Finance and Tax Committee

Wednesday, February 15, 2012

8:00 a.m.

404 House Office Building

MEETING PACKET

REVISED

Dean Cannon
Speaker

Stephen Precourt
Chair

Finance and Tax Committee

AGENDA

February15, 2012
8:00 a.m.
404 House Office Building

I. Call to Order/Roll Call

II. Consideration of the following bill(s):
CS/HB 133 Assessment of Residential and Nonhomestead Real Property by Energy & Utilities Subcommittee, Frishe

CS/HB 615 Sale of Tobacco Products by Business & Consumer Affairs Subcommittee, Horner

HB 865 Pinellas Suncoast Transit Authority, Pinellas County by Hooper

CS/HB 933 Affordable Housing by Community & Military Affairs Subcommittee, Rouson

CS/HB 1033 Lealman Special Fire Control District, Pinellas County by Community & Military Affairs Subcommittee, Ahern

CS/HB 1299 North Lake County Hospital District, Lake County by Community & Military Affairs Subcommittee, Metz

CS/HB 1319 County Boundary Lines by Community & Military Affairs Subcommittee, Harrell

HB 1393 Taxation Of Transient Rentals by Brodeur

CS/HB 1417 State Investments by Government Operations Subcommittee, Oliva

CS/HB 1495 Spring Lake Improvement District, Highlands County by Community & Military Affairs Subcommittee, Albritton

HB 7117 Energy by Energy & Utilities Subcommittee, Plakon

III. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 133 Assessment of Residential and Nonhomestead Real Property
SPONSOR(S): Energy & Utilities Subcommittee, Frishe and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 156

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	15 Y, 0 N, As CS	Whittier	Collins
2) Community & Military Affairs Subcommittee	13 Y, 0 N	Gibson	Hoagland
3) Finance & Tax Committee		Aldridge	Langston
4) State Affairs Committee			

SUMMARY ANALYSIS

In the November 2008 General Election, Florida voters approved a constitutional amendment relating to property taxes authorizing the Legislature, by general law, to prohibit consideration of the following in the determination of the assessed value of real property used for residential purposes:

- Any change or improvement made for the purpose of improving the property's resistance to wind damage.
- The installation of a renewable energy source device.

This bill implements the 2008 constitutional amendment. Specifically, the bill defines "changes or improvements made for the purpose of improving a property's resistance to wind damage" and "renewable energy source device." It provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider the increase in the just value attributed to changes or improvements made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device. The bill specifies that the provision applies to new and existing property. Specifically, the provision applies to changes or improvements made to properties on or after January 1, 2012, and applies to assessments beginning on January 1, 2013.

The Revenue Estimating Conference (REC) has estimated that this bill will have no impact on state revenues. The REC estimated, **assuming current millage rates,** that the bill will have a negative impact on school tax revenues of $5.1 million in FY 2013-14, $10.4 million in FY 2014-15, $16.5 million in FY 2015-16 and a recurring negative impact on school tax revenues of $24.1 million. The estimated statewide negative impact on local government non-school tax revenue is $7.1 million in FY 2013-14, $14.4 million in FY 2014-15, $23.1 million in FY 2015-16 with a negative $33.6 million recurring.

The bill takes effect on July 1, 2012, and applies to assessments beginning January 1, 2013.

The bill may implicate the mandate provisions of Article VII, section 18 of the Florida Constitution, requiring a two-thirds vote of the membership of each house to become law. (See Comments section).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to Article VII, section 3(d), Florida Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature approved a property tax exemption for real property on which a renewable energy source device[1] is installed and is being operated. However, the exemption expired after 10 years, as provided in the constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

In December of 2000, the last of the exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission adding the following language to Article VII, section 4, of the Florida Constitution:

> (i) The legislature, by general law and subject to conditions specified therein, may[2] prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:
>
> (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
>
> (2) The installation of a renewable energy source device.

[1] Ss. 196.175 and 196.012(14), F.S.

[2] The 2008 constitutional amendment is permissive and does not require the Legislature to enact legislation.

The amendment also repealed the constitutional authority for the Legislature to grant an *ad valorem* tax exemption to a renewable energy source device and to real property on which such device is installed and operated. This repealed language had provided the constitutional basis for legislation passed in 1980 and in 2008.

Although the constitutional provision that the *ad valorem* tax exemption was based on has been repealed, the statutory language has not yet been repealed by the Legislature. On March 10, 2010, the House passed HB 7005, repealing the obsolete language [ss. 196.175 and 196.012(14), F.S.]. The bill, however, was not heard in the Senate and died in Messages. On April 29, 2011, the House, again, passed the measure, but the bill was not heard in the Senate.

