require and approve a plan to be prepared by the local governmental entity or district school board that prescribes necessary actions to adjust the entity's debt.

Subsection (5) of s. 218.503, F.S., prohibits a local government entity or district school board from applying for bankruptcy under the United States Constitution without prior approval from the Governor for local governmental entities or the Commissioner of Education for district school boards.

Current law does not provide time frames within which entities must respond to requests for information by the Executive Office of the Governor or the Commissioner of Education, or provide consequences for failure to respond.

Financial Emergency Board

One of the measures available to the Governor or the Commissioner of Education to assist in resolving a financial emergency is the establishment of a financial emergency board.⁶ This board is charged with overseeing activities of the targeted entity. The Governor or the State Board of Education shall appoint members and select a chair. Once established, the board may:

- review the entity's records, reports, and assets;
- consult with local entity officials and auditors and with state officials regarding the necessary steps to bring the entity's accounting books, systems, financial procedures, and reports into compliance with state requirements; and
- review the entity's operations, management, efficiency, productivity, and financing of functions and operations.⁷

All recommendations and reports made by the financial emergency board must be provided to the Governor for local governmental entities or to the Commissioner of Education and the State Board of Education for district school boards.⁸

⁵ s. 218.503(3), F.S.

⁶ s. 218.503 (3)(g)1., F.S.

⁷ s. 218.503 (3)(g)1.a.-c., F.S.

⁸ s. 218.503 (3)(g)2., F.S.

Financial Emergency Plan

Another measure the Governor or Commissioner of Education may require of entities when resolving a financial emergency is the development of a plan prescribing remedial actions.⁹ Subject to Governor or Commissioner of Education approval, the adopted plan must include but is not limited to:

- provision for full payment of obligations outlined in s. 218.503(1), F.S., designated as priority items, that are currently due or will become due;
- establishment of priority budgeting or zero-based budgeting to eliminate items that are not affordable; and
- the prohibition of a level of operations which can be sustained only with nonrecurring revenues.¹⁰

Article IV, Section 7 of the Florida Constitution: Suspensions

Article IV, section 7 of the Florida Constitution provides the following:

By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension.

Effect of Proposed Changes

The bill deletes the condition specified in s.218.503(1)(e), F.S., regarding a deficit fund balance or net assets balance and amends s. 218.39(5), F.S., to require auditors to consider that same condition in determining whether deteriorating financial conditions exist that are required to be discussed with the governing body. The effect is to require auditors to consider fund balances as a potential indicator of financial distress rather than a statutory indicator. The independent auditor then reports it as one potential sign of deteriorating financial conditions to the governing body.

The bill amends s. 218.503(3), F.S., to create a timeframe of 45 days after the date of a request for information which entities must respond to requests for information by the Executive Office of the Governor or the Commissioner of Education. If the entity does not comply with the request, the Governor, or the Commissioner of Education, or their respective designee then notifies the Legislative Auditing Committee who may take action pursuant to s. 11.40, F.S.¹¹

The bill further amends s. 218.503(3), F.S., regarding measures to resolve financial emergencies. This section authorizes financial emergency boards appointed by the Governor or Commissioner of Education to consult with other governmental entities for the consolidation of administrative direction and support services. Such services include, but are not limited to, services for:

- asset sales,
- economic and community development,
- building inspections,
- parks and recreation,
- facilities management,
- engineering and construction,

⁹ s. 218.503 (3)(h), F.S.

¹⁰ Section 1011.051(2), F.S., provides additional emergency plan provisions for school districts. If a school district's unreserved general fund is projected to drop below 2 percent of general fund revenues and the Commissioner of Education determines that the district does not have a plan that is reasonably anticipated to avoid a financial emergency, the Commissioner shall appoint a financial emergency board to assist the district.

¹¹ The Legislative Auditing Committee has broad investigative powers and may exercise the powers of subpoena by law vested in a standing committee of the Legislature.

- insurance coverage,
- risk management,
- planning and zoning,
- information systems,
- fleet management, and
- purchasing.

The bill also provides that entities required by the Governor or Commissioner of Education to develop remedial financial emergency plans must include provisions, where applicable, for implementing the consolidation, sourcing, or discontinuance of administrative direction and support services as part of the entity's adopted plan. Such services include, but are not limited to, the services cited above.

Finally, the bill creates s. 218.503(6), F.S., to clarify the constitutional ability of the Governor to suspend and recommend removal of members of governing bodies who fail to resolve a state of financial emergency. This failure constitutes malfeasance, misfeasance, and neglect of duty for purposes of Article IV, s. 7 of the Florida Constitution. This is consistent with the Governor's existing authority in the constitution to remove elected officials for malfeasance, misfeasance and neglect of duty.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.39(5), F.S., to require auditors to consider a deficit fund balance or net assets balance in determining whether deteriorating financial conditions exist that are required to be discussed with the governing body.

Section 2: Amends s. 218.503(3), F.S., relating to various measures necessary to resolve financial emergencies in local governments and district school boards.

Section 3: Provides that this act shall take effect July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Financial emergency boards acting on behalf of an entity that has been declared to be in a state of financial emergency will be authorized to consult with other governmental entities for the consolidation of all administrative direction and support services.

Local government entities and district school boards in a state of financial emergency who are required to adopt financial emergency plans must include provisions, where applicable, for implementing the consolidation, sourcing or discontinuance of administrative direction and support services as part of the entity's adopted financial emergency plan.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill creates s. 218.503(6), F.S., to clarify the constitutional ability of the Governor to suspend and recommend removal of members of governing bodies who fail to resolve a state of financial emergency. This failure constitutes malfeasance, misfeasance, and neglect of duty for purposes of Article IV, s. 7 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to financial emergencies; amending s.
 3 218.39, F.S.; requiring the Auditor General to notify
 4 each member of the governing body of a local
 5 governmental entity, district school board, charter
 6 school, or charter technical career center of certain
 7 fund balance deficits; amending s. 218.503, F.S.;
 8 removing a condition under which local governmental
 9 entities, charter schools, charter technical career
 10 centers, and district school boards are subject to
 11 certain review and oversight by the Governor, the
 12 charter school sponsor, the charter technical career
 13 center sponsor, or the Commissioner of Education;
 14 requiring a local governmental entity or district
 15 school board to provide requested information within a
 16 specified period of time; authorizing a financial
 17 emergency board for a local governmental entity or
 18 district school board to consult with other
 19 governmental entities for the consolidation of
 20 administrative direction and support services;
 21 authorizing the Governor or Commissioner of Education
 22 to require a local governmental entity or district
 23 school board to include provisions implementing the
 24 consolidation, sourcing, or discontinuance of all
 25 administrative direction and support services in
 26 certain plans; providing that the members of the
 27 governing body of a local governmental entity or the
 28 members of a district school board who fail to resolve

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29 a state of financial emergency are subject to
 30 suspension or removal from office; providing an
 31 effective date.

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Subsection (5) of section 218.39, Florida
 36 Statutes, is amended to read:

37 218.39 Annual financial audit reports.—

38 (5) At the conclusion of the audit, the auditor shall
 39 discuss with the chair of the governing body of the local
 40 governmental entity or the chair's designee, the elected
 41 official of each county agency or the elected official's
 42 designee, the chair of the district school board or the chair's
 43 designee, the chair of the board of the charter school or the
 44 chair's designee, or the chair of the board of the charter
 45 technical career center or the chair's designee, as appropriate,
 46 all of the auditor's comments that will be included in the audit
 47 report. If the officer is not available to discuss the auditor's
 48 comments, their discussion is presumed when the comments are
 49 delivered in writing to his or her office. The auditor shall
 50 notify each member of the governing body of a local governmental
 51 entity, district school board, charter school, or charter
 52 technical career center for which:

53 (a) Deteriorating financial conditions exist that may
 54 cause a condition described in s. 218.503(1) to occur if actions
 55 are not taken to address such conditions.

56 (b) A fund balance deficit in total or for that portion of

57 a fund balance not classified as restricted, committed, or
 58 nonspendable, or a total or unrestricted net assets deficit, as
 59 reported on the fund financial statements of entities required
 60 to report under governmental financial reporting standards or on
 61 the basic financial statements of entities required to report
 62 under not-for-profit financial reporting standards, for which
 63 sufficient resources of the local governmental entity, charter
 64 school, charter technical career center, or district school
 65 board, as reported on the fund financial statements, are not
 66 available to cover the deficit. Resources available to cover
 67 reported deficits include fund balance or net assets that are
 68 not otherwise restricted by federal, state, or local laws, bond
 69 covenants, contractual agreements, or other legal constraints.
 70 Property, plant, and equipment, the disposal of which would
 71 impair the ability of a local governmental entity, charter
 72 school, charter technical career center, or district school
 73 board to carry out its functions, are not considered resources
 74 available to cover reported deficits.

75 Section 2. Paragraph (e) of subsection (1) and subsection
 76 (3) of section 218.503, Florida Statutes, are amended, and
 77 subsection (6) is added to that section, to read:

78 218.503 Determination of financial emergency.—

79 (1) Local governmental entities, charter schools, charter
 80 technical career centers, and district school boards shall be
 81 subject to review and oversight by the Governor, the charter
 82 school sponsor, the charter technical career center sponsor, or
 83 the Commissioner of Education, as appropriate, when any one of
 84 the following conditions occurs:

85 ~~(c) A fund balance deficit in total or for that portion of~~
 86 ~~a fund balance not classified as restricted, committed, or~~
 87 ~~nonspendable, or a total or unrestricted net assets deficit, as~~
 88 ~~reported on the fund financial statements of entities required~~
 89 ~~to report under governmental financial reporting standards or on~~
 90 ~~the basic financial statements of entities required to report~~
 91 ~~under not for profit financial reporting standards, for which~~
 92 ~~sufficient resources of the local governmental entity, charter~~
 93 ~~school, charter technical career center, or district school~~
 94 ~~board, as reported on the fund financial statements, are not~~
 95 ~~available to cover the deficit. Resources available to cover~~
 96 ~~reported deficits include fund balance or net assets that are~~
 97 ~~not otherwise restricted by federal, state, or local laws, bond~~
 98 ~~covenants, contractual agreements, or other legal constraints.~~
 99 ~~Property, plant, and equipment, the disposal of which would~~
 100 ~~impair the ability of a local governmental entity, charter~~
 101 ~~school, charter technical career center, or district school~~
 102 ~~board to carry out its functions, are not considered resources~~
 103 ~~available to cover reported deficits.~~

104 (3) Upon notification that one or more of the conditions
 105 in subsection (1) have occurred or will occur if action is not
 106 taken to assist the local governmental entity or district school
 107 board, the Governor or his or her designee shall contact the
 108 local governmental entity or the Commissioner of Education or
 109 his or her designee shall contact the district school board to
 110 determine what actions have been taken by the local governmental
 111 entity or the district school board to resolve or prevent the
 112 condition. The information requested must be provided within 45

113 days after the date of the request. If the local governmental
 114 entity or the district school board does not comply with the
 115 request, the Governor or his or her designee or the Commissioner
 116 of Education or his or her designee shall notify the members of
 117 the Legislative Auditing Committee who may take action pursuant
 118 to s. 11.40. The Governor or the Commissioner of Education, as
 119 appropriate, shall determine whether the local governmental
 120 entity or the district school board needs state assistance to
 121 resolve or prevent the condition. If state assistance is needed,
 122 the local governmental entity or district school board is
 123 considered to be in a state of financial emergency. The Governor
 124 or the Commissioner of Education, as appropriate, has the
 125 authority to implement measures as set forth in ss. 218.50-
 126 218.504 to assist the local governmental entity or district
 127 school board in resolving the financial emergency. Such measures
 128 may include, but are not limited to:

129 (a) Requiring approval of the local governmental entity's
 130 budget by the Governor or approval of the district school
 131 board's budget by the Commissioner of Education.

132 (b) Authorizing a state loan to a local governmental
 133 entity and providing for repayment of same.

134 (c) Prohibiting a local governmental entity or district
 135 school board from issuing bonds, notes, certificates of
 136 indebtedness, or any other form of debt until such time as it is
 137 no longer subject to this section.

138 (d) Making such inspections and reviews of records,
 139 information, reports, and assets of the local governmental
 140 entity or district school board as are needed. The appropriate

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141 | local officials shall cooperate in such inspections and reviews.

142 | (e) Consulting with officials and auditors of the local
 143 | governmental entity or the district school board and the
 144 | appropriate state officials regarding any steps necessary to
 145 | bring the books of account, accounting systems, financial
 146 | procedures, and reports into compliance with state requirements.

147 | (f) Providing technical assistance to the local
 148 | governmental entity or the district school board.

149 | (g)1. Establishing a financial emergency board to oversee
 150 | the activities of the local governmental entity or the district
 151 | school board. If a financial emergency board is established for
 152 | a local governmental entity, the Governor shall appoint board
 153 | members and select a chair. If a financial emergency board is
 154 | established for a district school board, the State Board of
 155 | Education shall appoint board members and select a chair. The
 156 | financial emergency board shall adopt such rules as are
 157 | necessary for conducting board business. The board may:

158 | a. Make such reviews of records, reports, and assets of
 159 | the local governmental entity or the district school board as
 160 | are needed.

161 | b. Consult with officials and auditors of the local
 162 | governmental entity or the district school board and the
 163 | appropriate state officials regarding any steps necessary to
 164 | bring the books of account, accounting systems, financial
 165 | procedures, and reports of the local governmental entity or the
 166 | district school board into compliance with state requirements.

167 | c. Review the operations, management, efficiency,
 168 | productivity, and financing of functions and operations of the

169 local governmental entity or the district school board.

170 d. Consult with other governmental entities for the
 171 consolidation of administrative direction and support services,
 172 including, but not limited to, services for asset sales,
 173 economic and community development, building inspections, parks
 174 and recreation, facilities management, engineering and
 175 construction, insurance coverage, risk management, planning and
 176 zoning, information systems, fleet management, and purchasing.

177 2. The recommendations and reports made by the financial
 178 emergency board must be submitted to the Governor for local
 179 governmental entities or to the Commissioner of Education and
 180 the State Board of Education for district school boards for
 181 appropriate action.

182 (h) Requiring and approving a plan, to be prepared by
 183 officials of the local governmental entity or the district
 184 school board in consultation with the appropriate state
 185 officials, prescribing actions that will cause the local
 186 governmental entity or district school board to no longer be
 187 subject to this section. The plan must include, but need not be
 188 limited to:

189 1. Provision for payment in full of obligations outlined
 190 in subsection (1), designated as priority items, that are
 191 currently due or will come due.

192 2. Establishment of priority budgeting or zero-based
 193 budgeting in order to eliminate items that are not affordable.

194 3. The prohibition of a level of operations which can be
 195 sustained only with nonrecurring revenues.

196 4. Provisions implementing the consolidation, sourcing, or

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197 discontinuance of administrative direction and support services,
 198 including, but not limited to, services for asset sales,
 199 economic and community development, building inspections, parks
 200 and recreation, facilities management, engineering and
 201 construction, insurance coverage, risk management, planning and
 202 zoning, information systems, fleet management, and purchasing.

203 (6) The failure of the members of the governing body of a
 204 local governmental entity or the failure of the members of a
 205 district school board to resolve a state of financial emergency
 206 constitutes malfeasance, misfeasance, and neglect of duty for
 207 purposes of s. 7, Art. IV of the State Constitution.

208 Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 12-01 Property Tax Oversight

SPONSOR(S): Finance & Tax Committee

TIED BILLS: IDEN./SIM. BILLS: SPB 7036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Aldridge <i>A</i>	Langston <i>AL</i>

SUMMARY ANALYSIS

The proposed bill contains recommendations by the Department of Revenue for property tax oversight improvements. Among other things, the bill clarifies ambiguous language, deletes obsolete statutory provisions, and eliminates unneeded reporting requirements in the property tax statutes. The bill also:

- Amends statutory requirements for scheduling value adjustment board hearings.
- Allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government.
- Amends the current order that property tax exemptions are to be applied to require that the exemptions be applied in a manner that results in the lowest taxable value.
- Requires the property appraiser to mail an additional form along with the TRIM notice, upon request of the governing body of the county that informs taxpayers of the portion of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission.
- Amends s. 196.199(1), F.S., to provide that all property of the state and its political subdivisions and municipalities of this state, when used in conjunction with, or as an essential ancillary function of, an exempt or immune Federal, State or County facility, or property, shall be exempt from ad valorem taxation.

Additionally, current law provides that the assessed value of certain nonhomestead property cannot increase by more than 10 percent over the prior year. The law requires such property to be assessed at just value [fair market value] when the property is "placed on the tax roll." The bill clarifies that property is to be assessed at just value when it is subject to a new assessment limitation. The bill also amends these provisions to provide that parcels combined or divided are not to be included as such on the tax notice until the following January 1 on which it is first assessed as a combined or divided parcel. The bill further provides that increases in value due to dividing property are apportioned to each parcel pro rata based on just value, and increases in value of property when properties are combined are attributable to the combination.

Except for the provisions relating to certain exemption of government-owned property, which staff estimates will have a negative, but unknown local revenue impact, the Revenue Estimating Conference estimated that the bill will have no impact on state revenue and will have a negative recurring impact on local revenue of \$0.6 million, beginning in FY 2012-13.

The bill takes effect upon becoming law, except as otherwise provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Locally elected officials administer Florida's property tax system. The Department of Revenue (Department) is responsible for general supervision of the assessment and valuation of property, tax collection and all other aspects of the administration of property taxes.¹ In this role, the Department from time to time identifies statutory provisions that appear to contain drafting errors, inconsistencies, or inefficiencies. Most of the statutory changes in the bill were suggested by the Department and approved by the Governor and Cabinet, to address these types of issues.

Definitions

Current Situation

Section 192.001, F.S., defines terms used in the statutes imposing ad valorem taxes. Some of these definitions have not been amended to conform to other statutory and constitutional changes.

Proposed Changes

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

Value Adjustment Board Hearing Wait Time Limit

Current Situation

Taxpayers have the right to petition the value adjustment board (VAB) over objections to their property tax assessments, denial of homestead or other property tax exemptions, and appeals concerning property tax deferrals and classifications.² Section 194.032, F.S., outlines the timetable and procedure for VAB hearings. Taxpayers previously were required to exhaust their administrative remedies prior to filing an action in circuit court related to these matters.³ There is a vestige of this prior requirement in s. 194.032, F.S., whereby taxpayers who had waited 4 hours after the scheduled hearing time would be deemed to have exhausted their administrative remedies and thereby be permitted to file an action in circuit court.

Proposed Change

The bill amends the VAB hearing procedure in s. 194.032, F.S., and limits the amount of time a petitioner may be required to wait for his or her hearing after the scheduled time to "a reasonable time, not to exceed 2 hours." If the hearing is not commenced within this time, the petitioner may leave and the clerk shall reschedule the hearing, though this rescheduled hearing is not counted against the

¹ Section 194.011, F.S.

² Sections 194.011 and 194.032, F.S.

³ See *Stiles v. Brown*, 177 So.2d 672 (Fla.App.1965), affirmed 182 So.2d 612 (Fla. 1966) finding that appearance before the Board of Equalization [predecessor of the current VABs] was a necessary "exhaustion of administrative remedies" and a prerequisite to filing a lawsuit. See also Chapter 80-274, L.O.F., which added language now contained in s. 194.034(1)(b), F.S., which legislatively eliminated that prerequisite:

(b) Nothing herein shall preclude an aggrieved taxpayer from contesting his or her assessment in the manner provided by s. 194.171, whether or not he or she has initiated an action pursuant to s. 194.011.

taxpayer's one-time right to reschedule a hearing for any reason.⁴ The bill also amends the Taxpayer's Bill of Rights in s. 192.0105(2)(d), F.S., to conform to the amendments in s. 194.032, F.S., described here.

Repeal of the Property Tax Administration Task Force

Current Situation

The Property Tax Administration Task Force was created in s. 192.117, F.S., in 2001 for the purpose of serving as a forum for bringing issues in property tax administration to the Department, of providing and evaluating suggestions for improving the property tax administration process, and of promoting greater understanding of property tax administration issues. Under s. 20.03(8), F.S., a task force created by statute can exist for a maximum of three years. Accordingly, this task force was dissolved in 2004, rendering s. 192.117, F.S., obsolete.

Proposed Change

The bill repeals s. 192.117, F.S.

Real Property Assessment Roll Components

Current Situation

Section 193.114(2), F.S., provides a list of items that must be included on the real property assessment roll prepared by the property appraiser. Among these items, paragraph (n) requires the sale price, sale date, and basis for qualification or disqualification for an arms-length transaction for each sale of the property in the previous year to be included on the roll. Paragraph (p), requires the name and address of the owner or fiduciary responsible for the payment of taxes on the property.

Proposed Change

The bill amends s. 193.114(2)(n), F.S., to replace the term "sale price" with "recorded selling price," clarifying that the price submitted must be the amount indicated by the documentary stamps posted on the transfer document. "Sale date" is replaced with "ownership transfer date" to clarify that all real property transfers recorded or otherwise discovered during the period beginning 1 year before the assessment date, and up to the date the roll is submitted to the department, must be included on the roll. "Ownership transfer date" is defined as the date that the deed or other transfer instrument is signed and notarized or otherwise executed.

The bill also amends s. 193.114(2)(p), F.S., to delete the requirement that the assessment roll contain the name and address of a fiduciary responsible for payment of property taxes.

Assessment of Nonhomestead Residential Property; Assessment of Certain Residential and Nonresidential Real Property

Current Situation

Article VII, sections 4(g) and (h) of the Florida Constitution, provide, among other things, that the assessed value of certain nonhomestead property cannot increase more than 10 percent over the prior year. These provisions are implemented in ss. 193.1554 and 193.1555, F.S. Both sections require property to be assessed at just value [fair market value] when the property is "placed on the tax roll." The Department has interpreted this language to apply to situations where property that was already on

⁴ Taxpayers may reschedule their VAB hearing one time for any reason. See section 194.032(2), F.S.

the roll changes classifications, such as from homestead to nonhomestead, although this interpretation is currently being litigated.⁵

Sections 193.1554 and 193.1555, F.S., also govern how such property is assessed when parcels are merged or split. However, they do not specify how an increase in the just value from combining or dividing the parcels should be calculated and apportioned.

Proposed Change

The bill amends ss. 193.1554, F.S., and 193.1555, F.S., to clarify that property is to be assessed at just value when it is subject to a new limitation. The bill also amends these provisions to provide that parcels combined or divided in this section shall not be included as such on the tax notice until the following January 1 on which it is first assessed as a combined or divided parcel. These sections further provide that increases in value due to dividing property are apportioned to each parcel pro rata based on just value, and increases in value of property when properties are combined are attributable to the combination.

Reporting for Certain Tax Liabilities by Tax Collectors

Current Situation

Sections 193.501, 193.503, and 193.505, F.S., provide reduced assessments for lands subject to a conservation easement or other development limitation, historic property used for commercial or certain nonprofit purposes, or historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted, respectively.⁶ These provisions require repayment of the amount of reduced liability if the qualifying use is not maintained for the required period. Tax collectors must annually report to the Department the amount of repayments made under these sections.

Proposed Change

These provisions are amended removing the reporting requirement.