Property Valuation

Article VII, section 4, of the Florida Constitution, provides that all property, with some exceptions, is to be assessed at "just value." Florida courts define "just value" as the estimated fair market value of the property. The constitution requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

"Assessed value of property"[3] means an annual determination of the just or fair market value of an item or property or the value of a homestead property after application of the "Save Our Homes" assessment limitation[4] and the 10 percent cap on non-homestead property.[5] In addition, "assessed value" is also the classified use value of agricultural or other special classes of property that are valued based on their current "classified" use rather than on market value.

Property Appraisals

Section 193.011, F.S., lists the following factors to be taken into consideration when determining just valuation:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

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[3] S. 192.001(2), F.S.

[4] The "Save Our Homes" amendment to the Florida Constitution was approved by voters in 1992. This amendment limits annual assessment increases to the lower of the change in the Consumer Price Index (CPI) or 3 percent of the assessment for the prior year. *See* Art. VII, s. 4(d)(1), Fla. Const.

[5] On January 29, 2008, Florida voters approved a constitutional amendment changing property taxation provisions. Some of the changes provided that the property tax assessment of certain non-homestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed.[6]

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (the Governor and Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010.

Effect of Proposed Changes

The bill provides that, when determining the assessed value of real property used for residential purposes, for both new and existing property, the property appraiser may not consider the increase in the just value of the property attributable to the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
    - Improving the strength of the roof deck attachment.
    - Creating a secondary water barrier to prevent water intrusion.
    - Installing wind-resistant shingles.
    - Installing gable-end bracing.
    - Reinforcing roof-to-wall connections.
    - Installing storm shutters.
    - Installing opening protections.
- The installation and operation of a renewable energy source device, which means any of the following equipment which collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:
    - Solar energy collectors, photovoltaic modules, and inverters.
    - Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

[6] The former Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc., for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, entitled *Development of Loss Relativities for Wind Resistive Features of Residential Structures*, was completed in 2002. The study's mathematical results, termed "wind loss relativities," were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property. The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

- Rockbeds.
- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.
- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
- Windmills and wind turbines.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The bill provides that when residential real property is being assessed, any increase in the just value of the property attributable to changes or improvements made to improve its resistance to wind damage, or for the installation of a renewable energy source device, may not be considered if an application is filed with the property appraiser on or before March 1 of the first year the property owner requests the assessment. The provision applies to changes or improvements to properties made on or after January 1, 2012, and applies to assessments beginning January 1, 2013.

The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish the increase in just value attributable to the renewable energy source device, or changes or improvements made for the purpose of improving the property's resistance to wind damage.

Similar to provisions in s. 196.011, F.S., the language provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the Truth in Millage notice and authorizes the applicant to file a petition with the Value Adjustment Board (VAB), pursuant to s. 194.011(3), F.S. The applicant must pay a non-refundable fee of $15.00 upon filing the petition. Upon review of the petition by the property appraiser or the VAB, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances to warrant granting assessment under this section, the property appraiser must recalculate the assessment in accordance with the new provision.

The bill deletes the existing definition of renewable energy source device in s. 196.012(14), F.S., and repeals the obsolete exemption (s. 196.175, F.S.), based on the repeal of the constitutional provision by the voters in 2008. Several cross-references are amended.

B. SECTION DIRECTORY:

Section 1: creates s. 193.624, F.S., relating to definitions and assessment of residential real property.

Section 2: amends s. 193.155, F.S., relating to homestead assessments.

Section 3: amends s. 193.1554, F.S., relating to the assessment of nonhomestead residential property.

Section 4: amends s. 196.012, F.S., deleting the definition of a renewable energy source device.

Section 5: amends s. 196.121, F.S., amending a cross-reference.

Section 6: amends s. 196.1995, F.S., amending cross-references.

Section 7: repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

Section 8: provides an effective date of July 1, 2012, and applies to assessments beginning on January 1, 2013.

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 REC estimated, **assuming current millage rates,** that the bill will have a negative impact on school tax revenues of $5.1 million in FY 2013-14, $10.4 million in FY 2014-15, $16.5 million in FY 2015-16 and a recurring negative impact on school tax revenues of $24.1 million. The estimated statewide negative impact on local government non-school tax revenue is $7.1 million in FY 2013-14, $14.4 million in FY 2014-15, $23.1 million in FY 2015-16 with a negative $33.6 million recurring.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in the bill may result in lower property tax expenses and lower insurance rates and energy costs for taxpayers who make qualifying improvements to residential real property on or after January 1, 2012.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Article VII, section 18, of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing *ad valorem* tax bases compared to that which would exist under current law. 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.