Notification of Value Adjustment Board's Decision

Current Situation

Section 194.034(2), F.S., provides that when a petitioner challenges a property assessment through the VAB, and the VAB is required to render a written decision, the clerk is required to mail a notification of the decision to various parties, including the Department.

Proposed Change

The bill amends s. 194.034(2), F.S., by removing the clerk's duty to notify the Department of every decision of the board. In place of that requirement, the bill provides that the clerk shall provide a copy of the decision (or information relating to the tax impact of the findings and results as provided in s.194.037, F.S.) to the Department upon the Department's request.

⁵ In December 2010, in *Sommers v. Orange Cnty. Prop. Appraiser*, No. 2010-CA-012489-O (Fla. 9th Cir. Ct. 2010), *pending appeal*, the Ninth Judicial Circuit Court ruled that the Sommers were entitled to the 10 percent assessment limitation on their previously homesteaded property without first reassessing the home to its full market value. The court based its ruling on constitutional language implemented in section 193,1554(3), F.S. This ruling is being appealed. *See* Case No. 5D11-240 (Fla. 5th DCA).

⁶ Constitutional authority provided in Art. VII, ss. 3(f) and 4(b).

Department's Review of Assessment Rolls

Current Situation

The Department is required to conduct an in-depth review of the assessment rolls of each county at least once every two years and report the results of its review to specified legislative staff and county officials.⁷ Statistical sampling used in the review of assessment rolls must meet a 95 percent confidence level. However, in some instances, there is insufficient data to meet the 95 percent confidence level standard.

Section 195.0985, F.S., requires the Department to annually publish sales ratio studies for counties after approving the tax roll assessments in those counties.

Proposed Change

The bill amends s. 195.096(2), F.S., allowing the Department to use ratio study standards that are generally accepted by professional appraisal organizations in lieu of the 95 percent confidence level requirement, when a 95 percent level of confidence is not attainable. Instead of being required to forward the findings to the Senate and the House of Representatives committees with oversight responsibilities, the bill directs the Department to publish its findings and notify the legislative staff and county officials that such publication has occurred. Copies of the data and findings will be provided upon request.

This bill also repeals s. 195.0985, F.S., eliminating a redundant requirement.

Department's Review of Assessments for Certain Businesses

Current Situation

Section 195.099, F.S., requires the Department to periodically review the assessments of new, rebuilt, and expanded businesses in designated enterprise zones⁸ or brownfield areas.⁹

Proposed Change

The bill amends this provision to remove the Department's mandatory review requirement and, instead, permits the Department to review these assessments.

Tax Exemption of Homesteads

Current Situation

Section 196.031(7), F.S., specifies the order in which various exemptions are applied to homestead property that is not totally exempt from ad valorem taxation. Under current law, the order of exemptions could result in some properties not being able to take full advantage of all the exemptions.

Proposed Change

The bill amends s. 196.031(7), F.S., to require that the exemptions in this section be applied in a manner that results in the lowest taxable value.

⁷ Section 195.096(2), F.S.

⁸ Section 193.077(3), F.S.

⁹ Section 196.1995, F.S.

Delay in Disability Exemption

Current Situation

Sections 196.081, 196.082, 196.091, 196.101, 196.202, and 196.24, F.S., provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions. To qualify for these discounts and exemptions, a taxpayer must first provide evidence of the disability by obtaining certification of the disability from specified sources, depending upon the specific discount or exemption, such as the United States government, the United States Department of Veterans Affairs or its predecessor, or the Social Security Administration; the taxpayer may not receive a discount or exemption until the letter is obtained. In some instances, taxpayers have lost the ability to claim discounts and exemptions because the receipt of the documentation was delayed.

Proposed Change

The bill amends these sections to allow a taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer receiving the necessary documentation. Once the documentation is received by the property appraiser, the exemption is granted back to the date of the original application and a refund of excess tax payments is made. The refund is only permitted for years that are within the normal 4 year statute of limitations for property tax refunds.

Printed Forms for Tax Exemptions

Current Situation

Section 196.121(1), F.S., requires the Department to furnish hard-copy, printed forms to the property appraiser of each county for taxpayers to use when claiming a homestead exemption.

Proposed Change

This bill amends s. 196.121(1), F.S., by removing the requirement that the Department provide printed forms; in its place, the bill provides that the Department shall provide the forms by electronic means or other methods designated by the Department.

Government Property Exemptions from Tax

Current Situation

Section 196.199, F.S., contains the statutory provisions related to exemption from property tax of certain government owned property.

Proposed Change

The bill adds language to s. 196.199(1), F.S., that provides that all property of the state and its political subdivisions and municipalities of this state, when used in conjunction with, or as an essential ancillary function of, an exempt or immune Federal, State or County facility, or property, shall be exempt from ad valorem taxation.

Method for Fixing Millage; Notice of Intent to Levy Additional Taxes

Current Situation

Section 200.065, F.S., provides the method for fixing the maximum millage rate that local governments can levy. To determine this maximum rate, the section refers to prior year's rate and sets the cap at the rate that would have been levied in the prior year if the maximum millage rate had been applied, *unless*

*a higher rate is adopted.*¹⁰ In an apparent drafting error, the phrase “is adopted” was used instead of “was adopted” in referring to that millage rate, causing uncertainty in the phrase’s meaning.

Additionally, this section requires a district school board to publish notice of intent to levy additional taxes under s. 1011.71(2), F.S. Since 2008,¹¹ district school boards have also been able to levy additional taxes pursuant to s. 1011.71(3), F.S. However, the notice requirements in s. 200.065(10), F.S., do not reference those levies.

Proposed Change

The bill amends s. 200.065(5), F.S., by replacing “is adopted” with “was adopted.” The bill also amends the notice requirement in s. 200.065(10), F.S., to require the district school board to publish a notice of intent to levy additional taxes under s. 1011.71(3), F.S.

Notice of Proposed Property Taxes

Current Situation

Section 200.069, F.S., provides the statutory provisions related to The Notice of Proposed Property Taxes, also known as the TRIM notice, which enables taxpayers to compare the prior year assessed value and taxes with the present year assessed value and proposed taxes for the upcoming year. The TRIM notice lists the date, time, and location of all budget hearings at which the taxing authorities will hear from the public. The notice also shows the deadline for filing a petition to protest the assessment. Taxing authorities establish the millage to be levied against a parcel of land shown on the TRIM notice at budget hearings.

Proposed Change

The bill amends s. 200.069, F.S., to require the property appraiser to mail an additional form along with the TRIM notice, upon request of the governing body of the county. Any costs related to this form shall be borne by the county. The form may include information regarding the proposed budget for the county, inform taxpayers of the portion of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission, and include:

- The dollar value of proposed nonvoted property tax funding for each constitutional officer and the county commission;
- The percent of the total nonvoted property tax revenues designated for each constitutional officer and the county commission in the proposed budget; and
- The proposed nonvoted millage rate for each constitutional officer and the county commission, calculated by multiplying the percent of the total nonvoted property tax revenues designated for each entity by the county's proposed nonvoted millage rate.

Fiscally Constrained County Distribution

Current Situation

Sections 218.12 and 218.125, F.S., direct the legislature to appropriate moneys to be distributed to fiscally constrained counties¹² to offset reductions in ad valorem tax revenue experienced as a result of certain amendments to Article VII of the Florida Constitution in 2008.¹³ These provisions contain an

¹⁰ Section 200.065(5), F.S.

¹¹ Ch. 2008-142, L.O.F.

¹² Defined in s. 218.67(1), F.S.

¹³ Am. C.S. for S.J.R. 2-D, 2007; adopted Jan. 2008 (providing, inter alia, a 10% cap on increase of assessed value of nonhomestead residential real property); Ams. Proposed by Taxation and Budget Reform Commission, Revision No. 4, 2008, filed with the

application process for such fiscally constrained counties, including documentation requirements that require counties to report their maximum millage under chapter 200, F.S. This citation is incorrect. Additionally, distributions under these sections are calculated by multiplying the current year reduction in taxable value by the prior year's millage rate, rather than using the current year's millage rate.

Proposed Change

The bill corrects the maximum millage calculation references, and the calculation of the distribution is corrected to be based on the current year millage. The bill also provides that if a fiscally constrained county fails to apply for the distribution, its share shall revert to the fund from which the appropriation was made.

B. SECTION DIRECTORY:

- Section 1: Amends s. 192.001(2) and (18), F.S., redefining the terms "assessed value of property" and "complete submission on the rolls."
- Section 2: Amends s. 192.0105(2)(d), F.S., limiting the amount of time a petitioner may be required to wait for a VAB hearing.
- Section 3: Repeals s. 192.117, F.S., the Property Tax Administrative Task Force in accordance with s. 20.38, F.S.
- Section 4: Amends s. 193.114(2)(n), F.S., replacing terms that describe what should be included on the real property assessment roll, and removing the requirement that the name and address of the fiduciary responsible for the payment of the taxes on the property be included on the roll.
- Section 5: Amends s. 193.1554, F.S., providing that nonhomestead residential property is to be assessed at just value when it is subject to a new assessment limitation; providing how any increase in value of property assessed under this section which is attributable to combining or dividing parcels should be apportioned.
- Section 6: Amends s. 193.1555, F.S., providing that certain residential and nonresidential real property are to be assessed at just value when they are subject to a new assessment limitation; providing how any increase in value of property assessed under this section which is attributable to combining or dividing parcels should be apportioned.
- Section 7: Amends s. 193.501(7), F.S., removing the provision requiring the tax collector to annually report to the Department the amount of deferred tax liability collected pursuant to this section.
- Section 8: Amends s. 193.503(9), F.S., removing the provision requiring the tax collector to annually report to the Department the amount of deferred tax liability collected pursuant to this section.
- Section 9: Amends s. 193.505(9), F.S., removing the provision requiring the tax collector to annually report to the Department the amount of deferred tax liability collected pursuant to this section.
- Section 10: Amends s. 194.032(2), F.S., limiting the amount of time a petitioner may be required to wait for a VAB hearing.

- Section 11: Amends s. 194.034(2), F.S., removing the clerk's duty to notify the Department of every VAB decision, and providing that the clerk shall furnish a copy of the decision upon the request of the Department.
- Section 12: Amends s. 195.096(2), F.S., allowing the Department to use ratio study standards that are generally accepted by professional appraisal organizations in lieu of the current 95 percent confidence level requirement.
- Section 13: Repeals s. 195.0985, F.S., which requires the Department to annually publish sales ratio studies for counties after approving the tax assessment roll in those counties.
- Section 14: Amends s. 195.099(1) and (2), F.S., removing the Department's mandatory review requirement and, in its place, permits the Department to review assessments of new, rebuilt and expanded businesses that meet certain exemptions.
- Section 15: Amends s. 196.031, F.S., requiring the exemptions applied to homestead property not totally exempt from ad valorem taxation to be applied in a manner that results in the lowest taxable value.
- Section 16: Amends s. 196.081, F.S., allowing certain permanently and totally disabled veterans and surviving spouses of veterans to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.
- Section 17: Amends s. 196.082, F.S., allowing disabled veterans to apply for a property tax discount prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the discount and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S..
- Section 18: Amends s. 196.091, F.S., allowing disabled veterans confined to wheelchairs to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.
- Section 19: Amends s. 196.101, F.S., allowing totally and permanently disabled persons to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.
- Section 20: Amends s. 196.121(1), F.S., removing the requirement that the Department provide printed forms; requiring the Department to provide the forms by electronic means or other methods designated by the Department.
- Section 21: Amends s. 199.196(1), F.S., adding a provision related to property of the state and its political subdivisions and municipalities of this state, when used in conjunction with, or as an essential ancillary function of, an exempt or immune Federal, State or County facility, or property.
- Section 22: Amends s. 196.202, F.S., allowing widows, widowers, blind persons, and persons totally and permanently disabled to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.

Section 23: Amends s. 196.24, F.S., allowing a disabled ex-servicemember or surviving spouse to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.

Section 24: Amends s. 200.065, F.S., correcting an apparent drafting error and requiring the district school board to publish notice of intent to levy additional taxes under s. 1011.71(3), F.S.

Section 25: Amends s. 200.069, F.S., to require the property appraiser to mail an additional form along with the "TRIM" notice, upon request of the governing body of the county that may include information regarding the proposed budget for the county to inform taxpayers of the portion of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission.

Section 26: Amends s. 218.12, F.S., changing a maximum millage rate cross-reference, replacing the year's millage rate to be multiplied against a county's current reduction in ad valorem taxation, and stating what will happen to unused funds if a fiscally constrained county fails to apply for the distribution.

Section 27: Amends s. 218.125, F.S., changing a maximum millage rate cross-reference, replacing the year's millage rate to be multiplied against a county's current reduction in ad valorem taxation, and stating what will happen to unused funds if a fiscally constrained county fails to apply for the distribution.

Section 28: Provides the effective date for the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimated that the bill will have no impact on state revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Except for the provisions relating to certain exemption of government-owned property, which staff estimates will have a negative, but unknown local revenue impact, the Revenue Estimating Conference estimated that the bill will have a negative recurring impact on local revenue of \$0.6 million, beginning in FY 2012-13.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill would reduce a county or municipality's authority to raise revenue in the aggregate; however, an exemption may apply. Laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, section 18, of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the administration of property
 3 taxes; amending s. 192.001, F.S.; revising the
 4 definitions of the terms "assessed value of property"
 5 and "complete submission of the rolls"; amending s.
 6 192.0105, F.S.; providing that a taxpayer has a right
 7 to have a hearing before the value adjustment board
 8 rescheduled if the hearing is not commenced within a
 9 certain period after the scheduled time; repealing s.
 10 192.117, F.S., relating to the Property Tax
 11 Administration Task Force; amending s. 193.114, F.S.;
 12 revising the information that must be included on a
 13 real property assessment roll relating to the transfer
 14 of ownership of property; defining the term "ownership
 15 transfer date"; deleting a requirement to include
 16 information relating to a fiduciary on a real property
 17 assessment roll; amending s. 193.1554, F.S.; deleting
 18 obsolete provisions; providing for the apportionment
 19 of increases in the value of combined and divided
 20 parcels of nonhomestead residential property;
 21 providing for the application of an assessment
 22 limitation to a combined or divided parcel of
 23 nonhomestead residential property; amending s.
 24 193.1555, F.S.; redefining the term "nonresidential
 25 real property" to conform a cross-reference to the
 26 State Constitution; deleting obsolete provisions;
 27 providing for the apportionment of increases in the
 28 value of combined and divided parcels of property;

29 providing for the application of an assessment
 30 limitation to a combined or divided parcel of
 31 property; amending ss. 193.501, 193.503, and 193.505,
 32 F.S.; deleting provisions requiring that the tax
 33 collector report amounts of deferred tax liability to
 34 the Department of Revenue; amending s. 194.032, F.S.;
 35 requiring that a hearing before the value adjustment
 36 board be rescheduled if the hearing on the
 37 petitioner's petition is not commenced within a
 38 certain time after the scheduled time; making
 39 technical and grammatical changes; amending s.
 40 194.034, F.S.; deleting an exception to a requirement
 41 that a value adjustment board render a written
 42 decision relating to the petitioner's failure to make
 43 a required payment; deleting a requirement that the
 44 Department of Revenue be notified of decisions by the
 45 value adjustment board; requiring that the clerk
 46 notify the Department of Revenue of a decision of the
 47 value adjustment board or information relating to the
 48 tax impact of the decision upon request; making
 49 technical and grammatical changes; amending s.
 50 195.096, F.S.; authorizing the measures in the
 51 findings resulting from an in-depth review of an
 52 assessment roll of a county to be based on a ratio
 53 that is generally accepted by professional appraisal
 54 organizations in developing a statistically valid
 55 sampling plan under certain circumstances; revising
 56 the requirements for the Department of Revenue to

57 provide certain information concerning its review of
 58 assessment rolls to the Legislature, the appropriate
 59 property appraiser, and county commissions; requiring
 60 that copies of the review data and findings be
 61 provided upon request; repealing s. 195.0985, F.S.,
 62 relating to a requirement that the department publish
 63 annual ratio studies; amending s. 195.099, F.S.;
 64 allowing the department discretion in determining
 65 whether to review the assessments of certain
 66 businesses; amending s. 196.031, F.S.; requiring that
 67 ad valorem tax exemptions be applied in the order that
 68 results in the lowest taxable value of a homestead;
 69 amending s. 196.081, F.S.; authorizing an applicant
 70 for an ad valorem tax exemption for a disabled veteran
 71 or for a surviving spouse to apply for the exemption
 72 before receiving certain documentation from the
 73 Federal Government; requiring refunds of excess taxes
 74 paid under certain circumstances; amending s. 196.082,
 75 F.S.; authorizing an applicant for an ad valorem tax
 76 discount available to disabled veterans to apply for
 77 the discount before receiving certain documentation
 78 from the Federal Government; requiring refunds of
 79 excess taxes paid under certain circumstances;
 80 amending s. 196.091, F.S.; authorizing an applicant
 81 for an ad valorem tax exemption for disabled veterans
 82 confined to a wheelchair to apply for the exemption
 83 before receiving certain documentation from the
 84 Federal Government; requiring refunds of excess taxes

85 paid under certain circumstances; amending s. 196.101,
 86 F.S.; authorizing an applicant for an ad valorem tax
 87 exemption for totally and permanently disabled persons
 88 to apply for the exemption before receiving certain
 89 documentation from the Federal Government; requiring
 90 refunds of excess taxes paid under certain
 91 circumstances; amending s. 196.121, F.S.; authorizing
 92 the Department of Revenue to provide certain forms
 93 electronically; deleting a requirement that the
 94 department supply printed forms to property
 95 appraisers; amending s. 196.199, F.S.; amending s.
 96 196.202, F.S.; authorizing an applicant for an ad
 97 valorem exemption for widows, widowers, blind persons,
 98 or persons who are totally and permanently disabled to
 99 apply for the exemption before receiving certain
 100 documentation from the Federal Government; requiring
 101 refunds of excess taxes paid under certain
 102 circumstances; amending s. 196.24, F.S.; authorizing
 103 an applicant for an ad valorem tax exemption for
 104 disabled ex-servicemembers or a surviving spouse to
 105 apply for the exemption before receiving certain
 106 documentation from the Federal Government; requiring
 107 refunds of excess taxes paid under certain
 108 circumstances; amending s. 200.065, F.S.; deleting
 109 obsolete provisions; revising provisions relating to
 110 the calculation of the rolled-back rate; correcting
 111 cross-references to certain additional taxes; amending
 112 s. 200.069, F.S.; requiring a property appraiser, at

113 the request of the governing body of a county, to mail
 114 an additional form along with the notice of proposed
 115 taxes to notify taxpayers of the portion of the
 116 proposed nonvoted county millage rate that is
 117 attributable to each constitutional officer and the
 118 county commission; amending ss. 218.12 and 218.125,
 119 F.S.; deleting obsolete provisions; providing for the
 120 reversion of funds appropriated to offset reductions
 121 in ad valorem tax revenue to a fiscally constrained
 122 county if the county fails to apply for a distribution
 123 of funds; providing effective dates.

124

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

126

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

129 192.001 Definitions.—All definitions set out in chapters 1
 130 and 200 that are applicable to this chapter are included herein.
 131 In addition, the following definitions shall apply in the
 132 imposition of ad valorem taxes:

133 (2) "Assessed value of property" means an annual
 134 determination of:

135 (a) The just or fair market value of an item or property;

136 ~~or~~

137 (b) The value of ~~the homestead~~ property as limited by
 138 ~~pursuant to s. 4(d),~~ Art. VII of the State Constitution; ~~or,~~

139 (c) The value of property in a classified use or at a
 140 fractional value if the a property is assessed solely on the

141 basis of character or use or at a specified percentage of its
 142 value under, ~~pursuant to s. 4(a) or 4(c)~~, Art. VII of the State
 143 Constitution, ~~its classified use value or fractional value.~~

144 (18) "Complete submission of the rolls" includes, but is
 145 not necessarily limited to, accurate tabular summaries of
 146 valuations as prescribed by department rule; an electronic a
 147 ~~computer tape~~ copy of the real property assessment roll
 148 including for each parcel total value of improvements, land
 149 value, the ~~two most recently~~ recorded selling prices, data
 150 required for an assessment roll under s. 193.114, the value of
 151 any improvement made to the parcel in the 12 months preceding
 152 the valuation date, the type and amount of any exemption
 153 granted, and such other information as may be required by
 154 department rule; an accurate tabular summary by property class
 155 of any adjustments made to recorded selling prices or fair
 156 market value in arriving at assessed value, as prescribed by
 157 department rule; an electronic a ~~computer tape~~ copy of the
 158 tangible personal property assessment roll, including for each
 159 entry a unique account number and such other information as may
 160 be required by department rule; and an accurate tabular summary
 161 of per-acre land valuations used for each class of agricultural
 162 property in preparing the assessment roll, as prescribed by
 163 department rule.

164 Section 2. Paragraph (d) of subsection (2) of section
 165 192.0105, Florida Statutes, is amended to read:

166 192.0105 Taxpayer rights.—There is created a Florida
 167 Taxpayer's Bill of Rights for property taxes and assessments to
 168 guarantee that the rights, privacy, and property of the

169 taxpayers of this state are adequately safeguarded and protected
 170 during tax levy, assessment, collection, and enforcement
 171 processes administered under the revenue laws of this state. The
 172 Taxpayer's Bill of Rights compiles, in one document, brief but
 173 comprehensive statements that summarize the rights and
 174 obligations of the property appraisers, tax collectors, clerks
 175 of the court, local governing boards, the Department of Revenue,
 176 and taxpayers. Additional rights afforded to payors of taxes and
 177 assessments imposed under the revenue laws of this state are
 178 provided in s. 213.015. The rights afforded taxpayers to assure
 179 that their privacy and property are safeguarded and protected
 180 during tax levy, assessment, and collection are available only
 181 insofar as they are implemented in other parts of the Florida
 182 Statutes or rules of the Department of Revenue. The rights so
 183 guaranteed to state taxpayers in the Florida Statutes and the
 184 departmental rules include:

185 (2) THE RIGHT TO DUE PROCESS.—

186 (d) The right to prior notice of the value adjustment
 187 board's hearing date, ~~and~~ the right to the hearing at the within
 188 4 hours of scheduled time, and the right to have the hearing
 189 rescheduled if the hearing is not commenced within a reasonable
 190 time, not to exceed 2 hours, after the scheduled time (see s.
 191 194.032(2)).

192 Section 3. Section 192.117, Florida Statutes, is repealed.

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

195 193.114 Preparation of assessment rolls.—

196 (2) The real property assessment roll shall include:

197 (n) The recorded selling ~~For each sale of the property in~~
 198 ~~the previous year, the sale price, ownership transfer sale date,~~
 199 ~~and official record book and page number or clerk instrument~~
 200 ~~number for each deed or other instrument transferring ownership~~
 201 ~~of real property and recorded or otherwise discovered during the~~
 202 ~~period beginning 1 year before the assessment date and up to the~~
 203 ~~date the assessment roll is submitted to the department. The~~
 204 ~~assessment roll shall also include,~~ and the basis for
 205 qualification or disqualification of a transfer as an arms-
 206 length transaction. A decision qualifying or disqualifying a
 207 transfer of property as an arms-length transaction ~~Sale data~~
 208 ~~must be current on all tax rolls submitted to the department,~~
 209 ~~and sale qualification decisions must be recorded on the~~
 210 ~~assessment tax roll within 3 months after the sale date that the~~
 211 ~~deed or other transfer instrument is recorded or otherwise~~
 212 ~~discovered. Sale or transfer data must be current on all tax~~
 213 ~~rolls submitted to the department. As used in this paragraph,~~
 214 ~~the term "ownership transfer date" means the date that the deed~~
 215 ~~or other transfer instrument is signed and notarized or~~
 216 ~~otherwise executed.~~

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

220 Section 5. Subsections (2), (3), and (7) of section
 221 193.1554, Florida Statutes, are amended to read:

222 193.1554 Assessment of nonhomestead residential property.-

223 (2) For all levies other than school district levies,
 224 nonhomestead residential property shall be assessed at just

225 value as of January 1 of the year that the property becomes
 226 eligible for assessment pursuant to this section, ~~2008~~. Property
 227 ~~placed on the tax roll after January 1, 2008, shall be assessed~~
 228 ~~at just value as of January 1 of the year in which the property~~
 229 ~~is placed on the tax roll.~~

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

237 (7) Any increase in the value of property assessed under
 238 this section which is attributable to combining or dividing
 239 parcels shall be assessed at just value, and the just value
 240 shall be apportioned among the parcels created.

241 (a) For divided parcels, the amount by which the sum of
 242 the just values of the divided parcels exceeds what the just
 243 value of the parcel would be if undivided shall be attributable
 244 to the division. This amount shall be apportioned to the parcels
 245 pro rata based on their relative just values.

246 (b) For combined parcels, the amount by which the just
 247 value of the combined parcel exceeds what the sum of the just
 248 values of the component parcels would be if they had not been
 249 combined shall be attributable to the combination.

250 (c) A parcel that is created by combining or dividing a
 251 parcel and that is eligible for assessment pursuant to this
 252 section retains such eligibility and shall be assessed as

253 provided in this subsection. A parcel that is combined or
 254 divided after January 1 and that is included as a combined or
 255 divided parcel on the tax notice is not considered to be a
 256 combined or divided parcel for purposes of this section until
 257 the January 1 on which it is first assessed as a combined or
 258 divided parcel.

259 Section 6. Subsections (1), (2), (3), and (7) of section
 260 193.1555, Florida Statutes, are amended to read:

261 193.1555 Assessment of certain residential and
 262 nonresidential real property.—

263 (1) As used in this section, the term:

264 (a) "Nonresidential real property" means real property
 265 that is not subject to the assessment limitations set forth in
 266 subsection 4(a), (b), (c), (d), or (g), Art. VII of the State
 267 Constitution ~~s. 4(a), (c), (d), or (g), Art. VII of the State~~
 268 ~~Constitution.~~

269 (b) "Improvement" means an addition or change to land or
 270 buildings which increases their value and is more than a repair
 271 or a replacement.

272 (2) For all levies other than school district levies,
 273 nonresidential real property and residential real property that
 274 is not assessed under s. 193.155 or s. 193.1554 shall be
 275 assessed at just value as of January 1 of the year that the
 276 property becomes eligible for assessment pursuant to this
 277 section, 2008. Property placed on the tax roll after January 1,
 278 ~~2008, shall be assessed at just value as of January 1 of the~~
 279 ~~year in which the property is placed on the tax roll.~~

280 (3) Beginning in 2009, ~~or~~ the year following the year the

281 property becomes eligible for assessment pursuant to this
 282 section is placed on the tax roll, whichever is later, the
 283 property shall be reassessed annually on January 1. Any change
 284 resulting from such reassessment may not exceed 10 percent of
 285 the assessed value of the property for the prior year.

286 (7) Any increase in the value of property assessed under
 287 this section which is attributable to combining or dividing
 288 parcels shall be assessed at just value, and the just value
 289 shall be apportioned among the parcels created.

290 (a) For divided parcels, the amount by which the sum of
 291 the just values of the divided parcels exceeds what the just
 292 value of the parcel would be if undivided shall be attributable
 293 to the division. This amount shall be apportioned to the parcels
 294 pro rata based on their relative just values.

295 (b) For combined parcels, the amount by which the just
 296 value of the combined parcel exceeds what the sum of the just
 297 values of the component parcels would be if they had not been
 298 combined shall be attributable to the combination.

299 (c) A parcel that is created by combining or dividing a
 300 parcel that is eligible for assessment pursuant to this section
 301 retains such eligibility and shall be assessed as provided in
 302 this subsection. A parcel that is combined or divided after
 303 January 1 and that is included as a combined or divided parcel
 304 on the tax notice is not considered to be a combined or divided
 305 parcel for purposes of this section until the January 1 on which
 306 it is first assessed as a combined or divided parcel.

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

309 193.501 Assessment of lands subject to a conservation
 310 easement, environmentally endangered lands, or lands used for
 311 outdoor recreational or park purposes when land development
 312 rights have been conveyed or conservation restrictions have been
 313 covenanted.—

314 (7)~~(a)~~ The property appraiser shall report to the
 315 department showing the just value and the classified use value
 316 of property that is subject to a conservation easement under s.
 317 704.06, property assessed as environmentally endangered land
 318 pursuant to this section, and property assessed as outdoor
 319 recreational or park land.

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

323 Section 8. Paragraph (d) of subsection (9) of section
 324 193.503, Florida Statutes, is amended to read:

325 193.503 Classification and assessment of historic property
 326 used for commercial or certain nonprofit purposes.—

327 (9)

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

331 Section 9. Paragraph (c) of subsection (9) of section
 332 193.505, Florida Statutes, is amended to read:

333 193.505 Assessment of historically significant property
 334 when development rights have been conveyed or historic
 335 preservation restrictions have been covenanted.—

336 (9)

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

340 Section 10. Subsection (2) of section 194.032, Florida
 341 Statutes, is amended to read:

342 194.032 Hearing purposes; timetable.-

343 (2) (a) The clerk of the governing body of the county shall
 344 prepare a schedule of appearances before the board based on
 345 petitions timely filed with him or her. The clerk shall notify
 346 each petitioner of the scheduled time of his or her appearance
 347 at least no less than 25 calendar days before ~~prior to~~ the day of
 348 the such scheduled appearance. The notice shall indicate whether
 349 the petition has been scheduled to be heard at a particular time
 350 or during a block of time. If the petition has been scheduled to
 351 be heard within a block of time, the beginning and ending of
 352 that block of time shall be indicated on the notice; however, as
 353 provided in paragraph (b), a petitioner may not be required to
 354 wait for more than a reasonable time, not to exceed 2 hours,
 355 after the beginning of the block of time. If the petitioner
 356 checked the appropriate box on the petition form to request a
 357 copy of the property record card containing relevant information
 358 used in computing the current assessment, the clerk shall
 359 provide the copy of the card along with the notice. Upon receipt
 360 of the notice ~~this notification~~, the petitioner may ~~shall~~ have
 361 ~~the right to~~ reschedule the hearing a single time by submitting
 362 to the clerk ~~of the governing body of the county~~ a written
 363 request to reschedule, at least no less than 5 calendar days
 364 before the day of the originally scheduled hearing.

365 (b) ~~A copy of the property record card containing relevant~~
 366 ~~information used in computing the taxpayer's current assessment~~
 367 ~~shall be included with such notice, if said card was requested~~
 368 ~~by the taxpayer. Such request shall be made by checking an~~
 369 ~~appropriate box on the petition form. No petitioner may not~~
 370 ~~shall~~ be required to wait for more than a reasonable time, not
 371 to exceed 2 4 hours, after from the scheduled time for the
 372 hearing to commence. ~~and,~~ If the hearing is not commenced
 373 within his or her petition is not heard in that time, the
 374 petitioner may inform, ~~at his or her option, report to the~~
 375 chairperson of the meeting that he or she intends to leave. ~~and,~~
 376 ~~and, If the petitioner leaves he or she is not heard~~
 377 ~~immediately,~~ the clerk shall reschedule the hearing, and the
 378 rescheduling is not considered to be a request to reschedule as
 379 provided in paragraph (a) petitioner's administrative remedies
 380 ~~will be deemed to be exhausted, and he or she may seek further~~
 381 ~~relief as he or she deems appropriate.~~

382 (c) Failure on three occasions with respect to any single
 383 tax year to convene at the scheduled time of meetings of the
 384 board is shall constitute grounds for removal from office by the
 385 Governor for neglect of duties.

386 Section 11. Subsection (2) of section 194.034, Florida
 387 Statutes, is amended to read:

388 194.034 Hearing procedures; rules.-

389 (2) In each case, except if the ~~when a~~ complaint is
 390 withdrawn by the petitioner or if the complaint, is acknowledged
 391 as correct by the property appraiser, ~~or is denied pursuant to~~
 392 ~~s. 194.014(1)(c),~~ the value adjustment board shall render a

393 written decision. All such decisions shall be issued within 20
 394 calendar days after ~~of~~ the last day the board is in session
 395 under s. 194.032. The decision of the board must ~~shall~~ contain
 396 findings of fact and conclusions of law and must ~~shall~~ include
 397 reasons for upholding or overturning the determination of the
 398 property appraiser. If ~~When~~ a special magistrate has been
 399 appointed, the recommendations of the special magistrate shall
 400 be considered by the board. The clerk, upon issuance of a
 401 decision ~~the decisions~~, shall, on a form provided by the
 402 Department of Revenue, notify by first-class mail each taxpayer
 403 and, the property appraiser, ~~and the department~~ of the decision
 404 of the board. If requested by the Department of Revenue, the
 405 clerk shall provide to the department a copy of the decision or
 406 information relating to the tax impact of the findings and
 407 results of the board as described in s. 194.037 in the manner
 408 and form requested.

409 Section 12. Effective July 1, 2012, paragraph (f) of
 410 subsection (2) and subsection (3) of section 195.096, Florida
 411 Statutes, are amended to read:

412 195.096 Review of assessment rolls.—

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

421 to appraise property.

422 (f) Within 120 days after ~~following the~~ receipt of a
 423 county assessment roll by the executive director of the
 424 department pursuant to s. 193.1142(1), or within 10 days after
 425 approval of the assessment roll, whichever is later, the
 426 department shall complete the review for that county and publish
 427 the department's ~~forward its~~ findings. The findings must
 428 include, ~~including~~ a statement of the confidence interval for
 429 the median and such other measures as may be appropriate for
 430 each classification or subclassification studied and for the
 431 roll as a whole, ~~employing a 95-percent level of confidence,~~ and
 432 related statistical and analytical details. The measures in the
 433 findings must be based on:

- 434 1. A 95 percent level of confidence; or
- 435 2. Ratio study standards that are generally accepted by
 436 professional appraisal organizations in developing a
 437 statistically valid sampling plan if a 95 percent level of
 438 confidence is not attainable ~~to the Senate and the House of~~
 439 ~~Representatives committees with oversight responsibilities for~~
 440 ~~taxation, and the appropriate property appraiser. Upon releasing~~
 441 ~~its findings, the department shall notify the chairperson of the~~
 442 ~~appropriate county commission or the corresponding official~~
 443 ~~under a consolidated charter that the department's findings are~~
 444 ~~available upon request. The department shall, within 90 days~~
 445 ~~after receiving a written request from the chairperson of the~~
 446 ~~appropriate county commission or the corresponding official~~
 447 ~~under a consolidated charter, forward a copy of its findings,~~
 448 ~~including the confidence interval for the median and such other~~

449 ~~measures of each classification or subclassification studied and~~
 450 ~~for all the roll as a whole, and related statistical and~~
 451 ~~analytical details, to the requesting party.~~

452 (3) (a) Upon completion of review pursuant to paragraph
 453 (2) (f), the department shall publish the results of reviews
 454 conducted under this section. The results must include all
 455 statistical and analytical measures computed under this section
 456 for the real property assessment roll as a whole, the personal
 457 property assessment roll as a whole, and independently for the
 458 following real property classes if ~~whenever~~ the classes
 459 constituted 5 percent or more of the total assessed value of
 460 real property in a county on the previous tax roll:

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

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

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

469 4. Vacant lots.

470 5. Nonagricultural acreage and other undeveloped parcels.

471 6. Improved commercial and industrial property.

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

475

476 If ~~When~~ one of the above classes constituted less than 5 percent

477 of the total assessed value of all real property in a county on
 478 the previous assessment roll, the department may combine it with
 479 one or more other classes of real property for purposes of
 480 assessment ratio studies or use the weighted average of the
 481 other classes for purposes of calculating the level of
 482 assessment for all real property in a county. The department
 483 shall also publish such results for any subclassifications of
 484 the classes or assessment rolls it may have chosen to study.

485 (b) If ~~When~~ necessary for compliance with s. 1011.62, and
 486 for those counties not being studied in the current year, the
 487 department shall project value-weighted mean levels of
 488 assessment for each county. The department shall make its
 489 projection based upon the best information available, using
 490 ~~utilizing~~ professionally accepted methodology, and shall
 491 separately allocate changes in total assessed value to:

- 492 1. New construction, additions, and deletions.
- 493 2. Changes in the value of the dollar.
- 494 3. Changes in the market value of property other than
 495 those attributable to changes in the value of the dollar.
- 496 4. Changes in the level of assessment.

497
 498 In lieu of the statistical and analytical measures published
 499 pursuant to paragraph (a), the department shall publish details
 500 concerning the computation of estimated assessment levels and
 501 the allocation of changes in assessed value for those counties
 502 not subject to an in-depth review.

503 (c) Upon publication of data and findings as required by
 504 this subsection, the department shall notify the committees of

505 the Senate and of the House of Representatives having oversight
 506 responsibility for taxation, the appropriate property appraiser,
 507 and the county commission chair or corresponding official under
 508 a consolidated charter. Copies of the data and findings shall be
 509 provided upon request.

510 Section 13. Section 195.0985, Florida Statutes, is
 511 repealed.

512 Section 14. Section 195.099, Florida Statutes, is amended
 513 to read:

514 195.099 Periodic review.—

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

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

522 (2) The department may ~~shall~~ review the assessments of new
 523 and expanded businesses granted an exemption pursuant to s.
 524 196.1995 to ensure parity of level of assessment with other
 525 classifications of property.

526 Section 15. Subsection (7) of section 196.031, Florida
 527 Statutes, is amended to read:

528 196.031 Exemption of homesteads.—

529 (7) Unless the homestead property is totally exempt from
 530 ad valorem taxation, the exemptions provided in paragraphs
 531 (1) (a) and (b) and other homestead exemptions shall be applied
 532 in the order that results in the lowest taxable value. ~~as~~

533 follows:

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

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

539 ~~(c) The additional homestead exemption in paragraph~~
 540 ~~(1)(b), for levies other than school district levies, shall be~~
 541 ~~applied to the assessed value greater than \$50,000 before any~~
 542 ~~other exemptions are applied to that assessed value; and~~

543 ~~(d) Other exemptions include and shall be applied in the~~
 544 ~~following order: widows, widowers, blind persons, and disabled~~
 545 ~~persons, as provided in s. 196.202; disabled ex-servicemembers~~
 546 ~~and surviving spouses, as provided in s. 196.24, applicable to~~
 547 ~~all levies; the local option low-income senior exemption up to~~
 548 ~~\$50,000, applicable to county levies or municipal levies, as~~
 549 ~~provided in s. 196.075; and the veterans percentage discount, as~~
 550 ~~provided in s. 196.082.~~

551 Section 16. Subsection (5) is added to section 196.081,
 552 Florida Statutes, to read:

553 196.081 Exemption for certain permanently and totally
 554 disabled veterans and for surviving spouses of veterans.—

555 (5) An applicant for the exemption under this section may
 556 apply for the exemption before receiving the necessary
 557 documentation from the United States Government or the United
 558 States Department of Veterans Affairs or its predecessor. Upon
 559 receipt of the documentation, the exemption shall be granted as
 560 of the date of the original application, and the excess taxes

561 paid shall be refunded. Any refund of excess taxes paid shall be
 562 limited to those paid during the 4-year period of limitation set
 563 forth in s. 197.182(1)(e).

564 Section 17. Subsection (6) is added to section 196.082,
 565 Florida Statutes, to read:

566 196.082 Discounts for disabled veterans.—

567 (6) An applicant for the discount under this section may
 568 apply for the discount before receiving the necessary
 569 documentation from the United States Department of Veterans
 570 Affairs or its predecessor. Upon receipt of the documentation,
 571 the discount shall be granted as of the date of the original
 572 application, and the excess taxes paid shall be refunded. Any
 573 refund of excess taxes paid shall be limited to those paid
 574 during the 4-year period of limitation set forth in s.
 575 197.182(1)(e).

576 Section 18. Subsection (4) is added to section 196.091,
 577 Florida Statutes, to read:

578 196.091 Exemption for disabled veterans confined to
 579 wheelchairs.—

580 (4) An applicant for the exemption under this section may
 581 apply for the exemption before receiving the necessary
 582 documentation from the United States Government or the United
 583 States Department of Veterans Affairs or its predecessor. Upon
 584 receipt of the documentation, the exemption shall be granted as
 585 of the date of the original application, and the excess taxes
 586 paid shall be refunded. Any refund of excess taxes paid shall be
 587 limited to those paid during the 4-year period of limitation set
 588 forth in s. 197.182(1)(e).

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589 Section 19. Subsection (8) is added to section 196.101,
590 Florida Statutes, to read:

591 196.101 Exemption for totally and permanently disabled
592 persons.—

593 (8) An applicant for the exemption under this section may
594 apply for the exemption before receiving the necessary
595 documentation from the United States Department of Veterans
596 Affairs or its predecessor. Upon receipt of the documentation,
597 the exemption shall be granted as of the date of the original
598 application, and the excess taxes paid shall be refunded. Any
599 refund of excess taxes paid shall be limited to those paid
600 during the 4-year period of limitation set forth in s.
601 197.182(1)(e).

602 Section 20. Subsection (1) of section 196.121, Florida
603 Statutes, is amended to read:

604 196.121 Homestead exemptions; forms.—

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

611 Section 21. Paragraph (d) is added to subsection (1) of
612 section 196.199, Florida Statutes, to read:

613 196.199 Government property exemption.—

614 (1) Property owned and used by the following governmental
615 units shall be exempt from taxation under the following
616 conditions:

617 (d) All property of the state and its political
 618 subdivisions and municipalities of this state, when used in
 619 conjunction with, or as an essential ancillary function of, an
 620 exempt or immune Federal, State or County facility, or property,
 621 shall be exempt from ad valorem taxation.

622 Section 22. Section 196.202, Florida Statutes, is amended
 623 to read:

624 196.202 Property of widows, widowers, blind persons, and
 625 persons totally and permanently disabled.—

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

635 (2) An applicant for the exemption under this section may
 636 apply for the exemption before receiving the necessary
 637 documentation from the United States Department of Veterans
 638 Affairs or its predecessor, or the Social Security
 639 Administration. Upon receipt of the documentation, the exemption
 640 shall be granted as of the date of the original application, and
 641 the excess taxes paid shall be refunded. Any refund of excess
 642 taxes paid shall be limited to those paid during the 4-year
 643 period of limitation set forth in s. 197.182(1)(e).

644 Section 23. Section 196.24, Florida Statutes, is amended

645 to read:

646 196.24 Exemption for disabled ex-servicemember or
 647 surviving spouse; evidence of disability.—

648 (1) Any ex-servicemember, as defined in s. 196.012, who is
 649 a bona fide resident of the state, who was discharged under
 650 honorable conditions, and who has been disabled to a degree of
 651 10 percent or more by misfortune or while serving during a
 652 period of wartime service as defined in s. 1.01(14),~~or by~~
 653 ~~misfortune,~~ is entitled to the exemption from taxation provided
 654 for in s. 3(b), Art. VII of the State Constitution as provided
 655 in this section. Property to the value of \$5,000 of such a
 656 person is exempt from taxation. The production by him or her of
 657 a certificate of disability from the United States Government or
 658 the United States Department of Veterans Affairs or its
 659 predecessor before the property appraiser of the county wherein
 660 the ex-servicemember's property lies is prima facie evidence of
 661 the fact that he or she is entitled to the exemption. The
 662 unremarried surviving spouse of such a disabled ex-servicemember
 663 who, on the date of the disabled ex-servicemember's death, had
 664 been married to the disabled ex-servicemember for at least 5
 665 years is also entitled to the exemption.

666 (2) An applicant for the exemption under this section may
 667 apply for the exemption before receiving the necessary
 668 documentation from the United States Government or the United
 669 States Department of Veterans Affairs or its predecessor. Upon
 670 receipt of the documentation, the exemption shall be granted as
 671 of the date of the original application, and the excess taxes
 672 paid shall be refunded. Any refund of excess taxes paid shall be

673 limited to those paid during the 4-year period of limitation set
 674 forth in s. 197.182(1)(e).

675 Section 24. Effective July 1, 2012, subsection (5) and
 676 paragraph (a) of subsection (10) of section 200.065, Florida
 677 Statutes, are amended to read:

678 200.065 Method of fixing millage.-

679 (5) ~~Beginning in the 2009-2010 fiscal year and~~ In each
 680 fiscal year thereafter:

681 (a) The maximum millage rate that a county, municipality,
 682 special district dependent to a county or municipality,
 683 municipal service taxing unit, or independent special district
 684 may levy is a rolled-back rate based on the amount of taxes
 685 which would have been levied in the prior year if the maximum
 686 millage rate had been applied, adjusted for change in per capita
 687 Florida personal income, unless a higher rate was ~~is~~ adopted, in
 688 which case the maximum is the adopted rate. The maximum millage
 689 rate applicable to a county authorized to levy a county public
 690 hospital surtax under s. 212.055 and which did so in fiscal year
 691 2007 shall exclude the revenues required to be contributed to
 692 the county public general hospital in the current fiscal year
 693 for the purposes of making the maximum millage rate calculation,
 694 but shall be added back to the maximum millage rate allowed
 695 after the roll back has been applied, the total of which shall
 696 be considered the maximum millage rate for such a county for
 697 purposes of this subsection. The revenue required to be
 698 contributed to the county public general hospital for the
 699 upcoming fiscal year shall be calculated as 11.873 percent times
 700 the millage rate levied for countywide purposes in fiscal year

701 2007 times 95 percent of the preliminary tax roll for the
 702 upcoming fiscal year. A higher rate may be adopted only under
 703 the following conditions:

704 1. A rate of not more than 110 percent of the rolled-back
 705 rate based on the previous year's maximum millage rate, adjusted
 706 for change in per capita Florida personal income, may be adopted
 707 if approved by a two-thirds vote of the membership of the
 708 governing body of the county, municipality, or independent
 709 district; or

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

716 (b) The millage rate of a county or municipality,
 717 municipal service taxing unit of that county, and any special
 718 district dependent to that county or municipality may exceed the
 719 maximum millage rate calculated pursuant to this subsection if
 720 the total county ad valorem taxes levied or total municipal ad
 721 valorem taxes levied do not exceed the maximum total county ad
 722 valorem taxes levied or maximum total municipal ad valorem taxes
 723 levied respectively. Voted millage and taxes levied by a
 724 municipality or independent special district that has levied ad
 725 valorem taxes for less than 5 years are not subject to this
 726 limitation. The millage rate of a county authorized to levy a
 727 county public hospital surtax under s. 212.055 may exceed the
 728 maximum millage rate calculated pursuant to this subsection to

729 the extent necessary to account for the revenues required to be
 730 contributed to the county public hospital. Total taxes levied
 731 may exceed the maximum calculated pursuant to subsection (6) as
 732 a result of an increase in taxable value above that certified in
 733 subsection (1) if such increase is less than the percentage
 734 amounts contained in subsection (6) or if the administrative
 735 adjustment cannot be made because the value adjustment board is
 736 still in session at the time the tax roll is extended;
 737 otherwise, millage rates subject to this subsection, s. 200.185,
 738 or s. 200.186 may be reduced so that total taxes levied do not
 739 exceed the maximum.

740

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

754 (10)(a) In addition to the notice required in subsection
 755 (3), a district school board shall publish a second notice of
 756 intent to levy additional taxes under s. 1011.71(2) or (3). The

757 ~~Such~~ notice shall specify the projects or number of school buses
 758 anticipated to be funded by the ~~such~~ additional taxes and shall
 759 be published in the size, within the time periods, adjacent to,
 760 and in substantial conformity with the advertisement required
 761 under subsection (3). The projects shall be listed in priority
 762 within each category as follows: construction and remodeling;
 763 maintenance, renovation, and repair; motor vehicle purchases;
 764 new and replacement equipment; payments for educational
 765 facilities and sites due under a lease-purchase agreement;
 766 payments for renting and leasing educational facilities and
 767 sites; payments of loans approved pursuant to ss. 1011.14 and
 768 1011.15; payment of costs of compliance with environmental
 769 statutes and regulations; payment of premiums for property and
 770 casualty insurance necessary to insure the educational and
 771 ancillary plants of the school district; payment of costs of
 772 leasing relocatable educational facilities; and payments to
 773 private entities to offset the cost of school buses pursuant to
 774 s. 1011.71(2)(i). The additional notice shall be in the
 775 following form, except that if the district school board is
 776 proposing to levy the same millage under s. 1011.71(2) or (3)
 777 which it levied in the prior year, the words "continue to" shall
 778 be inserted before the word "impose" in the first sentence, and
 779 except that the second sentence of the second paragraph shall be
 780 deleted if the district is advertising pursuant to paragraph
 781 (3)(e):

782
 783 NOTICE OF TAX FOR SCHOOL
 784 CAPITAL OUTLAY

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

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

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

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

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

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

Section 25. Subsection (11) is added to section 200.069, Florida Statutes, to read:

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

813 and use the format provided in the following form.
 814 Notwithstanding the provisions of s. 195.022, no county officer
 815 shall use a form other than that provided herein. The Department
 816 of Revenue may adjust the spacing and placement on the form of
 817 the elements listed in this section as it considers necessary
 818 based on changes in conditions necessitated by various taxing
 819 authorities. If the elements are in the order listed, the
 820 placement of the listed columns may be varied at the discretion
 821 and expense of the property appraiser, and the property
 822 appraiser may use printing technology and devices to complete
 823 the form, the spacing, and the placement of the information in
 824 the columns. A county officer may use a form other than that
 825 provided by the department for purposes of this part, but only
 826 if his or her office pays the related expenses and he or she
 827 obtains prior written permission from the executive director of
 828 the department; however, a county officer may not use a form the
 829 substantive content of which is at variance with the form
 830 prescribed by the department. The county officer may continue to
 831 use such an approved form until the law that specifies the form
 832 is amended or repealed or until the officer receives written
 833 disapproval from the executive director.

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

841 | attributable to each constitutional officer and the county
842 | commission, and include:

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

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

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

854 | Section 26. Effective July 1, 2012, subsection (2) of
855 | section 218.12, Florida Statutes, is amended to read:

856 | 218.12 Appropriations to offset reductions in ad valorem
857 | tax revenue in fiscally constrained counties.-

858 | (2) On or before November 15 of each year, ~~beginning in~~
859 | ~~2008,~~ each fiscally constrained county shall apply to the
860 | Department of Revenue to participate in the distribution of the
861 | appropriation and provide documentation supporting the county's
862 | estimated reduction in ad valorem tax revenue in the form and
863 | manner prescribed by the Department of Revenue. The
864 | documentation must include an estimate of the reduction in
865 | taxable value directly attributable to revisions of Art. VII of
866 | the State Constitution for all county taxing jurisdictions
867 | within the county and shall be prepared by the property
868 | appraiser in each fiscally constrained county. The documentation

869 must also include the county millage rates applicable in all
 870 such jurisdictions for both the current year and the prior year;
 871 rolled-back rates, determined as provided in s. 200.065, for
 872 each county taxing jurisdiction; and maximum millage rates that
 873 could have been levied by majority vote pursuant to s.
 874 200.065(5) ~~s. 200.185~~. For purposes of this section, each
 875 fiscally constrained county's reduction in ad valorem tax
 876 revenue shall be calculated as 95 percent of the estimated
 877 reduction in taxable value times the lesser of the 2007
 878 applicable millage rate or the applicable millage rate for each
 879 county taxing jurisdiction in the current ~~prior~~ year. If a
 880 fiscally constrained county fails to apply for the distribution,
 881 its share shall revert to the fund from which the appropriation
 882 was made.

883 Section 27. Effective July 1, 2012, subsection (2) of
 884 section 218.125, Florida Statutes, is amended to read:

885 218.125 Offset for tax loss associated with certain
 886 constitutional amendments affecting fiscally constrained
 887 counties.—

888 (2) On or before November 15 of each year, ~~beginning in~~
 889 ~~2010,~~ each fiscally constrained county shall apply to the
 890 Department of Revenue to participate in the distribution of the
 891 appropriation and provide documentation supporting the county's
 892 estimated reduction in ad valorem tax revenue in the form and
 893 manner prescribed by the Department of Revenue. The
 894 documentation must include an estimate of the reduction in
 895 taxable value directly attributable to revisions of Art. VII of
 896 the State Constitution for all county taxing jurisdictions

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897 | within the county and shall be prepared by the property
 898 | appraiser in each fiscally constrained county. The documentation
 899 | must also include the county millage rates applicable in all
 900 | such jurisdictions for the current year and the prior year,
 901 | rolled-back rates determined as provided in s. 200.065 for each
 902 | county taxing jurisdiction, and maximum millage rates that could
 903 | have been levied by majority vote pursuant to s. 200.065(5)
 904 | ~~200.185~~. For purposes of this section, each fiscally constrained
 905 | county's reduction in ad valorem tax revenue shall be calculated
 906 | as 95 percent of the estimated reduction in taxable value
 907 | multiplied by the lesser of the 2010 applicable millage rate or
 908 | the applicable millage rate for each county taxing jurisdiction
 909 | in the current ~~prior~~ year. If a fiscally constrained county
 910 | fails to apply for the distribution, its share shall revert to
 911 | the fund from which the appropriation was made.

912 | Section 28. Except as otherwise expressly provided in this
 913 | act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 12-02 General Tax Administration

SPONSOR(S): Finance & Tax Committee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Wilson <i>WJ</i>	Langston <i>DL</i>

SUMMARY ANALYSIS

This bill contains the Department of Revenue’s (Department) recommendations for general tax administration improvements. The bill includes numerous statutory changes that will reduce the burden on taxpayers, reduce the Department’s costs, increase efficiency in tax administration, and improve enforcement of tax laws.

The bill:

- Clarifies the application of current criminal penalties regarding any person who willfully fails to collect a tax or fee, who makes a false or fraudulent return with willful intent, or who engages in acts that require a certificate of registration and “fails or refuses” to register or willfully fails to register after the Department provides notice.
- Provides that the Department can require individuals and entities seeking to obtain a dealer’s certificate of registration to post a cash deposit, bond, or other security if that business will be operated at an identical location of a previous business that would have been required to post such security. This requirement can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated.
- Clarifies a provision requiring the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected to conform to a similar law changes made by the Legislature in 2010.
- Provides definitions for “automated sales suppression device” or “zappers” and “phantom-ware”, and criminalizes the knowing sale, purchase, installation, transfer, or possession of such software or software devices that can be used to falsify the records of electronic cash registers and other point-of-sale systems.
- Provides the Department can use driver’s license images for use in establishing positive identification for tax administration purposes.
- Establishes a requirement for employers to comply with all work records requested during an audit as a prerequisite to earn the lower, unemployment tax contribution rate. The bill further standardizes the interest rate provisions for unemployment tax and makes them the same rate as is applied to other taxes administered by the Department.

The 2012 Revenue Estimating Conference (REC) has reviewed the provisions of this bill. Several provisions are estimated to have positive, but indeterminate state and local revenue impacts. One provision is estimated by the REC to have a -\$0.1 million recurring impact on the Unemployment Compensation Trust Fund beginning in FY 2012-13.

The bill shall take effect on July 1, 2012, except as otherwise provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Failure to Collect; Penalties

Present situation

Provisions in s. 212.07(1)(b), F.S., provide that a resale must be in strict compliance with s. 212.18, F.S., and the rules and regulations of the Department. A dealer who makes a sale for resale that is not in strict compliance with 212.18, F.S., shall himself or herself be liable for and pay the tax due. Dealer guidelines for sales for resale are established and supported by rules of the Department. Section 212.07(3), F.S., establishes that any dealer who fails, neglects, or refuses to collect the tax is guilty of a first degree misdemeanor.

Proposed change

This bill amends s. 212.07(3), F.S., to clarify that a dealer who willfully fails to collect a tax or fee after receiving notice from the Department is liable for the uncollected tax or fee and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This section also provides that the Department may contact the dealer in violation by personal service, registered mail, or both. This section will become effective upon becoming law. This amended section is related to similar changes made in sections 2 & 4.

Section 2. Failure to Collect; Penalties

Present situation

Provisions in s. 212.12, F.S., establish rules regarding a person (dealer) who makes false or fraudulent returns and/or fails to register as a dealer. The Department will contact a person by written notice with a "failure to register" letter followed, if needed, by an intentional failure to collect letter. The provisions cited under s. 775.082, s. 775.083, and s. 775.084, F.S., provide the civil and criminal penalties imposed upon these violators.

Proposed change

This bill amends s. 212.12(d), F.S., to provide that a person who makes a false or fraudulent return with willful intent is liable for the uncollected taxes or fees and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This amended section is related to similar changes made in sections 1 & 4.

Section 3. Security Requirements for New Registrations

Present situation

Section 212.14(4), F.S., authorizes the Department to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a dealer's certificate of registration. Despite this requirement, some delinquent sales tax dealers are able to close down their businesses with outstanding tax liabilities and reopen under a new name, allowing the dealers to repeatedly fail to remit sales and use tax for successive businesses. Delinquent dealers can engage in this activity because the current provisions in s. 212.14(4), F.S., do not clearly apply to all of the individuals who were operating, or all who had an ownership interest in, the prior businesses.

Proposed change

This bill amends s. 212.14(4), F.S., to define which individuals or entities the Department can require to produce a cash deposit, bond, or other security. Included in this list of individuals and entities are not only those who had an ownership interest or a controlling interests in a business that would otherwise be liable for posting a cash deposit, bond, or other security, but those individuals and entities seeking to obtain a dealer's certificate of registration for a business that will be operated at an identical location of a previous business that would have otherwise been liable for posting a cash deposit, bond, or other

security. These requirements can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated. The bill further allows the Department to adopt rules necessary to administer this subsection.

Section 4. Failure to Collect; Penalties

Present situation

In s. 212.18(3)(b), F.S., guidelines are provided for persons who want to engage in and conduct business within the state as a dealer. The Department also grants certificates of registration for each place of business. The failure or refusal of any person, firm, co-partnership, or corporation to follow these rules is a first degree misdemeanor and is subject to injunctive proceedings as provided by law.

Proposed change

This bill amends s. 212.18(3)(c), F.S., to clarify that any person that engages in acts that require a certificate of registration and “fails or refuses” to register, commits a misdemeanor of the first degree. This bill also adds s. 212.18(3)(c)2., F.S., to provide that a person who willfully fails to register after the Department provides notice, commits a felony of the third degree, punishable as proscribed in law. This section further provides that the Department shall give written notice of the duty to register to the person through registered mail, personal service or both. This section will become effective upon becoming a law. This amended section is related to similar changes made in sections 1 & 2.

Section 5. Electronic Remittance and Distribution of Funds by the Clerk of Courts

Present situation

In 2010, the Legislature passed ch. 2010-162, L.O.F., that changed the remittance date for funds collected by the clerks of the court from the 20th to the 10th day of the month immediately following the month in which the funds are collected. A conforming provision in s. 213.13, F.S., regarding electronic remittance was not updated after the law change.

Proposed change

This bill amends s. 213.13(5), F.S., to require the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected. This section is effective upon becoming a law and will apply retroactively to July 1, 2010.

Section 6. Automated Sales Suppression Devices or “Zappers”

Present situation

The Department has identified a practice of retailers using automated sales suppression software programs (“zappers”) and/or “phantom-ware” to falsify the records of electronic cash registers and other point-of-sale systems. In effect, the technologies allow dealers to create a fraudulent, virtual second set of books by which the dealers are able to evade state and federal sales taxes.

Proposed change

The bill creates s. 213.295, F.S., defines zappers and phantom-ware, and criminalizes the knowing sale, purchase, installation, transfer, or possession of phantom-ware in this state. This section provides that any person in violation of this section shall be guilty of a felony of the third degree and shall be liable for all taxes, fees, penalties, and interest due to the state; the dealer shall also forfeit to the state all profits associated with the sale or use of the zappers or phantom-ware. Finally, the bill classifies zappers and phantom-ware as contraband articles under s. 932.701-932.706, F.S., the Florida Contraband Act. This section will become effective upon becoming a law.

Section 7. Identity Confirmation; Interagency Agreements

Present situation

Currently, Department staff during an audit does not have a way to verify the identity of a business owner prior to visiting a business. In some cases, Department staff cannot be sure that the person with whom they are working during a field visit is the business owner. Under s. 322.142, F.S., the Department of Highway Safety and Motor Vehicles (DHSMV) maintains a file of the digital images and signatures of driver's license holders. Currently, these DHSMV records can be shared with the Department through an interagency agreement for child support enforcement purposes but not for other uses.

Proposed change

The bill amends s. 322.142, F.S., to allow the Department to use driver's license images for use in establishing positive identification for tax administration purposes.

Section 8. Standard Rate for Non-Compliance with Audit Record Requests; Unemployment Tax

Present situation

Florida law provides a standard unemployment tax rate, and allows many employers to earn a lower rate if they meet certain compliance conditions set forth in s. 443.131(3)(h), F.S. However, under the current requirements to meet the compliance standards, it does not explicitly state that the taxpayer must comply with records requests to qualify for the reduced tax rate pursuant to s. 443.171(5), F.S.

Proposed change

This bill amends s. 443.131, F.S., to require an employer to comply with records requests as a prerequisite for that employer to earn the lower, unemployment tax contribution rate. In order to receive the lower contribution rate, the employer must produce all work records requested during an audit by the Department of Economic Opportunity or the state agency providing tax collection services pursuant to s. 443.171(5), F.S. This section will become effective upon becoming a law.

Section 9. Floating Interest Rate; Unemployment Tax

Present situation

Section 443.141(1)(a), F.S., states that unemployment compensation tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month (an effective rate of 12 percent annually). Other payment deficiencies on taxes that the Department administers have an interest rate of prime plus 4 percent but not to exceed an effective rate of 1 percent per month, adjusted twice per year.

Proposed change

This bill amends s. 443.141(1)(a), F.S., to adjust the interest rate applied to contributions or reimbursements unpaid on the date due. The current interest rate of 1 percent will carry on through December 31, 2012, and beginning January 1, 2013, the interest rate shall be calculated in accordance with s. 213.235, F.S., except that the rate of interest shall never be greater than 1 percent per month. This bill would reduce the interest rate provisions for unemployment tax and make them the same rate as is applied to other taxes administered by the Department. This section will become effective January 1, 2013.

Section 10. Effective Date

This act shall take effect July 1, 2012, except as expressly provided within the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.07(3), F.S., clarifying when a dealer is liable for failing to collect a tax or fee and imposing criminal penalties for such failure.

Section 2: Amends s. 212.12, F.S., providing a tax liability and restating the criminal penalties for dealers who willfully make false or fraudulent tax returns.

Section 3: Amends s. 212.14(4), F.S., defining which individuals or entities the Department can require to produce a cash deposit, bond, or other security as a condition to a person obtaining a dealer's certificate of registration.

Section 4: Amends s. 212.18(3)(c), F.S., and adds s. 212.18(3)(c)2., F.S., imposing criminal penalties on a person for willfully failing to register as a dealer after the Department provides notice by personal service, mail, or both of that person's duty to register as a dealer.

Section 5: Amends s. 213.13(5), F.S., changing the date by which the clerks of the court shall transmit all court-related collections.

Section 6: Creates s. 213.295, F.S., defining sales suppression software (or "zappers") and phantom-ware and imposing criminal liability for willfully and knowingly selling, purchasing, installing, transferring, or possessing such sales suppression software or phantom-ware.

Section 7: Amends s. 322.142, F.S., allowing the Department to use indentifying information in DHSMV's licensee file for use in establishing positive identification for tax administration purposes.

Section 8: Amends s. 443.131, F.S., requiring the employer to produce all work records requested by the Department as a prerequisite for that employer earning a lower, preferential unemployment contribution rate.

Section 9: Amends s. 443.141(1)(a), F.S., adjusting the interest rate applied to contributions or reimbursements unpaid on the date due and capping that interest rate at 1 percent per month.

Section 10: This act shall take effect July 1, 2012, except as expressly provided within the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will reduce taxpayer expenses. These savings will be generated by reducing the interest rate applied to taxpayer unemployment tax contributions or reimbursements that go unpaid on the date they are due and makes it uniform to the interest rate that applied to other taxes administered by the Department.

D. FISCAL COMMENTS:

The 2012 Revenue Estimating Conference (REC) has reviewed the provisions of this bill. Several provisions are estimated to have positive, but indeterminate state and local revenue impacts. One provision is estimated by the REC to have a -\$0.1 million recurring impact on the Unemployment Compensation Trust Fund beginning in FY 2012-13.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 3. The Department may adopt rules necessary to administer s. 212.14(4), F.S., related to requiring a cash deposit, bond, or other security as a condition to a person obtaining or retaining a dealer's certificate of registration.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to tax administration; amending s.
 3 212.07, F.S.; conforming a cross-reference to changes
 4 made by the act; subjecting a dealer to monetary and
 5 criminal penalties for the willful failure to collect
 6 certain taxes or fees after notice of the duty to
 7 collect the taxes or fees by the Department of
 8 Revenue; amending s. 212.12, F.S.; deleting provisions
 9 relating to the imposition of criminal penalties after
 10 notice by the Department of Revenue of requirements to
 11 register as a dealer or to collect taxes; making
 12 technical and grammatical changes to provisions
 13 specifying penalties for making a false or fraudulent
 14 return with the intent to evade payment of a tax or
 15 fee; amending s. 212.14, F.S.; defining the term
 16 "person"; authorizing the Department of Revenue to
 17 adopt rules relating to requirements for a person to
 18 deposit cash, a bond, or other security with the
 19 department in order to ensure compliance with sales
 20 tax laws; making technical and grammatical changes;
 21 amending s. 212.18, F.S.; subjecting a person to
 22 criminal penalties for willfully failing to register
 23 as a dealer after notice of the duty to register by
 24 the Department of Revenue; making technical and
 25 grammatical changes; amending s. 213.13, F.S.;
 26 revising the due date for funds collected by the
 27 clerks of court to be transmitted to the Department of
 28 Revenue; providing retroactive application; creating

29 s. 213.295, F.S.; providing definitions; subjecting a
 30 person to criminal penalties and monetary penalties
 31 for knowingly selling or engaging in certain other
 32 actions involving an automated sales suppression
 33 device, zipper, or phantom-ware; defining sales
 34 suppression devices and phantom-ware as contraband
 35 articles under the Florida Contraband Forfeiture Act;
 36 amending s. 322.142, F.S.; authorizing the Department
 37 of Highway Safety and Motor Vehicles to release
 38 photographs or digital images to the Department of
 39 Revenue in order to identify individuals for purposes
 40 of tax administration; amending s. 443.131, F.S.;

41 imposing a requirement on employers to produce records
 42 for the Department of Economic Opportunity or its tax
 43 collection service provider as a prerequisite for a
 44 reduction in the rate of unemployment tax; amending s.
 45 443.141, F.S.; providing a method to calculate the
 46 interest rate for past due contributions and
 47 reimbursements, and delinquent, erroneous, incomplete,
 48 or insufficient reports; providing effective dates.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Effective upon this act becoming a law,
 53 subsections (1) and (3) of section 212.07, Florida Statutes, are
 54 amended to read:

55 212.07 Sales, storage, use tax; tax added to purchase
 56 price; dealer not to absorb; liability of purchasers who cannot

57 | prove payment of the tax; penalties; general exemptions.—
 58 | (1) (a) The privilege tax herein levied measured by retail
 59 | sales shall be collected by the dealers from the purchaser or
 60 | consumer.
 61 | (b) A resale must be in strict compliance with s. 212.18
 62 | and the rules and regulations, and any dealer who makes a sale
 63 | for resale which is not in strict compliance with s. 212.18 and
 64 | the rules and regulations shall himself or herself be liable for
 65 | and pay the tax. Any dealer who makes a sale for resale shall
 66 | document the exempt nature of the transaction, as established by
 67 | rules promulgated by the department, by retaining a copy of the
 68 | purchaser's resale certificate. In lieu of maintaining a copy of
 69 | the certificate, a dealer may document, prior to the time of
 70 | sale, an authorization number provided telephonically or
 71 | electronically by the department, or by such other means
 72 | established by rule of the department. The dealer may rely on a
 73 | resale certificate issued pursuant to s. 212.18(3)(d)
 74 | ~~212.18(3)(e)~~, valid at the time of receipt from the purchaser,
 75 | without seeking annual verification of the resale certificate if
 76 | the dealer makes recurring sales to a purchaser in the normal
 77 | course of business on a continual basis. For purposes of this
 78 | paragraph, "recurring sales to a purchaser in the normal course
 79 | of business" refers to a sale in which the dealer extends credit
 80 | to the purchaser and records the debt as an account receivable,
 81 | or in which the dealer sells to a purchaser who has an
 82 | established cash or C.O.D. account, similar to an open credit
 83 | account. For purposes of this paragraph, purchases are made from
 84 | a selling dealer on a continual basis if the selling dealer

85 makes, in the normal course of business, sales to the purchaser
 86 no less frequently than once in every 12-month period. A dealer
 87 may, through the informal protest provided for in s. 213.21 and
 88 the rules of the Department of Revenue, provide the department
 89 with evidence of the exempt status of a sale. Consumer
 90 certificates of exemption executed by those exempt entities that
 91 were registered with the department at the time of sale, resale
 92 certificates provided by purchasers who were active dealers at
 93 the time of sale, and verification by the department of a
 94 purchaser's active dealer status at the time of sale in lieu of
 95 a resale certificate shall be accepted by the department when
 96 submitted during the protest period, but may not be accepted in
 97 any proceeding under chapter 120 or any circuit court action
 98 instituted under chapter 72.

99 (c) Unless the purchaser of tangible personal property
 100 that is incorporated into tangible personal property
 101 manufactured, produced, compounded, processed, or fabricated for
 102 one's own use and subject to the tax imposed under s.
 103 212.06(1)(b) or is purchased for export under s. 212.06(5)(a)1.
 104 extends a certificate in compliance with the rules of the
 105 department, the dealer shall himself or herself be liable for
 106 and pay the tax.

107 (3) (a) A ~~Any~~ dealer who fails, neglects, or refuses to
 108 collect the tax or fees imposed under this chapter herein
 109 ~~provided, either~~ by himself or herself or through the dealer's
 110 agents or employees, ~~is,~~ in addition to the penalty of being
 111 liable for ~~and~~ paying the tax ~~himself or herself,~~ commits guilty
 112 ~~of~~ a misdemeanor of the first degree, punishable as provided in

113 s. 775.082 or s. 775.083.

114 (b) A dealer who willfully fails to collect a tax or fee
 115 after the department provides notice of the duty to collect the
 116 tax or fee is liable for a specific penalty of 100 percent of
 117 the uncollected tax or fee. This penalty is in addition to any
 118 other penalty that may be imposed by law. A dealer who willfully
 119 fails to collect taxes or fees totaling:

120 1. Less than \$300:

121 a. For a first offense, commits a misdemeanor of the
 122 second degree, punishable as provided in s. 775.082 or s.
 123 775.083.

124 b. For a second offense, commits a misdemeanor of the
 125 first degree, punishable as provided in s. 775.082 or s.
 126 775.083.

127 c. For a third or subsequent offense, commits a felony of
 128 the third degree, punishable as provided in s. 775.082, s.
 129 775.083, or s. 775.084.

130 2. An amount equal to \$300 or more, but less than \$20,000,
 131 commits a felony of the third degree, punishable as provided in
 132 s. 775.082, s. 775.083, or s. 775.084.

133 3. An amount equal to \$20,000 or more, but less than
 134 \$100,000, commits a felony of the second degree, punishable as
 135 provided in s. 775.082, s. 775.083, or s. 775.084.

136 4. An amount equal to \$100,000 or more, commits a felony
 137 of the first degree, punishable as provided in s. 775.082, s.
 138 775.083, or s. 775.084.

139 (c) The department shall give written notice of the duty
 140 to collect taxes or fees to the dealer by personal service, by

141 sending notice to the dealer's last known address by registered
 142 mail, or by both personal service and mail.

143 Section 2. Effective upon this act becoming a law,
 144 paragraph (d) of subsection (2) of section 212.12, Florida
 145 Statutes, is amended to read:

146 212.12 Dealer's credit for collecting tax; penalties for
 147 noncompliance; powers of Department of Revenue in dealing with
 148 delinquents; brackets applicable to taxable transactions;
 149 records required.—

150 (2)

151 (d) A ~~Any~~ person who makes a false or fraudulent return
 152 with a willful intent to evade payment of any tax or fee imposed
 153 under this chapter is; ~~any person who, after the department's~~
 154 ~~delivery of a written notice to the person's last known address~~
 155 ~~specifically alerting the person of the requirement to register~~
 156 ~~the person's business as a dealer, intentionally fails to~~
 157 ~~register the business; and any person who, after the~~
 158 ~~department's delivery of a written notice to the person's last~~
 159 ~~known address specifically alerting the person of the~~
 160 ~~requirement to collect tax on specific transactions,~~
 161 ~~intentionally fails to collect such tax, shall, in addition to~~
 162 ~~the other penalties provided by law, be liable for a specific~~
 163 ~~penalty of 100 percent of any unreported or any uncollected tax~~
 164 ~~or fee. This penalty is in addition to any other penalty~~
 165 provided by law. A person who makes a false or fraudulent return
 166 with a willful intent to evade payment of taxes or fees
 167 totaling:

168 1. Less than \$300:

169 a. For a first offense, commits a misdemeanor of the
 170 second degree, punishable as provided in s. 775.082 or s.
 171 775.083.

172 b. For a second offense, commits a misdemeanor of the
 173 first degree, punishable as provided in s. 775.082 or s.
 174 775.083.

175 c. For a third or subsequent offense, commits a felony of
 176 the third degree, punishable as provided in s. 775.082, s.
 177 775.083, or s. 775.084.

178 2. An amount equal to \$300 or more, but less than \$20,000,
 179 commits a felony of the third degree, punishable as provided in
 180 s. 775.082, s. 775.083, or s. 775.084.

181 3. An amount equal to \$20,000 or more, but less than
 182 \$100,000, commits a felony of the second degree, punishable as
 183 provided in s. 775.082, s. 775.083, or s. 775.084.

184 4. An amount equal to \$100,000 or more, commits a felony
 185 of the first degree, punishable and, upon conviction, for fine
 186 and punishment as provided in s. 775.082, s. 775.083, or s.
 187 775.084. Delivery of written notice may be made by certified
 188 mail, or by the use of such other method as is documented as
 189 being necessary and reasonable under the circumstances. The
 190 civil and criminal penalties imposed herein for failure to
 191 comply with a written notice alerting the person of the
 192 requirement to register the person's business as a dealer or to
 193 collect tax on specific transactions shall not apply if the
 194 person timely files a written challenge to such notice in
 195 accordance with procedures established by the department by rule
 196 or the notice fails to clearly advise that failure to comply

197 ~~with or timely challenge the notice will result in the~~
 198 ~~imposition of the civil and criminal penalties imposed herein.~~

199 ~~1. If the total amount of unreported or uncollected taxes~~
 200 ~~or fees is less than \$300, the first offense resulting in~~
 201 ~~conviction is a misdemeanor of the second degree, the second~~
 202 ~~offense resulting in conviction is a misdemeanor of the first~~
 203 ~~degree, and the third and all subsequent offenses resulting in~~
 204 ~~conviction is a misdemeanor of the first degree, and the third~~
 205 ~~and all subsequent offenses resulting in conviction are felonies~~
 206 ~~of the third degree.~~

207 ~~2. If the total amount of unreported or uncollected taxes~~
 208 ~~or fees is \$300 or more but less than \$20,000, the offense is a~~
 209 ~~felony of the third degree.~~

210 ~~3. If the total amount of unreported or uncollected taxes~~
 211 ~~or fees is \$20,000 or more but less than \$100,000, the offense~~
 212 ~~is a felony of the second degree.~~

213 ~~4. If the total amount of unreported or uncollected taxes~~
 214 ~~or fees is \$100,000 or more, the offense is a felony of the~~
 215 ~~first degree.~~

216 Section 3. Subsection (4) of section 212.14, Florida
 217 Statutes, is amended to read:

218 212.14 Departmental powers; hearings; distress warrants;
 219 bonds; subpoenas and subpoenas duces tecum.—

220 (4) In all cases where it is necessary to ensure
 221 compliance with ~~the provisions of~~ this chapter, the department
 222 shall require a cash deposit, bond, or other security as a
 223 condition to a person obtaining or retaining a dealer's
 224 certificate of registration under this chapter. Such bond shall

225 | be in the form and such amount as the department deems
 226 | appropriate under the particular circumstances. Every person
 227 | failing to produce such cash deposit, bond, or other security as
 228 | provided for herein shall not be entitled to obtain or retain a
 229 | dealer's certificate of registration under this chapter, and the
 230 | Department of Legal Affairs is hereby authorized to proceed by
 231 | injunction, when so requested by the Department of Revenue, to
 232 | prevent such person from doing business subject to ~~the~~
 233 | ~~provisions of~~ this chapter until such cash deposit, bond, or
 234 | other security is posted with the department, and any temporary
 235 | injunction for this purpose may be granted by any judge or
 236 | chancellor authorized by law to grant injunctions. Any security
 237 | required to be deposited may be sold by the department at public
 238 | sale if it becomes necessary so to do in order to recover any
 239 | tax, interest, or penalty due. Notice of such sale may be served
 240 | personally or by mail upon the person who deposited the such
 241 | security. If by mail, notice sent to the last known address as
 242 | the same appears on the records of the department shall be
 243 | sufficient for the purpose of this requirement. Upon such sale,
 244 | the surplus, if any, above the amount due under this chapter
 245 | shall be returned to the person who deposited the security. The
 246 | department may adopt rules necessary to administer this
 247 | subsection. For the purpose of the cash deposit, bond, or other
 248 | security required by this subsection, the term "person" includes
 249 | those entities defined in s. 212.02(12), as well as:
 250 | (a) An individual or entity owning a controlling interest
 251 | in an entity;
 252 | (b) An individual or entity that has acquired an ownership

253 interest or a controlling interest in a business that would
 254 otherwise be liable for posting a cash deposit, bond, or other
 255 security, unless the department has determined that the
 256 individual or entity is not liable for taxes, interest, or
 257 penalties as set forth in s. 213.758; or

258 (c) An individual or entity seeking to obtain a dealer's
 259 certificate of registration for a business that will be operated
 260 at an identical location of a previous business that would
 261 otherwise have been liable for posting a cash deposit, bond, or
 262 other security, if the individual or entity fails to provide
 263 evidence that the business was acquired for consideration in an
 264 arms-length transaction.

265 Section 4. Effective upon this act becoming a law,
 266 subsection (3) of section 212.18, Florida Statutes, is amended
 267 to read:

268 212.18 Administration of law; registration of dealers;
 269 rules.-

270 (3) (a) Every person desiring to engage in or conduct
 271 business in this state as a dealer, ~~as defined in this chapter,~~
 272 or to lease, rent, or let or grant licenses in living quarters
 273 or sleeping or housekeeping accommodations in hotels, apartment
 274 houses, roominghouses, or tourist or trailer camps that are
 275 subject to tax under s. 212.03, or to lease, rent, or let or
 276 grant licenses in real property, ~~as defined in this chapter,~~ and
 277 every person who sells or receives anything of value by way of
 278 admissions, must file with the department an application for a
 279 certificate of registration for each place of business. The
 280 application must include, ~~showing~~ the names of the persons who

281 have interests in such business and their residences, the
 282 address of the business, and ~~such~~ other data reasonably required
 283 by ~~as~~ the department ~~may reasonably require~~. However, owners and
 284 operators of vending machines or newspaper rack machines are
 285 required to obtain only one certificate of registration for each
 286 county in which such machines are located. The department, by
 287 rule, may authorize a dealer that uses independent sellers to
 288 sell its merchandise to remit tax on the retail sales price
 289 charged to the ultimate consumer in lieu of having the
 290 independent seller register as a dealer and remit the tax. The
 291 department may appoint the county tax collector as the
 292 department's agent to accept applications for registrations. The
 293 application must be made to the department before the person,
 294 firm, copartnership, or corporation may engage in such business,
 295 and it must be accompanied by a registration fee of \$5. However,
 296 a registration fee is not required to accompany an application
 297 to engage in or conduct business to make mail order sales. The
 298 department may waive the registration fee for applications
 299 submitted through the department's Internet registration
 300 process.

301 (b) The department, upon receipt of such application,
 302 shall ~~will~~ grant to the applicant a separate certificate of
 303 registration for each place of business, which certificate may
 304 be canceled by the department or its designated assistants for
 305 any failure by the certificateholder to comply with ~~any of the~~
 306 ~~provisions of~~ this chapter. The certificate is not assignable
 307 and is valid only for the person, firm, copartnership, or
 308 corporation to which issued. The certificate must be placed in a

309 conspicuous place in the business or businesses for which it is
 310 issued and must be displayed at all times. Except as provided in
 311 this subsection, a ne person may not shall engage in business as
 312 a dealer or in leasing, renting, or letting of or granting
 313 licenses in living quarters or sleeping or housekeeping
 314 accommodations in hotels, apartment houses, roominghouses,
 315 tourist or trailer camps, or real property, or as hereinbefore
 316 ~~defined, nor shall any person~~ sell or receive anything of value
 317 by way of admissions, without a valid first having obtained such
 318 ~~a certificate. A or after such certificate has been canceled; no~~
 319 person may not shall receive a any license from any authority
 320 within the state to engage in any such business without a valid
 321 certificate first having obtained such a certificate or after
 322 ~~such certificate has been canceled. A person may not engage~~ The
 323 ~~engaging~~ in the business of selling or leasing tangible personal
 324 property or services or as a dealer; engage, as defined in this
 325 ~~chapter, or the engaging~~ in leasing, renting, or letting of or
 326 granting licenses in living quarters or sleeping or housekeeping
 327 accommodations in hotels, apartment houses, roominghouses, or
 328 tourist or trailer camps that are taxable under this chapter, or
 329 real property; ~~7~~ or engage ~~the engaging~~ in the business of
 330 selling or receiving anything of value by way of admissions,
 331 without a valid such certificate first being obtained or after
 332 ~~such certificate has been canceled by the department, is~~
 333 ~~prohibited.~~

334 (c)1. A The failure or refusal of any person who engages
 335 in acts requiring a certificate of registration under this
 336 subsection who fails or refuses to register commits, firm,

337 | ~~copartnership, or corporation to so qualify when required~~
 338 | ~~hereunder is~~ a misdemeanor of the first degree, punishable as
 339 | provided in s. 775.082 or s. 775.083. Such acts are, ~~or~~ subject
 340 | to injunctive proceedings as provided by law. A person who
 341 | engages in acts requiring a certificate of registration and who
 342 | fails or refuses to register is also subject ~~Such failure or~~
 343 | ~~refusal also subjects the offender~~ to a \$100 initial
 344 | registration fee in lieu of the \$5 registration fee required by
 345 | ~~authorized in~~ paragraph (a). However, the department may waive
 346 | the increase in the registration fee if it finds ~~is determined~~
 347 | ~~by the department~~ that the failure to register was due to
 348 | reasonable cause and not to willful negligence, willful neglect,
 349 | or fraud.

350 | 2.a. A person who willfully fails to register after the
 351 | department provides notice of the duty to register as a dealer
 352 | commits a felony of the third degree, punishable as provided in
 353 | s. 775.082, s. 775.083, or s. 775.084.

354 | b. The department shall give written notice of the duty to
 355 | register to the person by personal service, by sending notice by
 356 | registered mail to the person's last known address, or by both
 357 | personal service and mail.

358 | (d)-(e) In addition to the certificate of registration, the
 359 | department shall provide to each newly registered dealer an
 360 | initial resale certificate that will be valid for the remainder
 361 | of the period of issuance. The department shall provide each
 362 | active dealer with an annual resale certificate. For purposes of
 363 | this section, the term "active dealer" means a person who is
 364 | currently registered with the department and who is required to

365 file at least once during each applicable reporting period.

366 (e)~~(d)~~ The department may revoke a any dealer's
 367 certificate of registration if ~~when~~ the dealer fails to comply
 368 with this chapter. Prior to revocation of a dealer's certificate
 369 of registration, the department must schedule an informal
 370 conference at which the dealer may present evidence regarding
 371 the department's intended revocation or enter into a compliance
 372 agreement with the department. The department must notify the
 373 dealer of its intended action and the time, place, and date of
 374 the scheduled informal conference by written notification sent
 375 by United States mail to the dealer's last known address of
 376 record furnished by the dealer on a form prescribed by the
 377 department. The dealer is required to attend the informal
 378 conference and present evidence refuting the department's
 379 intended revocation or enter into a compliance agreement with
 380 the department which resolves the dealer's failure to comply
 381 with this chapter. The department shall issue an administrative
 382 complaint under s. 120.60 if the dealer fails to attend the
 383 department's informal conference, fails to enter into a
 384 compliance agreement with the department resolving the dealer's
 385 noncompliance with this chapter, or fails to comply with the
 386 executed compliance agreement.

387 (f)~~(e)~~ As used in this paragraph, the term "exhibitor"
 388 means a person who enters into an agreement authorizing the
 389 display of tangible personal property or services at a
 390 convention or a trade show. The following provisions apply to
 391 the registration of exhibitors as dealers under this chapter:

- 392 1. An exhibitor whose agreement prohibits the sale of

393 tangible personal property or services subject to the tax
 394 imposed in this chapter is not required to register as a dealer.

395 2. An exhibitor whose agreement provides for the sale at
 396 wholesale only of tangible personal property or services subject
 397 to the tax imposed in this chapter must obtain a resale
 398 certificate from the purchasing dealer but is not required to
 399 register as a dealer.

400 3. An exhibitor whose agreement authorizes the retail sale
 401 of tangible personal property or services subject to the tax
 402 imposed in this chapter must register as a dealer and collect
 403 the tax imposed under this chapter on such sales.

404 4. Any exhibitor who makes a mail order sale pursuant to
 405 s. 212.0596 must register as a dealer.

406

407 Any person who conducts a convention or a trade show must make
 408 his or her ~~their~~ exhibitor's agreements available to the
 409 department for inspection and copying.

410 Section 5. Effective upon this act becoming a law and
 411 retroactive to July 1, 2010, subsection (5) of section 213.13,
 412 Florida Statutes, is amended to read:

413 213.13 Electronic remittance and distribution of funds
 414 collected by clerks of the court.-

415 (5) All court-related collections, including fees, fines,
 416 reimbursements, court costs, and other court-related funds that
 417 the clerks must remit to the state pursuant to law, must be
 418 transmitted electronically by the 10th ~~20th~~ day of the month
 419 immediately following the month in which the funds are
 420 collected.

421 Section 6. Effective upon this act becoming a law, section
 422 213.295, Florida Statutes, is created to read:

423 213.295 Automated sales suppression devices.-

424 (1) As used in this section, the term:

425 (a) "Automated sales suppression device" or "zapper" means
 426 a software program that falsifies the electronic records of
 427 electronic cash registers or other point-of-sale systems,
 428 including, but not limited to, transaction data and transaction
 429 reports. The term includes the software program, any device that
 430 carries the software program, or an Internet link to the
 431 software program.

432 (b) "Electronic cash register" means a device that keeps a
 433 register or supporting documents through the use of an
 434 electronic device or computer system designed to record
 435 transaction data for the purpose of computing, compiling, or
 436 processing retail sales transaction data in whatever manner.

437 (c) "Phantom-ware" means a hidden programming option
 438 embedded in the operating system of an electronic cash register
 439 or hardwired into the electronic cash register that can be used
 440 to create a second set of records or may eliminate or manipulate
 441 transaction records, that may or may not be preserved in digital
 442 formats, to represent the true or manipulated record of
 443 transactions in the electronic cash register.

444 (d) "Transaction data" includes items purchased by a
 445 customer, the price for each item, a taxability determination
 446 for each item; a segregated tax amount for each of the taxed
 447 items, the amount of cash or credit tendered, the net amount
 448 returned to the customer in change, the date and time of the

449 purchase, the name, address, and identification number of the
 450 vendor, and the receipt or invoice number of the transaction.

451 (e) "Transaction report" means a report that documents,
 452 but is not limited to documenting, the sales, taxes, or fees
 453 collected, media totals, and discount voids at an electronic
 454 cash register that is printed on a cash register tape at the end
 455 of a day or a shift, or a report that documents every action at
 456 an electronic cash register and that is stored electronically.

457 (2) A person may not knowingly sell, purchase, install,
 458 transfer, possess, use, or access any automated sales
 459 suppression device, zapper, or phantom-ware.

460 (3) (a) A person who violates this section commits a felony
 461 of the third degree, punishable as provided in s. 775.082, s.
 462 775.083, or s. 775.084.

463 (b) A person who violates this section is liable for all
 464 taxes, fees, penalties, and interest due the state as a result
 465 of the use of an automated sales suppression device, zapper, or
 466 phantom-ware and shall forfeit to the state as an additional
 467 penalty all profits associated with the sale or use of an
 468 automated sales suppression device, zapper, or phantom-ware.

469 (4) An automated sales suppression device, zapper,
 470 phantom-ware, or any device containing such device or software
 471 is a contraband article under ss. 932.701-932.706, the Florida
 472 Contraband Forfeiture Act.

473 Section 7. Subsection (4) of section 322.142, Florida
 474 Statutes, is amended to read:

475 322.142 Color photographic or digital imaged licenses.—

476 (4) The department may maintain a film negative or print

477 file. The department shall maintain a record of the digital
 478 image and signature of the licensees, together with other data
 479 required by the department for identification and retrieval.
 480 Reproductions from the file or digital record are exempt from
 481 ~~the provisions of~~ s. 119.07(1) and shall be made and issued only
 482 for departmental administrative purposes; for the issuance of
 483 duplicate licenses; in response to law enforcement agency
 484 requests; to the Department of Business and Professional
 485 Regulation pursuant to an interagency agreement for the purpose
 486 of accessing digital images for reproduction of licenses issued
 487 by the Department of Business and Professional Regulation; to
 488 the Department of State pursuant to an interagency agreement to
 489 facilitate determinations of eligibility of voter registration
 490 applicants and registered voters in accordance with ss. 98.045
 491 and 98.075; to the Department of Revenue pursuant to an
 492 interagency agreement for use in establishing paternity and
 493 establishing, modifying, or enforcing support obligations in
 494 Title IV-D cases; to the Department of Revenue for use in
 495 establishing positive identification for tax administration
 496 purposes; to the Department of Children and Family Services
 497 pursuant to an interagency agreement to conduct protective
 498 investigations under part III of chapter 39 and chapter 415; to
 499 the Department of Children and Family Services pursuant to an
 500 interagency agreement specifying the number of employees in each
 501 of that department's regions to be granted access to the records
 502 for use as verification of identity to expedite the
 503 determination of eligibility for public assistance and for use
 504 in public assistance fraud investigations; or to the Department

505 of Financial Services pursuant to an interagency agreement to
 506 facilitate the location of owners of unclaimed property, the
 507 validation of unclaimed property claims, and the identification
 508 of fraudulent or false claims.

509 Section 8. Effective upon this act becoming a law,
 510 paragraph (h) of subsection (3) of section 443.131, Florida
 511 Statutes, is amended to read:

512 443.131 Contributions.—

513 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
 514 EXPERIENCE.—

515 (h) Additional conditions for variation from the standard
 516 rate.—An employer's contribution rate may not be reduced below
 517 the standard rate under this section unless:

518 1. All contributions, reimbursements, interest, and
 519 penalties incurred by the employer for wages paid by him or her
 520 in all previous calendar quarters, except the 4 calendar
 521 quarters immediately preceding the calendar quarter or calendar
 522 year for which the benefit ratio is computed, are paid; ~~and~~

523 2. The employer has produced for inspection and copying
 524 all work records in his or her possession, custody, or control
 525 which were requested by the Department of Economic Opportunity
 526 or its tax collection service provider pursuant to s.
 527 443.171(5); and

528 ~~3.2-~~ The employer entitled to a rate reduction must have
 529 at least one annual payroll as defined in subparagraph (b)1.
 530 unless the employer is eligible for additional credit under the
 531 Federal Unemployment Tax Act. If the Federal Unemployment Tax
 532 Act is amended or repealed in a manner affecting credit under

533 the federal act, this section applies only to the extent that
 534 additional credit is allowed against the payment of the tax
 535 imposed by the Federal Unemployment Tax Act.

536
 537 The tax collection service provider shall assign an earned
 538 contribution rate to an employer ~~under subparagraph 1.~~ the
 539 quarter immediately after the quarter in which all
 540 contributions, reimbursements, interest, and penalties are paid
 541 in full and all work records requested pursuant to s. 443.171(5)
 542 have been produced for inspection and copying to the Department
 543 of Economic Opportunity or the tax collection service provider.

544 Section 9. Effective January 1, 2013, paragraph (a) of
 545 subsection (1) of section 443.141, Florida Statutes, is amended
 546 to read:

547 443.141 Collection of contributions and reimbursements.—

548 (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
 549 ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

550 (a) Interest.—Contributions or reimbursements unpaid on
 551 the date due bear interest at the rate of 1 percent per month
 552 through December 31, 2012. Beginning January 1, 2013, the
 553 interest rate shall be calculated in accordance with s. 213.235,
 554 except that the rate of interest shall never be greater than 1
 555 percent per month, from and after the ~~that~~ date due until
 556 payment plus accrued interest is received by the tax collection
 557 service provider, unless the service provider finds that the
 558 employing unit has good reason for failing to pay the
 559 contributions or reimbursements when due. Interest collected
 560 under this subsection must be paid into the Special Employment

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2012

561 Security Administration Trust Fund.


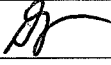
562 Section 10. Except as otherwise expressly provided in this
563 act and except for this section, which shall take effect upon
564 this act becoming a law, this act shall take effect July 1,
565 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 12-03 Corporate Income Tax

SPONSOR(S): Finance & Tax Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Aldridge 	Langston 

SUMMARY ANALYSIS

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year in question. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the "piggyback bill."

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2012. The change will apply retroactively to January 1, 2012.

The Revenue Estimating Conference has not yet estimated the revenue impact of the bill.

The bill is effective upon becoming law and applies retroactively to January 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida.¹ For simplicity's sake, the determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes.² This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. With federal taxable income as a starting point, Florida law then requires a variety of additions and subtractions to reflect Florida-specific policies to determine Florida taxable income.

Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the "piggyback bill."

Proposed Changes

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2012. The change will apply retroactively to January 1, 2012.

B. SECTION DIRECTORY:

Section 1: Amends ss. 220.03(1) and (2), F.S., to update the version of the internal revenue code adopted by ch. 220, F.S., from 2011 to 2012.

Section 2: Provides that the bill is effective upon becoming law and operates retroactively to January 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the revenue impact of the bill.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the revenue impact of the bill. However, the bill has no revenue impact on local governments.

2. Expenditures:

None.

¹ Section 220.11, F.S.

² Sections 220.12 and 220.13, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the corporate income tax; amending
 3 s. 220.03, F.S.; adopting the 2012 version of the
 4 Internal Revenue Code for purposes of ch. 220, F.S.;
 5 providing for retroactive operation; providing an
 6 effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (n) of subsection (1) and paragraph
 11 (c) of subsection (2) of section 220.03, Florida Statutes, are
 12 amended to read:

13 220.03 Definitions.—

14 (1) SPECIFIC TERMS.—When used in this code, and when not
 15 otherwise distinctly expressed or manifestly incompatible with
 16 the intent thereof, the following terms shall have the following
 17 meanings:

18 (n) "Internal Revenue Code" means the United States
 19 Internal Revenue Code of 1986, as amended and in effect on
 20 January 1, 2012 ~~2011~~, except as provided in subsection (3).

21 (2) DEFINITIONAL RULES.—When used in this code and neither
 22 otherwise distinctly expressed nor manifestly incompatible with
 23 the intent thereof:

24 (c) Any term used in this code shall have the same meaning
 25 as when used in a comparable context in the Internal Revenue
 26 Code and other statutes of the United States relating to federal
 27 income taxes, as such code and statutes are in effect on January
 28 1, 2012 ~~2011~~. However, if subsection (3) is implemented, the

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29 | meaning of any term shall be taken at the time the term is
30 | applied under this code.

31 | Section 2. This act shall take effect upon becoming a law
32 | and shall operate retroactively to January 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 12-04 Corporate Income Tax
SPONSOR(S): Finance & Tax Committee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Aldridge	Langston

SUMMARY ANALYSIS

Florida imposes a 5.5% tax on the net income of corporations doing business in Florida.¹ If a taxpayer reasonably estimates his or her corporate income tax will be more than \$2,500 for a taxable year, then that taxpayer is required to make a declaration of that estimated amount.² Following the declaration, the taxpayer is required to make payments of the estimated tax, in varying numbers of installments, depending on when the declaration is due. The payments are due before the first day of specified months, including the 7th month of the taxable year, which for calendar-year corporations is also the first month of the state's fiscal year.

If the day on which an estimated payment is due is a Saturday, Sunday, or legal holiday, current administrative practice is to allow such payment to be made on the next following day that is not a Saturday, Sunday, or legal holiday. Therefore, if estimated payments due before July 1 fall on a Saturday, Sunday, or legal holiday, the payment will not be due until the following Monday, which would be into the next state fiscal year.

June 30, 2013 is a Sunday. Therefore, estimated payments that are otherwise due no later than that date, would not be due under current law and practice until Monday, July 1, 2013, which is the first day of the 2013-14 state fiscal year.

The bill requires a one-time "speed-up" of estimated corporate income tax payments so that any estimated tax payment that would otherwise be due no later than Sunday, June 30, 2013, shall be paid on or before June 28, 2013.

Staff estimates the impact on General Revenue to be a positive \$100 million in FY 2012-13 and a negative \$100 million in FY 2013-14.

This bill takes effect upon becoming law.

¹ Section 220.11, F.S.

² Section 220.24, F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb04.FTC.DOCX

DATE: 1/17/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida imposes a 5.5% tax on the net income of corporations doing business in Florida.³ Every taxpayer that is liable for corporate income tax under ch. 220 or that is required to make a federal income return is required to submit a return to the state of Florida for each taxable year.⁴ If a taxpayer reasonably estimates his or her corporate income tax will be more than \$2,500 for a taxable year, then the taxpayer is required to make a declaration of that estimated amount.⁵ Following the declaration, the taxpayer is required to make payments of the estimated tax, in varying numbers of installments, depending on when the declaration is due.⁶ Although the statutes do not specify specific calendar day due dates⁷ for the estimated payments—stating the taxpayers must pay *before* a given date⁸—the estimated payment “due date” for each installment is, practically speaking, the day immediately preceding the deadline. At least some of these estimated tax payment due dates fall on a Saturday, Sunday, or legal holiday.⁹ Current administrative practice is to allow such payment to be made on the next following day that is not a Saturday, Sunday, or legal holiday.¹⁰

Current Situation

The June 30, 2013, estimated payment “due date” falls on a Sunday. Accordingly, an estimated \$100 million that would normally have been due to be received in FY 2012-2013 if the due date were not a weekend day, will instead be due to be received in FY 2013-14.

Effect of Proposed Changes

The bill amends s. 220.33, F.S., to provide that notwithstanding any administrative rule or determination of the department that allows estimated payments otherwise due on a Saturday, Sunday or legal holiday to be paid on the next succeeding day that is not a Saturday, Sunday or legal holiday, any estimated tax payment required under s. 200.33, F.S., that would otherwise be due no later than Sunday, June 30, 2013, shall be paid on or before June 28, 2013.

B. SECTION DIRECTORY:

³ Section 220.11, F.S.

⁴ Section 220.22, F.S. The Department may prescribe rules and regulations concerning taxpayers making returns and notices. Section 220.21, F.S. Statutes provide that all returns other than those required for a Domestic International Sales Corporation and partnership information are due “on or before the 1st day of the 4th month following the close of the taxable year or the 15th day following the due date, without extension, for the filing of the related federal return for the taxable year.” Additionally, the Department has provided that if the “due date prescribed by law falls on a Saturday, Sunday, or legal holiday, a return will be considered timely if” it is either postmarked or received “on the next succeeding day that is not a Saturday, Sunday, or legal holiday.” Rule 12C-1.0222, F.A.C. “For this purpose, a legal holiday will mean a holiday that is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended.” *Id.*

⁵ Section 220.24, F.S.

⁶ A taxpayer is required to file the declaration before the 1st day of the 5th month of each taxable year, unless “the minimum tax requirement of s. 220.24(1) is first met.” Section 220.241, F.S. (detailing the various declaration due dates if the minimum tax requirement is met).

⁷ E.g., “June 30” or “December 31.”

⁸ See Section 220.33, F.S. If the taxpayer is required to file the declaration before 1st day of the 5th month, then the estimated tax shall be paid in four equal installments in the following order: 1) before the 1st day of the 5th month; 2) before 1st day of the 7th month; 3) before the 1st day of the 10th month; and 4) before the 1st day of the next taxable year. *Id.*

⁹ *Id.*

¹⁰ C.f., Rule 12C-1.0222, F.A.C. (providing that if a return is due on a Saturday, Sunday, or legal holiday, then the return will be considered timely if it is electronically filed or postmarked on the “next day succeeding the day that is not a Saturday, Sunday, or legal holiday”). See also Form F1120N, which are the instructions for Form F1120, the Florida corporate income tax return. Form F1120N contains a schedule of due dates for declaration of estimated tax, including dates upon which installments are due based upon the taxable year of the taxpayer. This form indicates that the payment due date in question is July 1, 2013.

Section 1: Amends s. 220.33, F.S., to require estimated payments otherwise due no later than June 30, 2013 shall be paid on or before June 28, 2013. Provides for repeal of this provision July 1, 2014.

Section 2: Provides emergency rulemaking authority to the Department to implement the act.

Section 3: Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Staff estimates the impact on General Revenue to be a positive \$100 million in FY 2012-13 and a negative \$100 million in FY 2013-14.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
An act relating to corporate income tax; amending s. 220.33, F.S.; changing the filing date for estimated tax under certain circumstances; providing for future repeal; providing for emergency rules; providing an effective date.

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

Section 1. Subsection (7) of section 220.33, Florida Statutes, is renumbered as subsection (8), and a new subsection (7) is added to that section to read:

220.33 Payments of estimated tax.—A taxpayer required to file a declaration of estimated tax pursuant to s. 220.24 shall pay such estimated tax as follows:

(7) Notwithstanding any administrative rule or determination of the department that allows estimated payments otherwise due on a Saturday, Sunday, or legal holiday, to be paid on the next succeeding day that is not a Saturday, Sunday, or legal holiday, any estimated tax payment required under this section that would otherwise be due no later than Sunday, June 30, 2013, shall be paid on or before June 28, 2013. This subsection is repealed July 1, 2014.

Section 2. (1) The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, for the purpose of implementing this act.

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28 (2) Notwithstanding any other provision of law, the
29 emergency rules shall remain in effect for 6 months after
30 adoption and may be renewed during the pendency of procedures to
31 adopt permanent rules addressing the subject of the emergency
32 rules.

33 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 12-05 Communication Services Tax
SPONSOR(S): Finance & Tax Committee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Flieger 	Langston 

SUMMARY ANALYSIS

The bill will shift state revenue collections to the Public Education Capital Outlay Fund (PECO) and away from the General Revenue fund and local governments.

The bill amends ss. 202.12 and 203.01, F.S., to reduce the state communications services tax rate to 6.2 percent from 6.65 percent and increase the "additional" gross receipts tax rate on communication services from 0.15 percent to 0.6 percent. The combined tax rate on communications services will not change.

This bill has not yet been evaluated by the Revenue Estimating Committee. Staff estimates that in Fiscal Year 2012-13 General Revenue will be reduced by -\$44.3 million (-\$53.1 million recurring) and revenues shared with local governments will be reduced by -\$5.6 million (-\$6.8 million recurring). Revenues to the Public Education Capital Outlay Fund (PECO) in Fiscal Year 2012-13 will be increased by \$49.9 million (\$59.9 million recurring). The increased revenues to the PECO fund will increase the maximum available appropriations from the fund to approximately \$382 million in Fiscal Year 2012-13, compared to zero under current official forecasts.

The bill is effective on July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The sale of communications services which originate and terminate in Florida, or originate or terminate in Florida and are billed to a Florida address, are subject to the state communications services tax at a rate of 6.65 percent, except for direct-to-home satellite service, which is taxed at rate of 10.8 percent. Residential telephone service, which does not include mobile telephone service, is exempt from this tax.

The revenue collected pursuant to this tax (except for 37 percent of the direct-to-home satellite tax revenue) is distributed by the same formula as the state sales tax, as provided by s. 212.20(6), F.S. Approximately 10.8 percent is distributed to local governments through county and municipal revenue sharing, the Local Government Half-cent Sales Tax Clearing Trust Fund and the distribution to counties of \$29,915,500 that was formerly funded from pari-mutuel tax revenues. Smaller amounts are distributed to qualified counties for emergency distributions, selected sports facilities, and to the Public Employee Relations Trust Fund. The remainder of taxes remitted goes into the General Revenue Fund.

The tax on gross receipts for communications services is levied under ch. 203, F.S., at a base rate of 2.37 percent plus an additional 0.15 percent (for a total of 2.52 percent) on the sale of communications services. The tax is administered and collected pursuant to the provisions of ch. 202, F.S., but the exemption for communications services sold to residential households does not apply to the gross receipts tax levied at the base rate. All revenue received pursuant to this tax goes to the Public Education Capital Outlay and Debt Service ("PECO") Trust Fund. The use of such funds is limited to paying the principal or interest on bonds to finance capital projects for institutions of higher learning, community colleges, vocational technical schools, or public schools, deposit into any reserve funds related to the issuance of such bonds, or direct payment of the cost of any public educational facility capital project.

Section 215.61, F.S., limits the amount of PECO bonds that may be issued to 90 percent of the amount which the State Board of Education determines can be serviced by gross receipts tax revenues, based on the average annual amount of revenue collected in the most recent 24 months before the date of issuance of the bonds.

In 2010 the legislature reduced the communications services tax rate to 6.65 percent from 6.8 percent and created the 0.15 additional gross receipts tax on communications services to divert money from the communications services tax distribution to the PECO Trust Fund¹.

Effect of Proposed Changes

The bill reduces the state communications services tax rate to 6.2 percent from 6.65 percent and increases the additional gross receipts tax rate on communication services from 0.15 percent to 0.6 percent. The combined tax rate on communications services will not change.

B. SECTION DIRECTORY:

Section 1 amends s. 202.12, F.S., reducing the communication services tax.

Section 2 amends s. 202.12001, F.S., conforming a cross reference.

Section 3 amends s. 203.001, F.S., conforming a cross reference.

¹ 2010-149, L.O.F.

Section 4 amends 203.01, F.S., increasing the additional gross receipts tax on communication services.

Section 5 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill has not yet been evaluated by the Revenue Estimating Committee. Staff estimates that in Fiscal Year 2012-13 General Revenue will be reduced by -\$44.3 million (-\$53.1 million recurring). Revenues to the Public Education Capital Outlay Fund (PECO) in Fiscal Year 2012-13 will be increased by \$49.9 million (\$59.9 million recurring).

2. Expenditures:

The increased tax revenues to the PECO fund will increase bonding capacity, resulting in an increase in the maximum available appropriations from the fund to approximately \$382 million in Fiscal Year 2012-13, compared to zero under current official forecasts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has not yet been evaluated by the Revenue Estimating Committee. Staff estimates the bill will reduce state revenues shared with local governments in Fiscal Year 2012-13 by -\$5.6 million (\$6.8 million recurring).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the tax on communications and
 3 utility services; amending s. 202.12, F.S.; changing
 4 the rate at which the sales price of certain
 5 communications services are taxed; amending ss.
 6 202.12001 and 203.001, F.S.; conforming cross-
 7 references; amending s. 203.01, F.S.; changing the
 8 rate of the additional tax on certain communications
 9 services; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Paragraph (a) of subsection (1) of section
 14 202.12, Florida Statutes, is amended to read:

15 202.12 Sales of communications services.—The Legislature
 16 finds that every person who engages in the business of selling
 17 communications services at retail in this state is exercising a
 18 taxable privilege. It is the intent of the Legislature that the
 19 tax imposed by chapter 203 be administered as provided in this
 20 chapter.

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

24 (a) Except as otherwise provided in this subsection, at a
 25 rate of 6.2 ~~6.65~~ percent applied to the sales price of the
 26 communications service which:

- 27 1. Originates and terminates in this state, or
- 28 2. Originates or terminates in this state and is charged

29 to a service address in this state,
 30
 31 when sold at retail, computed on each taxable sale for the
 32 purpose of remitting the tax due. The gross receipts tax imposed
 33 by chapter 203 shall be collected on the same taxable
 34 transactions and remitted with the tax imposed by this
 35 paragraph. If no tax is imposed by this paragraph by reason of
 36 s. 202.125(1), the tax imposed by chapter 203 shall nevertheless
 37 be collected and remitted in the manner and at the time
 38 prescribed for tax collections and remittances under this
 39 chapter.

40 Section 2. Section 202.12001, Florida Statutes, is amended
 41 to read:

42 202.12001 Combined rate for tax collected pursuant to ss.
 43 202.12(1)(a) and 203.01(1)(b). ~~A In complying with ss. 1-3, ch.~~
 44 ~~2010-149, Laws of Florida,~~ the dealer of communication services
 45 may collect a combined rate of 6.8 percent comprised of 6.2 ~~6.65~~
 46 percent and 0.6 ~~0.15~~ percent required by ss. 202.12(1)(a) and
 47 203.01(1)(b)3., respectively, as long as the provider properly
 48 reflects the tax collected with respect to the two provisions as
 49 required in the return to the Department of Revenue.

50 Section 3. Section 203.001, Florida Statutes, is amended
 51 to read:

52 203.001 Combined rate for tax collected pursuant to ss.
 53 202.12(1)(a) and 203.01(1)(b). ~~A In complying with ss. 1-3, ch.~~
 54 ~~2010-149, Laws of Florida,~~ the dealer of communication services
 55 may collect a combined rate of 6.8 percent comprised of 6.2 ~~6.65~~
 56 percent and 0.6 ~~0.15~~ percent required by ss. 202.12(1)(a) and

57 | 203.01(1)(b)3., respectively, as long as the provider properly
 58 | reflects the tax collected with respect to the two provisions as
 59 | required in the return to the Department of Revenue.

60 | Section 4. Paragraph (b) of subsection (1) of section
 61 | 203.01, Florida Statutes, is amended to read:

62 | 203.01 Tax on gross receipts for utility and
 63 | communications services.—

64 | (1)

65 | (b)1. The rate applied to utility services shall be 2.5
 66 | percent.


67 | 2. The rate applied to communications services shall be
 68 | 2.37 percent.

69 | 3. There shall be an additional rate of 0.6 ~~0.15~~ percent
 70 | applied to communication services subject to the tax levied
 71 | pursuant to s. 202.12(1)(a), (c), and (d). The exemption
 72 | provided in s. 202.125(1) applies to the tax levied pursuant to
 73 | this subparagraph.

74 | Section 5. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 809 Communications Services Tax
SPONSOR(S): Finance & Tax Committee
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Flieger BF	Langston 

SUMMARY ANALYSIS

This PCS for HB 809 updates and modernizes a number of definitions related to the communications services tax:

- The term "cable service" is replaced with "video service,"
- The term "internet access" is defined through reference to federal statute,
- Definitions for the terms "digital good" and "digital service" are provided and both terms are exempted from the communications services tax,
- The definition of "sales price" is revised to allow additional nontaxable items to be billed together in a single line item on a customer's invoice without the entire amount of that item being taxable.

The provisions that govern assigning customers to local taxing jurisdictions for the purpose of imposing local communications services tax are revised to modify the liability a communications services tax dealer has in the event of underpayment of that tax resulting from the dealer assigning a service address to the incorrect local taxing jurisdiction.

The bill makes those changes and redefinitions retroactive and remedial.

The 2012 Revenue Estimating Conference estimates the changes to dealer liability for incorrectly assigned service addresses will have a negative impact to local governments of -\$4.3 million in FY 2012-13 (-\$4.7 million recurring). Other changes made by the bill will have a negative indeterminate effect on local government revenues.

The bill has an effective date of July 1, 2012.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 202, F.S., provides that the sale of communications services,¹ except direct-to-home satellite service,² is subject to a state communications services tax ("CST"), gross receipts tax, and a locally levied CST. Federal law prohibits direct-to-home satellite sales from being subject to a local CST. Collected local and state communications services taxes are remitted to the Department of Revenue ("the department"), who distributes the proceeds to the appropriate jurisdictions.³

The revenue collected pursuant to this tax (except for 37 percent of the direct-to-home satellite tax revenue) is distributed by the same formula as the state sales tax, as provided by s. 212.20(6), F.S. Approximately 10.8 percent is distributed to local governments through county and municipal revenue sharing, the Local Government Half-cent Sales Tax Clearing Trust Fund and the distribution to counties of \$29,915,500 that was formerly funded from pari-mutuel tax revenues. Smaller amounts are distributed to qualified counties for emergency distributions, selected sports facilities, and to the Public Employee Relations Trust Fund. The remainder of state CST remitted goes into the General Revenue Fund.

The state CST is currently set at a rate of 6.65 percent.⁴ The gross receipt tax is 2.37 percent plus an additional 0.15 percent, for a combined rate of 2.52 percent.⁵ Thus, the state CST and gross receipt tax are imposed at a combined rate of 9.17 percent. Local CST rates, as authorized in s. 202.19, F.S., vary widely, ranging from 0.1% to 7.0%.⁶

Direct-to-home satellite service sales are subject to a state CST at a rate of 10.8 percent⁷ and a gross receipt tax of 2.37 percent,⁸ for a combined rate of 13.17 percent.

Prior to 2001, much of what is now taxed under ch. 202, F.S. as communication services was subject to the state sales and use tax imposed by ch. 212, F.S. The Communications Services Tax Simplification Law⁹ revamped definitions and consolidated the taxation of communications services into ch. 202, F.S.

Current law defines communications services as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance."¹⁰ Section 202.11(2), F.S., lists a number of specifically excluded items such as information services, bad check and late payment charges, internet access services (currently

¹ For purposes of ch. 202, F.S., "communications services" is defined in s. 202.11(2), F.S., as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added."

² For purposes of ch. 202, F.S., direct-to-home satellite service is defined in 47 U.S.C. s. 303(v) as the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

³ Section 202.18, F.S.

⁴ Section 202.12(1)(a), F.S.

⁵ Section 203.01(1)(b), F.S.

⁶ Local CST rates can be found at the "Jurisdiction Rate Table" at http://dor.myflorida.com/dor/taxes/local_tax_rates.html.

⁷ Section 202.12(1)(b), F.S.

⁸ Section 203.01(1)(b), F.S.

⁹ Chapter 2000-260, L.O.F.

¹⁰ Section 202.11(2), F.S.

undefined in statute), and the sale or rental of tangible personal property which are not subject to the communications services tax.

Digital Goods and Services

There is no provision in ch. 202, F.S., defining “digital goods” or “digital services” or providing for their communications services tax treatment.

Situsing

Currently, communications services dealers must assign customers to local tax jurisdictions (“siting”) so that the correct local CST rate can be applied to each sale. Section 202.22, F.S., provides that dealers who use one of three specific methods to determine to which local taxing jurisdiction a customer’s service address should be assigned and who exercise due diligence in that use are held harmless from any taxes, penalties, and interest that result from incorrect assignment of a customer. The three methods are:

- Employing an electronic database provided by the department¹¹
- Employing a database developed by the dealer or supplied by a vendor that has been certified by the department¹²
- Employing enhanced zip codes to assign each street address, address range, post office box, or post office box range in the dealer’s service area to a specific local taxing jurisdiction.¹³

Dealers that do not use one of the approved methods may be held liable for any tax, interest, and penalty which is due as a result of incorrectly assigning service addresses among jurisdictions. However, a dealer is not liable for taxes, interest or penalties to the extent that such amount was collected and remitted with respect to a tax imposed by another jurisdiction.

Dealers who use one of those three methods are granted a collection allowance deduction of 0.75 percent of the amount of tax due, while a dealer who does not use those methods is only permitted to deduct 0.25 percent.

Taxation of items that are not separately stated

Federal law exempts internet access from state or local taxation.¹⁴ In complying with that directive, s. 202.11(13)(b)(8), F.S., allows charges for Internet access services that are not separately itemized on a customer’s bill but which can be reasonably identified from the selling dealer’s books and records to be excluded from the taxable sale. However, s. 202.11(13), F.S., defines the “sales price” as the total amount charged by a dealer, including any services that are part of the sale.

Thus, if a single line item contains both communications services and products that are not communications services, the CST is imposed on that entire sale unless the non-communications service product is internet access and the charges for internet access can be reasonably identified. If a dealer wishes to carve out nontaxable items,¹⁵ those items would need to be separately stated.

Proposed Changes

The bill makes a number of definitional and terminology updates. Significantly, in accordance with the bill redefining “cable service” as “video service,”¹⁶ and language is changed throughout ch. 202, F.S., to

¹² The certification process currently involves testing the accuracy of the third-party database against the master database maintained by the department.

¹³ 202.22(1)(a)-(c), F.S.

¹⁴ 47 U.S.C. §151.

¹⁵ E.g., the sale or rental of personal property such as a cable box.

¹⁶ “Video service” means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast

conform to that redefinition. The previously undefined term "internet access service" is defined to have the same meaning as "internet access" as used in the relevant federal law.¹⁷

The bill also updates the legislative intent contained in s. 202.105, F.S.

Digital Goods and Services

"Digital goods" and "digital services" are both added to the list of items that are excluded from the definition of "communication services" in s. 202.11, F.S. The bill defines "digital good" to mean any downloaded good or product that is delivered or transferred by means other than tangible storage media, including downloaded games, software, music,¹⁸ or other digital content. The term does not include video service, which remains taxable.

"Digital service" is any service, other than video service, that is provided electronically, including remotely provided access to or use of software or another digital good. Digital services also include the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services.

Situsing

The bill modifies the requirements of s. 202.22, F.S., relating to a dealer that does not use one of the three approved situsing methods. A dealer who incorrectly assigns a customer to a local CST taxing jurisdiction may only be held liable for the net aggregate underpaid local CST tax and any penalties or interest due as a result of that incorrect assignment if:

- The failure to use one of those methods results in a net aggregate underpayment of local tax, and
- The department has first determined the amount misallocated by the dealer between all jurisdictions.

The bill also provides that if a dealer does use one of the three methods described in s. 202.22(1), F.S., with or without due diligence, the department may not deny that dealer's collection allowance because of incorrectly assigned customers.

The bill requires the department to make monthly reports on jurisdiction-by-jurisdiction gross taxable sales and net tax information available to the public.

Taxation of items that are not separately stated

The bill revises the definition of "sales price" in renumbered s. 202.11(15), F.S., to expand the pre-existing provisions relating to what charges a dealer may exclude from the taxable sales price of communications services.¹⁹ The bill provides that a dealer may exclude charges for any good or service that is exempt from the CST, except those listed in renumbered s. 202.11(15)(a), F.S.,²⁰ so long as

by microwave or other equipment directly to the purchaser's premises, but the term does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services

¹⁷ 47 U.S.C. §151.

¹⁸ Including ringtones, etc.

¹⁹ Currently solely applicable to the cost of internet access.

²⁰ 1. The connection, movement, change, or termination of communications services.

2. The detailed billing of communications services.

3. The sale of directory listings in connection with a communications service.

4. Central office and custom calling features.

5. Voice mail and other messaging service.

6. Directory assistance.

7. The service of sending or receiving a document commonly referred to as a facsimile or "fax," except when performed during the course of providing professional or advertising services.

those exempt items can be reasonably identified from the selling dealer's books and records. The bill extends the list of allowable excluded charges that do not need to be separately stated from internet access to any good or service that is not otherwise taxable.

Remedial and Retroactive Nature of Changes

The definition changes, modification of taxation of items not separately stated, and new situsing procedures contained within the bill are remedial and retroactive but do not provide a basis for a right to a refund or credit for any tax paid, nor do they provide the basis for an assessment of tax not paid.

B. SECTION DIRECTORY:

Section 1 amends s. 202.105, F.S., modifying legislative intent.

Section 2 amends s. 202.11, F.S., modifying numerous definitions, including cable service, digital good, digital service, sales price, and video service.

Section 3 amends s. 202.125, F.S., conforming terminology to changed definitions.

Section 4 amends s. 202.16, F.S., conforming terminology to changed definitions.

Section 5 amends s. 202.24, F.S., conforming adjustment process to new situsing procedures.

Section 6 amends s. 202.18, F.S., clarifying public records status of certain confidential information.

Section 7 amends s. 202.195, F.S., clarifying public records status of certain confidential information.

Section 8 amends s. 202.22, F.S., modifying situsing procedure for assigning customer service addresses to local taxing jurisdictions, changing the liability dealers of communications services have in cases of incorrectly assigned service addresses.

Section 9 amends s. 202.231, F.S., requiring the department to make monthly reports available to the public.

Section 10 amends s. 202.24, F.S., conforming terminology to changed definitions.

Section 11 amends s. 202.26, F.S., changing a cross-reference.

Section 12 amends s. 203.01, F.S., changing a cross-reference.

Section 13 amends s. 610.118, F.S., changing a cross-reference.

Section 14 amends s. 624.105, F.S., changing a cross-reference.

Section 15 establishes that some of the changes above are of a remedial nature and have retroactive application.

Section 16 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The 2012 Revenue Estimating Conference estimates that the bill will have a negative indeterminate impact on state revenues.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The 2012 Revenue Estimating Conference estimates the changes to dealer liability for incorrectly assigned service addresses will have a negative recurring impact to local governments of -\$4.3 million in FY 2012-13 (-\$4.7 million recurring). Other changes made by the bill will have a negative indeterminate effect on local government revenues.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes to the siting process may decrease the administrative burden placed on communications services dealers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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29 public on a jurisdiction-by-jurisdiction basis certain
 30 sales and net tax information; amending s. 202.26,
 31 F.S.; conforming a cross-reference; amending ss.
 32 203.01, 610.118, and 624.105, F.S.; conforming cross-
 33 references; providing for certain retroactive effect;
 34 providing an effective date.

35
 36 Be It Enacted by the Legislature of the State of Florida:

37
 38 Section 1. Subsection (1) of section 202.105, Florida
 39 Statutes, is amended to read:

40 202.105 Legislative findings and intent.—

41 (1) It is declared to be a specific legislative finding
 42 that the creation of this chapter fulfills important state
 43 interests by reforming the tax laws to provide a fair,
 44 efficient, and uniform method for taxing communications services
 45 sold in this state. This chapter is essential to the continued
 46 economic vitality of this increasingly important industry
 47 because it restructures state and local taxes and fees to
 48 account for the impact of federal legislation, industry
 49 deregulation, and the multitude of convergence of service
 50 offerings that is now taking place among providers offering
 51 functionally equivalent communications services in today's
 52 marketplace. This chapter promotes the increased competition
 53 that accompanies deregulation by embracing a competitively
 54 neutral tax policy that will free consumers to choose a provider
 55 based on tax-neutral considerations. This chapter further spurs
 56 new competition by simplifying an extremely complicated state

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

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

73 202.11 Definitions.—As used in this chapter:

74 ~~(1) "Cable service" means the transmission of video,~~
 75 ~~audio, or other programming service to purchasers, and the~~
 76 ~~purchaser interaction, if any, required for the selection or use~~
 77 ~~of any such programming service, regardless of whether the~~
 78 ~~programming is transmitted over facilities owned or operated by~~
 79 ~~the cable service provider or over facilities owned or operated~~
 80 ~~by one or more other dealers of communications services. The~~
 81 ~~term includes point-to-point and point-to-multipoint~~
 82 ~~distribution services by which programming is transmitted or~~
 83 ~~broadcast by microwave or other equipment directly to the~~
 84 ~~purchaser's premises, but does not include direct-to-home~~

85 ~~satellite service. The term includes basic, extended, premium,~~
 86 ~~pay per view, digital, and music services.~~

87 (1)~~(2)~~ "Communications services" means the transmission,
 88 conveyance, or routing of voice, data, audio, video, or any
 89 other information or signals, including video ~~cable~~ services, to
 90 a point, or between or among points, by or through any
 91 electronic, radio, satellite, cable, optical, microwave, or
 92 other medium or method now in existence or hereafter devised,
 93 regardless of the protocol used for such transmission or
 94 conveyance. The term includes such transmission, conveyance, or
 95 routing in which computer processing applications are used to
 96 act on the form, code, or protocol of the content for purposes
 97 of transmission, conveyance, or routing without regard to
 98 whether such service is referred to as voice-over-Internet-
 99 protocol services or is classified by the Federal Communications
 100 Commission as enhanced or value-added. The term does not
 101 include:

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

113 services.

114 (i) Digital goods.

115 (j) Digital services.

116 ~~(2)-(3)~~ "Dealer" means a person registered with the
 117 department as a provider of communications services in this
 118 state.

119 ~~(3)-(4)~~ "Department" means the Department of Revenue.

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

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

136 ~~(6)-(5)~~ "Direct-to-home satellite service" has the meaning
 137 ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

138 ~~(7)-(6)~~ "Information service" means the offering of a
 139 capability for generating, acquiring, storing, transforming,
 140 processing, retrieving, using, or making available information

141 via communications services, including, but not limited to,
 142 electronic publishing, web-hosting service, and end-user 900
 143 number service. The term does not include any video, audio, or
 144 other programming service that uses point-to-multipoint
 145 distribution by which programming is delivered, transmitted, or
 146 broadcast by any means, including any interaction that may be
 147 necessary for selecting and using the service, regardless of
 148 whether the programming is delivered, transmitted, or broadcast
 149 over facilities owned or operated by the seller or another, or
 150 whether denominated as cable service or as basic, extended,
 151 premium, pay-per-view, digital, music, or two-way cable service.

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

156 (9)-(7) "Mobile communications service" means ~~commercial~~
 157 mobile ~~radio~~ service, as defined in 47 C.F.R. s. 20.3 as in
 158 effect on June 1, 1999. The term does not include air-ground
 159 radiotelephone service as defined in 47 C.F.R. s. 22.99 as in
 160 effect on June 1, 1999.

161 (10)-(8) "Person" has the meaning ascribed in s. 212.02.

162 (11)-(9) "Prepaid calling arrangement" means the separately
 163 stated retail sale by advance payment of communications services
 164 that consist exclusively of telephone calls originated by using
 165 an access number, authorization code, or other means that may be
 166 manually, electronically, or otherwise entered; ~~7~~ and that are
 167 sold in predetermined units or dollars of which the number
 168 declines with use in a known amount.

169 ~~(12)~~~~(10)~~ "Purchaser" means the person paying for or
 170 obligated to pay for communications services.

171 ~~(13)~~~~(11)~~ "Retail sale" means the sale of communications
 172 services for any purpose other than for resale or for use as a
 173 component part of or for integration into communications
 174 services to be resold in the ordinary course of business.
 175 However, any sale for resale must comply with s. 202.16(2) and
 176 the rules adopted thereunder.

177 ~~(14)~~~~(12)~~ "Sale" means the provision of communications
 178 services for a consideration.

179 ~~(15)~~~~(13)~~ "Sales price" means the total amount charged in
 180 money or other consideration by a dealer for the sale of the
 181 right or privilege of using communications services in this
 182 state, including any property or other service, not described in
 183 paragraph (a), which is ~~services that are~~ part of the sale and
 184 for which the charge is not separately itemized on a customer's
 185 bill or separately allocated under subparagraph (b)8. The sales
 186 price of communications services may ~~shall~~ not be reduced by any
 187 separately identified components of the charge which ~~that~~
 188 constitute expenses of the dealer, including, but not limited
 189 to, sales taxes on goods or services purchased by the dealer,
 190 property taxes, taxes measured by net income, and universal-
 191 service fund fees.

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

195 1. The connection, movement, change, or termination of
 196 communications services.

- 197 2. The detailed billing of communications services.
- 198 3. The sale of directory listings in connection with a
- 199 communications service.
- 200 4. Central office and custom calling features.
- 201 5. Voice mail and other messaging service.
- 202 6. Directory assistance.
- 203 7. The service of sending or receiving a document commonly
- 204 referred to as a facsimile or "fax," except when performed
- 205 during the course of providing professional or advertising
- 206 services.
- 207 (b) The sales price of communications services does not
- 208 include charges for any of the following:
- 209 1. An ~~Any~~ excise tax, sales tax, or similar tax levied by
- 210 the United States or any state or local government on the
- 211 purchase, sale, use, or consumption of any communications
- 212 service, including, but not limited to, a ~~any~~ tax imposed under
- 213 this chapter or chapter 203 which is permitted or required to be
- 214 added to the sales price of such service, if the tax is stated
- 215 separately.
- 216 2. A ~~Any~~ fee or assessment levied by the United States or
- 217 any state or local government, including, but not limited to,
- 218 regulatory fees and emergency telephone surcharges, which must
- 219 ~~is required to~~ be added to the price of the ~~such~~ service if the
- 220 fee or assessment is separately stated.
- 221 3. Communications services paid for by inserting coins
- 222 into coin-operated communications devices available to the
- 223 public.
- 224 4. The sale or recharge of a prepaid calling arrangement.

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

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

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

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

244 ~~(16)-(14)~~ "Service address" means:

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

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

249 2. In the case of a communications service paid through a
 250 credit or payment mechanism that does not relate to a service
 251 address, such as a bank, travel, debit, or credit card, and in
 252 the case of third-number and calling-card calls, the term

253 "service address" means the address of the central office, as
 254 determined by the area code and the first three digits of the
 255 seven-digit originating telephone number; or

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

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

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

268 ~~(17)-(15)~~ "Unbundled network element" means a network
 269 element, as defined in 47 U.S.C. s. 153(29), to which access is
 270 provided on an unbundled basis pursuant to 47 U.S.C. s.
 271 251(c) (3).

272 ~~(18)-(16)~~ "Private communications service" means a
 273 communications service that entitles the subscriber or user to
 274 exclusive or priority use of a communications channel or group
 275 of channels between or among channel termination points,
 276 regardless of the manner in which such channel or channels are
 277 connected, and includes switching capacity, extension lines,
 278 stations, and any other associated services that ~~which~~ are
 279 provided in connection with the use of such channel or channels.

280 ~~(19)-(17)~~(a) "Customer" means:

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

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

287 (b) "Customer" does not include:

288 1. A reseller of mobile communications services; or

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

292 (20)~~(18)~~ "Enhanced zip code" means a United States postal
 293 zip code of 9 or more digits.

294 (21)~~(19)~~ "Home service provider" means the facilities-
 295 based carrier or reseller with which the customer contracts for
 296 the provision of mobile communications services.

297 (22)~~(20)~~ "Licensed service area" means the geographic area
 298 in which the home service provider is authorized by law or
 299 contract to provide mobile communications service to the
 300 customer.

301 (23)~~(21)~~ "Place of primary use" means the street address
 302 representative of where the customer's use of the mobile
 303 communications service primarily occurs, which must be:

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

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

308 (24)~~(22)~~(a) "Reseller" means a provider who purchases

309 communications services from another communications service
 310 provider and then resells, uses as a component part of, or
 311 integrates the purchased services into a mobile communications
 312 service.

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

317 ~~(25)(23)~~ "Serving carrier" means a facilities-based
 318 carrier providing mobile communications service to a customer
 319 outside a home service provider's or reseller's licensed service
 320 area.

321 ~~(26)(24)~~ "Video service" means the transmission of video,
 322 audio, or other programming service to a purchaser, and the
 323 purchaser interaction, if any, required for the selection or use
 324 of a programming service, regardless of whether the programming
 325 is transmitted over facilities owned or operated by the video
 326 service provider or over facilities owned or operated by another
 327 dealer of communications services. The term includes point-to-
 328 point and point-to-multipoint distribution services through
 329 which programming is transmitted or broadcast by microwave or
 330 other equipment directly to the purchaser's premises, but does
 331 not include direct-to-home satellite service. The term includes
 332 basic, extended, premium, pay-per-view, digital video, two-way
 333 cable, and music services ~~has the same meaning as that provided~~
 334 ~~in s. 610.103.~~

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

337 202.125 Sales of communications services; specified
 338 exemptions.—

339 (1) The separately stated sales price of communications
 340 services sold to residential households is exempt from the tax
 341 imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does
 342 not apply to any residence that constitutes all or part of a
 343 transient public lodging establishment as defined in chapter
 344 509, any mobile communications service, any video ~~able~~ service,
 345 or any direct-to-home satellite service.

346 Section 4. Paragraph (a) of subsection (2) of section
 347 202.16, Florida Statutes, is amended to read:

348 202.16 Payment.—The taxes imposed or administered under
 349 this chapter and chapter 203 shall be collected from all dealers
 350 of taxable communications services on the sale at retail in this
 351 state of communications services taxable under this chapter and
 352 chapter 203. The full amount of the taxes on a credit sale,
 353 installment sale, or sale made on any kind of deferred payment
 354 plan is due at the moment of the transaction in the same manner
 355 as a cash sale.

356 (2) (a) A sale of communications services that are used as
 357 a component part of or integrated into a communications service
 358 or prepaid calling arrangement for resale, including, but not
 359 limited to, carrier-access charges, interconnection charges paid
 360 by providers of mobile communication services or other
 361 communication services, charges paid by a video ~~able~~ service
 362 provider providers for the purchase of video programming or the
 363 transmission of video or other programming by another dealer of
 364 communications services, charges for the sale of unbundled

365 network elements, and any other intercompany charges for the use
 366 of facilities for providing communications services for resale,
 367 must be made in compliance with the rules of the department. A
 368 ~~Any~~ person who makes a sale for resale which is not in
 369 compliance with these rules is liable for any tax, penalty, and
 370 interest due for failing to comply, to be calculated pursuant to
 371 s. 202.28(2)(a).

372 Section 5. Paragraph (c) of subsection (3) of section
 373 202.18, Florida Statutes, is amended to read:

374 202.18 Allocation and disposition of tax proceeds.—The
 375 proceeds of the communications services taxes remitted under
 376 this chapter shall be treated as follows:

377 (3)

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

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

393 services.

394 3.a. ~~Notwithstanding the time period specified in s.~~
 395 ~~202.22(5)~~, Adjustments in distributions which are necessary to
 396 correct misallocations between jurisdictions shall be governed
 397 by this subparagraph. If the department determines that
 398 misallocations between jurisdictions occurred, it shall provide
 399 written notice of such determination to all affected
 400 jurisdictions. The notice shall include the amount of the
 401 misallocations, the basis upon which the determination was made,
 402 data supporting the determination, and the identity of each
 403 affected jurisdiction. The notice shall also inform all affected
 404 jurisdictions of their authority to enter into a written
 405 agreement establishing a method of adjustment as described in
 406 sub-subparagraph c.

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

414 c. If an adjustment affecting a distribution to a
 415 jurisdiction equals or exceeds 90 percent of the average monthly
 416 distribution to that jurisdiction for the 6 months immediately
 417 preceding the department's determination, as reported by all
 418 communications services dealers, the affected jurisdictions may
 419 enter into a written agreement establishing a method of
 420 adjustment. If the agreement establishing a method of adjustment

421 provides for payments of local communications services tax
 422 monthly distributions, the amount of any such payment agreed to
 423 may not exceed the local communications services tax monthly
 424 distributions available to the jurisdiction that was allocated
 425 amounts in excess of those to which it was entitled. If affected
 426 jurisdictions execute a written agreement specifying a method of
 427 adjustment, a copy of the written agreement shall be provided to
 428 the department no later than the first day of the month
 429 following 90 days after the date the department transmits notice
 430 of the misallocation. If the department does not receive a copy
 431 of the written agreement within the specified time period, an
 432 adjustment affecting a distribution to a jurisdiction made
 433 pursuant to this sub-subparagraph shall be prorated over a time
 434 period that equals the time period over which the misallocations
 435 occurred.

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

438 202.195 Proprietary confidential business information;
 439 public records exemption.—

440 (1) Proprietary confidential business information obtained
 441 from a telecommunications company or from a franchised or
 442 certificated video service provider ~~cable company~~ for the
 443 purposes of ~~imposing fees for occupying the public rights-of-~~
 444 ~~way,~~ assessing the local communications services tax pursuant to
 445 s. 202.19, or occupying or regulating the public rights-of-way,
 446 held by a local governmental entity, is confidential and exempt
 447 from s. 119.07(1) and s. 24(a), Art. I of the State
 448 Constitution. Such proprietary confidential business information

449 held by a local governmental entity may be used only for the
 450 purposes of ~~imposing such fees,~~ assessing such tax, or
 451 regulating such rights-of-way, and may not be used for any other
 452 purposes, including, but not limited to, commercial or
 453 competitive purposes.

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

460 Section 7. Paragraph (b) of subsection (2) of section
 461 202.20, Florida Statutes, is amended to read:

462 202.20 Local communications services tax conversion
 463 rates.—

464 (2)

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

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

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

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

476 c. The public service tax on prepaid calling arrangements.

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

488 e. Actual permit fees relating to placing or maintaining
 489 facilities in or on public roads or rights-of-way, collected
 490 from providers of long-distance, cable, and mobile
 491 communications services for the fiscal year ending September 30,
 492 1999; however, if a municipality or charter county elects the
 493 option to charge permit fees pursuant to s. 337.401(3)(c)1.a.,
 494 such fees may ~~shall~~ not be included as a replaced revenue
 495 source.

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

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

501 202.22 Determination of local tax situs.—

502 (5) If a dealer of communications services does not use
 503 one or more of the methods specified in subsection (1) for
 504 determining the local taxing jurisdiction in which one or more

505 service addresses are a service address is located and:
 506 (a) The dealer's failure to use one or more of such
 507 methods results in a net aggregate underpayment of all taxes
 508 levied pursuant to s. 202.19 with respect to one or more tax
 509 periods that are being examined by the department; and
 510 (b) The department has determined the misallocations
 511 between jurisdictions for all taxes levied pursuant to s. 202.19
 512 and collected by the dealer with respect to any tax period being
 513 examined by the department; then,
 514
 515 the dealer of communications services may be held liable to the
 516 department for the net aggregate underpayment of any tax, and
 517 for including interest and penalties attributable to the net
 518 aggregate underpayment of tax, which is due as a result of
 519 assigning one or more the service addresses address to an
 520 incorrect local taxing jurisdiction. However, the dealer of
 521 communications services is not liable for any tax, interest, or
 522 penalty under this subsection unless the department has
 523 determined the net aggregate underpayment of tax for any tax
 524 period that is being examined, taking into account all
 525 underpayments and overpayments for such period or periods to the
 526 extent that such amount was collected and remitted by the dealer
 527 of communications services with respect to a tax imposed by
 528 another local taxing jurisdiction. Upon determining that an
 529 amount was collected and remitted by a dealer of communications
 530 services with respect to a tax imposed by another local taxing
 531 jurisdiction, the department shall adjust the respective amounts
 532 of the proceeds paid to each such taxing jurisdiction under s.

533 ~~202.18 in the month immediately following such determination.~~

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

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

540 1. Employs a method of assigning service addresses other
 541 than as set forth in paragraph (1) (a), paragraph (1) (b), or
 542 paragraph (1) (c), the deduction allowed to the dealer of
 543 communications services as compensation under s. 202.28 shall be
 544 0.25 percent of that portion of the tax due and accounted for
 545 and remitted to the department which is attributable to such
 546 method of assigning service addresses other than as set forth in
 547 paragraph (1) (a), paragraph (1) (b), or paragraph (1) (c).

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

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

556 202.231 Provision of information to local taxing
 557 jurisdictions.—

558 (3) The gross taxable sales and net tax information
 559 contained in the monthly reports required by this section shall
 560 be aggregated on a jurisdiction-by-jurisdiction basis, and the

561 aggregate jurisdiction-by-jurisdiction information shall be made
 562 available by the department to the public through the
 563 department's website for each fiscal year this chapter has been
 564 in effect.

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

567 202.24 Limitations on local taxes and fees imposed on
 568 dealers of communications services.—

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

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

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

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

583
 584 Municipalities and counties may not negotiate those terms and
 585 conditions related to franchise fees or the definition of gross
 586 revenues or other definitions or methodologies related to the
 587 payment or assessment of franchise fees on providers of ~~cable or~~
 588 video services.

589 (c) This subsection does not apply to:

590 1. Local communications services taxes levied under this

591 chapter.

592 2. Ad valorem taxes levied pursuant to chapter 200.

593 3. Business taxes levied under chapter 205.

594 4. "911" service charges levied under chapter 365.

595 5. Amounts charged for the rental or other use of property

596 owned by a public body which is not in the public rights-of-way

597 to a dealer of communications services for any purpose,

598 including, but not limited to, the placement or attachment of

599 equipment used in the provision of communications services.

600 6. Permit fees of general applicability which are not

601 related to placing or maintaining facilities in or on public

602 roads or rights-of-way.

603 7. Permit fees related to placing or maintaining

604 facilities in or on public roads or rights-of-way pursuant to s.

605 337.401.

606 8. Any in-kind requirements, institutional networks, or

607 contributions for, or in support of, the use or construction of

608 public, educational, or governmental access facilities allowed

609 under federal law and imposed on providers of ~~cable or~~ video

610 service pursuant to any existing ordinance or an existing

611 franchise agreement granted by each municipality or county,

612 under which ordinance or franchise agreement service is provided

613 before ~~prior to~~ July 1, 2007, or as permitted under chapter 610.

614 ~~Nothing in~~ This subparagraph does not shall prohibit ~~the ability~~

615 ~~of providers of cable or video service~~ from recovering the ~~to~~

616 ~~recover such~~ expenses as allowed under federal law.

617 9. Special assessments and impact fees.

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

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

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

627 Section 11. Paragraph (j) of subsection (3) of section
628 202.26, Florida Statutes, is amended to read:

629 202.26 Department powers.—

630 (3) To administer the tax imposed by this chapter, the
631 department may adopt rules relating to:

632 (j) The types of books and records kept in the regular
633 course of business which must be available during an audit of a
634 dealer's books and records when the dealer has made an
635 allocation or attribution pursuant to the definition of sales
636 prices in s. 202.11(15)(b)8. ~~202.11(13)(b)8.~~ and examples of
637 methods for determining the reasonableness thereof. Books and
638 records kept in the regular course of business include, but are
639 not limited to, general ledgers, price lists, cost records,
640 customer billings, billing system reports, tariffs, and other
641 regulatory filings and rules of regulatory authorities. The ~~Such~~
642 records may be required to be made available to the department
643 in an electronic format when so kept by the dealer. The dealer
644 may support the allocation of charges with books and records

645 kept in the regular course of business covering the dealer's
 646 entire service area, including territories outside this state.
 647 During an audit, the department may reasonably require
 648 production of any additional books and records found necessary
 649 to assist in its determination.

650 Section 12. Paragraph (a) of subsection (1) of section
 651 203.01, Florida Statutes, is amended to read:

652 203.01 Tax on gross receipts for utility and
 653 communications services.—

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

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

667 Section 13. Paragraph (a) of subsection (1) of section
 668 610.118, Florida Statutes, is amended to read:

669 610.118 Impairment; court-ordered operations.—

670 (1) If an incumbent cable or video service provider is
 671 required to operate under its existing franchise and is legally
 672 prevented by a lawfully issued order of a court of competent

673 jurisdiction from exercising its right to terminate its existing
 674 franchise pursuant to the terms of s. 610.105, any
 675 certificateholder providing cable service or video service in
 676 whole or in part within the service area that is the subject of
 677 the incumbent cable or video service provider's franchise shall,
 678 for as long as the court order remains in effect, comply with
 679 the following franchise terms and conditions as applicable to
 680 the incumbent cable or video service provider in the service
 681 area:

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

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

698 2. If the incumbent cable or video service provider is
 699 required to make payments for the funding of an institutional
 700 network, the certificateholder shall pay an amount equal to the

701 incumbent's funding obligations but not to exceed 1 percent of
 702 the sales price, as defined in s. 202.11(15) ~~202.11(13)~~, for the
 703 taxable monthly retail sales of cable or video programming
 704 services the certificateholder received from subscribers in the
 705 affected municipality or county. All definitions and exemptions
 706 under chapter 202 apply in the determination of taxable monthly
 707 retail sales of cable or video programming services.

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

710 624.105 Waiver of customer liability.—Any regulated
 711 company as defined in s. 350.111, any electric utility as
 712 defined in s. 366.02(2), any utility as defined in s.
 713 367.021(12) or s. 367.022(2) and (7), and any provider of
 714 communications services as defined in s. 202.11(1) ~~202.11(2)~~ may
 715 charge for and include an optional waiver of liability provision
 716 in their customer contracts under which the entity agrees to
 717 waive all or a portion of the customer's liability for service
 718 from the entity for a defined period in the event of the
 719 customer's call to active military service, death, disability,
 720 involuntary unemployment, qualification for family leave, or
 721 similar qualifying event or condition. Such provisions may not
 722 be effective in the customer's contract with the entity unless
 723 affirmatively elected by the customer. No such provision shall
 724 constitute insurance so long as the provision is a contract
 725 between the entity and its customer.

726 Section 15. The following changes made in this act are
 727 intended to be remedial in nature and apply retroactively, but
 728 do not provide a basis for an assessment of any tax not paid or

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

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

734 (2) The changes made in section 8 of this act to s.
735 202.22, Florida Statutes; and

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1063 Local Business Tax
SPONSOR(S): Finance & Tax Committee
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Aldridge <i>A</i>	Langston <i>SL</i>

SUMMARY ANALYSIS

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

The proposed committee substitute for HB 1063:

- Prohibits any increases in local business tax rates beginning in local FY 2012-13.
- Phases out the local business tax by reducing the rates allowed to be levied over six years beginning in local FY 2013-14.
- Provides an option for certain counties and municipalities to continue levying local business taxes, provided that at least 25% of their local tax revenue in local FY 2012-13 comes from local business taxes. Additionally, counties and municipalities opting to continue levying local business tax under these conditions may not increase their ad valorem millage rates above those levied in local FY 2012-13, unless they discontinue levying their local business tax.
- Provides that certain counties and municipalities who have expressly and separately pledged their local business tax revenue stream as security for bonds or certificates issued before March 9, 2012, may continue to levy their local business tax to meet obligations required by such bonds or certificates. Revenues collected in excess of amounts necessary to meet obligations of bonds or certificates must be refunded to taxpayers in proportion to the amount of taxes paid by each taxpayer.

The Revenue Estimating Conference has not estimated the revenue impact(s) of the proposed committee substitute. Staff estimates that the bill will have no effect on state revenue and will have a negative impact on local revenue of \$22 million beginning in local FY 2013-14, increasing by that amount each year over six years as the rate reduction described above is phased in, with a total recurring negative local revenue impact of \$132 million.

The bill is effective upon becoming law.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Brief Background

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

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

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

Administrative Procedures

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

For purposes of Chapter 205, F.S., the terms "business," "profession," and "occupation" do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in the state.⁹ These institutions are more particularly defined and limited in statute.¹⁰ The term "receipt" means the document that is issued by the local governing

¹ Sections 205.033 and 205.042, F.S.

² Section 205.022(5), F.S.

³ Chapter 80-274, L.O.F.

⁴ Chapter 86-298, L.O.F.

⁵ Chapter 2006-152, L.O.F.

⁶ Sections 205.033 and 205.042, F.S.

⁷ Id.

⁸ Sections 205.033 and 205.043, F.S.

⁹ Section 205.022(1), F.S.

¹⁰ Id.

authority which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of Chapter 205, F.S., relating to the business tax.¹¹

The governing body of a municipality that levies the tax may request that the county in which the municipality is located issue the municipal receipt and collect the tax.¹² The governing body of a county that levies the tax may request that municipalities within the county issue the county receipt and collect the tax.¹³ However, before any local government issues any business receipts on behalf of another local government, appropriate agreements must be entered into by the affected local governments.¹⁴ All business tax receipts are sold by the appropriate tax collector beginning July 1st of each year.¹⁵ The taxes are due and payable on or before September 30th of each year, and the receipts expire on September 30th of the succeeding year.¹⁶ In several situations, administrative penalties are also imposed.¹⁷

New Tax Levies

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

Tax Base/Rate Restructuring

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

Exemptions

Chapter 205, F.S., provides several exemptions and exclusions from local business taxes. Customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions are excluded from the definition of "business," "profession," and "occupation"

¹¹ Section 205.022(2), F.S.

¹² Section 205.045, F.S.

¹³ Id.

¹⁴ Id.

¹⁵ Section 205.053, F.S.

¹⁶ Id.

¹⁷ Id.

¹⁸ Section 205.0315, F.S..

¹⁹ Id.

²⁰ Section 205.0535, F.S.

²¹ Section 205.0535(4), F.S.

²² Id.

²³ Id.

and are thereby excluded from paying local business taxes.²⁴ There is an optional partial exemption for businesses located in enterprise zones.²⁵ The delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation service.²⁶ There are also exemptions for persons engaged in specified farming activities,²⁷ certain nonresident persons regulated by the Department of Professional Regulation,²⁸ certain employees of businesses that are required to pay a local business tax,²⁹ certain disabled persons, the aged, and widows with minor dependents,³⁰ disabled veterans of any war or their unremarried spouses,³¹ and certain mobile home setup operations.³² Charitable, religious, fraternal, youth, civic, service, or other similar organization that make occasional sales or engage in fundraising projects that are performed exclusively by the members where the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic and service activities of the organization are also exempt.³³

Regulatory Provisions

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

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

Distribution of Revenues

The revenues derived from the business tax imposed by county governments, exclusive of the costs of collection and any credit given for municipal business taxes, are apportioned between the county's unincorporated area and the incorporated municipalities located within the county by a ratio derived by dividing their respective populations by the county's total population.³⁴ Within 15 days following the month of receipt, the apportioned revenues are sent to each governing authority; however, this provision does not apply to counties that have established a new rate structure pursuant to s. 205.0535, F.S.³⁵

Authorized Uses of Revenues

The tax proceeds are considered general revenue for the county or municipality. Additionally, the county business tax proceeds may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities and other sales and marketing techniques.³⁶ The proceeds of the additional county business tax imposed pursuant to s. 205.033(6), F.S., shall be distributed by the county's governing body to a designated organization or

²⁴ Section 205.022(1), F.S.

²⁵ Section 205.054, F.S.

²⁶ Section 205.063, F.S.

²⁷ Section 205.064, F.S.

²⁸ Section 205.065, F.S.

²⁹ Section 205.066, F.S.

³⁰ Section 205.162, F.S.

³¹ Section 205.171, F.S.

³² Section 205.193, F.S.

³³ Section 205.192, F.S.

³⁴ Section 205.033(4), F.S.

³⁵ Section 205.033(5), F.S.

³⁶ Section 205.033(7), F.S.

agency for the purpose of implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.³⁷

Total Revenues Collected

In fiscal year 2008-09, counties collected a total of \$31.8 million of local business tax revenue.³⁸ In that same fiscal year, municipalities collected a total of \$127.0 million of local business tax revenue.³⁹

Effect of Proposed Changes

The bill prohibits any increases in local business tax rates beginning in local FY 2012-13.

The bill phases out the local business tax by reducing the rates allowed to be levied over six years beginning in local FY 2013-14. However, the bill provides certain counties and municipalities an option to continue levying local business taxes, if at least 25 percent of their local tax revenue in local FY 2012-13 comes from local business taxes. Counties and municipalities opting to continue levying local business tax under these conditions may not increase their ad valorem millage rates above those levied in local FY 2012-13, unless they discontinue levying their local business tax.

The bill also provides that certain counties and municipalities imposing a local business tax as of March 9, 2012 and who have expressly pledged their local business tax revenue stream as security for bonds or certificates may continue to levy their local business tax until such bonds or certificates are paid off. The local business tax bond pledge must be an express and separate pledge of local business taxes to qualify. Expenditures of revenues from tax levies continued pursuant to this provision are limited to meeting obligations required by bonds or certificates that were issued before March 9, 2012. Revenues collected in excess of amounts necessary to meet obligations of bonds or certificates must be refunded to taxpayers in proportion to the amount of taxes paid by each taxpayer. No county or municipality may pledge as security, revenues derived from local business taxes imposed under ch. 205, F.S., for bonds or certificates issued after March 9, 2012.

B. SECTION DIRECTORY:

- Section 1: Creates s. 205.0105, F.S., to phase out local business tax rates, with optional exceptions for certain counties and municipalities.
- Section 2: Repeals s. 205.0315, F.S., to delete a statutory provision that allowed certain counties and municipalities to impose a local business tax.
- Section 3: Creates a provision of law that permits certain counties and municipalities that had pledged their local business tax revenue stream as security for bonds or certificates to continue levying their local business taxes under specified conditions.
- Section 4: Amends s. 205.033(1)(b), F.S., to conform to the repeal of s. 205.0315, F.S., in section 2 of the bill.
- Section 5: Amends s. 205.043(1)(b), F.S., to conform to the repeal of s. 205.0315, F.S., in section 2 of the bill.
- Section 6: Provides an effective date of upon becoming law.

³⁷ Section 205.033(6)(b), F.S.

³⁸ Figures obtained from the Office of Economic and Demographic Research.

³⁹ Id.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impact(s) of the proposed committee substitute. Staff estimates that the bill will have no effect on state revenue and will have a negative impact on local revenue of \$22 million beginning in local FY 2013-14, increasing by that amount each year over six years as the rate reduction described above is phased in, with a total recurring negative local revenue impact of \$132 million.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some persons currently paying a local business tax would see their local business tax obligation reduced and ultimately eliminated.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill likely phases out the local businesses taxes authorized under Chapter 205, F.S., by reducing authorized local business tax rates, except in certain specified circumstances. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to local business taxes; creating s.
 3 205.0105, F.S.; providing for a scheduled, incremental
 4 reduction of local business tax rates to zero;
 5 authorizing counties and municipalities to opt out of
 6 such reduction of local business tax rates under
 7 certain circumstances; prohibiting counties and
 8 municipalities opting out of reducing local business
 9 tax rates from increasing specified property tax
 10 millage rates except under certain circumstances;
 11 repealing s. 205.0315, F.S., relating to the adoption
 12 of business tax ordinances; deleting the authority for
 13 counties and municipalities to adopt business tax
 14 ordinances in the future; authorizing the continuation
 15 of local business taxation, to the extent necessary to
 16 meet specified debt obligations secured by local
 17 business tax revenues; requiring that certain excess
 18 amounts of revenue collected from the continuation of
 19 local business taxation be refunded to taxpayers on a
 20 pro rata basis; prohibiting counties or municipalities
 21 from pledging business tax revenues for specified debt
 22 obligations issued after a certain date; amending ss.
 23 205.033 and 205.043, F.S.; conforming cross-
 24 references; providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:
 27

28 Section 1. Section 205.0105, Florida Statutes, is created
 29 to read:

30 205.0105 Local business tax phase out.-

31 (1) Notwithstanding any other provision of this chapter,
 32 beginning October 1, 2012, local business tax rates levied
 33 pursuant to this chapter may not be increased. Each county and
 34 municipality levying a local business tax shall reduce the local
 35 business tax rate applicable to each business and occupational
 36 classification as follows:

37 (a) For business tax receipts due after October 1, 2013,
 38 and on or before September 30, 2014, to an amount no greater
 39 than five-sixths of the rate in effect on September 30, 2012.

40 (b) For business tax receipts due on or before September
 41 30, 2015, to an amount no greater than four-sixths of the rate
 42 in effect on September 30, 2012.

43 (c) For business tax receipts due on or before September
 44 30, 2016, to an amount no greater than three-sixths of the rate
 45 in effect on September 30, 2012.

46 (d) For business tax receipts due on or before September
 47 30, 2017, to an amount no greater than two-sixths of the rate in
 48 effect on September 30, 2012.

49 (e) For business tax receipts due on or before September
 50 30, 2018, to an amount no greater than one-sixth of the rate in
 51 effect on September 30, 2012.

52 (f) For business tax receipts due on or before September
 53 30, 2019, to zero.

54 (2) Any county or municipality whose business tax receipts
 55 in its 2012-2013 fiscal year comprised at least 25 percent of

56 the county's or municipality's total revenue derived from local
 57 taxes levied by the county or municipality in that fiscal year
 58 may opt out of the requirements of subsection (1). However, any
 59 qualifying county or municipality that opts out may not increase
 60 its general county millage, general municipal millage, or any
 61 dependent special district millage above the level in effect for
 62 fiscal year 2012-2013 in any fiscal year, unless it ceases
 63 levying all local business taxes authorized under this chapter
 64 in the same fiscal year. Any qualifying county or municipality
 65 that does not reduce its local business tax rates pursuant to
 66 subsection (1) beginning with business tax receipts due on or
 67 before September 30, 2014, is deemed to have opted out of the
 68 requirements of subsection (1) and is subject to the
 69 requirements of this subsection. As used in this section, the
 70 terms "general county millage," "general municipal millage,"
 71 "and dependent special district millage" have the same meanings
 72 as in s. 200.001(1).

73 Section 2. Section 205.0315, Florida Statutes, is
 74 repealed.

75 Section 3. Notwithstanding the revisions to chapter 205,
 76 Florida Statutes, made by this act, counties or municipalities
 77 imposing a local business tax as of March 9, 2012, pursuant to
 78 chapter 205, Florida Statutes, may continue to levy such tax in
 79 the same manner and with the same rates and classifications as
 80 are in effect on March 9, 2012, to the extent necessary to meet
 81 all obligations to or for the benefit of holders of bonds or
 82 certificates that were issued before March 9, 2012, and for
 83 which taxes levied pursuant to chapter 205, Florida Statutes,

84 are expressly identified and pledged as security, separate from
 85 any other pledge of non-ad valorem revenues. Expenditures of
 86 revenues from tax levies continued pursuant to this section are
 87 limited to meeting obligations required by bonds or certificates
 88 that were issued before March 9, 2012. Revenues collected in
 89 excess of amounts necessary to meet obligations of bonds or
 90 certificates must be refunded to taxpayers in proportion to the
 91 amount of taxes paid by each taxpayer. A county or municipality
 92 may not pledge as security for bonds or certificates issued
 93 after March 9, 2012, revenues derived from local business taxes
 94 imposed under chapter 205, Florida Statutes.

95 Section 4. Paragraph (b) of subsection (1) of section
 96 205.033, Florida Statutes, is amended to read:

97 205.033 Conditions for levy; counties.—

98 (1) The following conditions are imposed on the authority
 99 of a county governing body to levy a business tax:

100 (b) Unless the county implements s. 205.0535 or has
 101 adopted ~~adopts~~ a new business tax ordinance under former s.
 102 205.0315, a business tax levied under this subsection may not
 103 exceed the rate provided by this chapter in effect for the year
 104 beginning October 1, 1971; however, beginning October 1, 1980,
 105 the county governing body may increase business taxes authorized
 106 by this chapter. The amount of the increase above the tax rate
 107 levied on October 1, 1971, for taxes levied at a flat rate may
 108 be up to 100 percent for business taxes that are \$100 or less;
 109 50 percent for business taxes that are between \$101 and \$300;
 110 and 25 percent for business taxes that are more than \$300.
 111 Beginning October 1, 1982, the increase may not exceed 25

112 percent for taxes levied at graduated or per unit rates.
 113 Authority to increase business taxes does not apply to licenses
 114 or receipts granted to any utility franchised by the county for
 115 which a franchise fee is paid.

116 Section 5. Paragraph (b) of subsection (1) of section
 117 205.043, Florida Statutes, is amended to read:

118 205.043 Conditions for levy; municipalities.—

119 (1) The following conditions are imposed on the authority
 120 of a municipal governing body to levy a business tax:

121 (b) Unless the municipality implements s. 205.0535 or has
 122 adopted ~~adopts~~ a new business tax ordinance under former s.
 123 205.0315, a business tax levied under this subsection may not
 124 exceed the rate in effect in the municipality for the year
 125 beginning October 1, 1971; however, beginning October 1, 1980,
 126 the municipal governing body may increase business taxes
 127 authorized by this chapter. The amount of the increase above the
 128 tax rate levied on October 1, 1971, for taxes levied at a flat
 129 rate may be up to 100 percent for business taxes that are \$100
 130 or less; 50 percent for business taxes that are between \$101 and
 131 \$300; and 25 percent for business taxes that are more than \$300.
 132 Beginning October 1, 1982, an increase may not exceed 25 percent
 133 for taxes levied at graduated or per unit rates. Authority to
 134 increase business taxes does not apply to receipts or licenses
 135 granted to any utility franchised by the municipality for which
 136 a franchise fee is paid.

137 Section 6. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
2 Representative Patronis offered the following:

3
4 **Amendment**

5 Remove lines 55-64 and insert:

6 in its 2012-2013 fiscal year comprised at least 20 percent of
7 the county's or municipality's total revenue derived from local
8 taxes levied by the county or municipality in that fiscal year
9 may opt out of the requirements of subsection (1). However, any
10 qualifying county or municipality that opts out may not increase
11 its general county millage, general municipal millage, or any
12 dependent special district millage above the level in effect for
13 fiscal year 2012-2013 in any fiscal year, unless a majority of
14 the electors of the qualifying county or qualifying municipality
15 voting in a general or special election held not more than 12
16 months before the increased rate takes effect has approved the
17 increased rate. Any qualifying county or municipality
18