   Although this bill is implementing a constitutional amendment adopted by Florida voters, the constitutional language is permissive and only authorizes, not requires, the Legislature to act.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2012, the Energy & Utilities Subcommittee heard and passed PCS for HB 133 as a Committee Substitute. Mainly, the Committee Substitute makes the following changes to the original bill:

- Deletes proposed direction to the Department of Revenue to review every change made to the assessed or taxable value of a parcel on the assessment roll that was the result of an informal conference;
- Deletes proposed definitions of "placed on the tax roll" for purposes of assessment of residential, nonhomestead residential, and nonresidential real properties;
- Deletes proposed subsection referring to properties that are combined or divided for purposes of assessments;
- Amends assessment calculations for purposes of the intent of the bill; and
- Specifies that the provision only apply to installations, changes or improvements to properties made on or after January 1, 2012.

This analysis addresses the current Committee Substitute.

A bill to be entitled

An act relating to the assessment of residential and nonhomestead real property; creating s. 193.624, F.S.; providing definitions; excluding the value of certain installations, changes, or improvements made after a specified date from the assessed value of residential real property; providing for application; requiring the filing of applications by specified times in order for such installations, changes, or improvements to be excluded from the assessed value of residential real property; providing procedural requirements and limitations; requiring a nonrefundable filing fee for a petition to the value adjustment board; amending s. 193.155, F.S.; specifying additional exceptions to the assessment of homestead property at just value; amending s. 193.1554, F.S.; specifying additional exceptions to assessment of nonhomestead property at just value; amending s. 196.012, F.S.; deleting the definition of the terms "renewable energy source device" and "device"; conforming a cross-reference; amending ss. 196.121 and 196.1995, F.S.; conforming cross-references; repealing s. 196.175, F.S., relating to the property tax exemption for renewable energy source devices; providing for application of the act; providing an effective date.

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

Section 1. Section 193.624, Florida Statutes, is created to read:

193.624 Assessment of residential property.—

(1) For the purposes of this section:

(a) "Changes or improvements made for the purpose of improving a property's resistance to wind damage" means:

1. Improving the strength of the roof-deck attachment;

2. Creating a secondary water barrier to prevent water intrusion;

3. Installing wind-resistant shingles;

4. Installing gable-end bracing;

5. Reinforcing roof-to-wall connections;

6. Installing storm shutters; or

7. Installing opening protections.

(b) "Renewable energy source device" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

1. Solar energy collectors, photovoltaic modules, and inverters.

2. Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

3. Rockbeds.

4. Thermostats and other control devices.

5. Heat exchange devices.

6. Pumps and fans.

7. Roof ponds.

8. Freestanding thermal containers.

9. Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.

10. Windmills and wind turbines.

11. Wind-driven generators.

12. Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.

13. Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of real property used for residential purposes, any increase in the just value of the property attributable to the installation of a renewable energy source device or changes or improvements made for the purpose of improving a property's resistance to wind damage may not be considered.

(3) This section applies to the installation of a renewable energy source device or changes or improvements made for the purpose of improving a property's resistance to wind damage installed or made on or after January 1, 2012, to new and existing residential real property.

(4) For a parcel of residential property to be assessed pursuant to this section, the owner of such property must file with the county property appraiser an application on or before March 1 of the first year such treatment is requested. The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such

information as may reasonably be required to establish the increase in just value attributable to the renewable energy source device or changes or improvements made for the purpose of improving the property's resistance to wind damage. Failure to make timely application by March 1 constitutes a waiver of the property owner to have his or her assessment calculated for that year under this section. However, an applicant who fails to file an application by March 1 may file a late application and may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting assessment under this section. The petition must be filed on or before the 25th day after the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding s. 194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances judged by the property appraiser or the value adjustment board to warrant granting assessment under this section, the property appraiser shall calculate the assessment pursuant to this section.

Section 2. Paragraph (a) of subsection (4) of section 193.155, Florida Statutes, is amended to read:

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

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 3. Paragraph (a) of subsection (6) of section 193.1554, Florida Statutes, is amended to read:

193.1554 Assessment of nonhomestead residential property.—

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 4. Subsections (14) through (20) of section 196.012, Florida Statutes, are amended to read:

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

~~(14) "Renewable energy source device" or "device" means any of the following equipment which, when installed in connection with a dwelling unit or other structure, collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:~~

~~(a) Solar energy collectors.~~

~~(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.~~

~~(c) Rockbeds.~~

~~(d) Thermostats and other control devices.~~

~~(e) Heat exchange devices.~~

~~(f) Pumps and fans.~~

~~(g) Roof ponds.~~

~~(h) Freestanding thermal containers.~~

~~(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.~~

~~(j) Windmills.~~

~~(k) Wind-driven generators.~~

~~(l) Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.~~

~~(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.~~

(14)~~(15)~~ "New business" means:

(a)1. A business or organization establishing 10 or more new jobs to employ 10 or more full-time employees in this state, paying an average wage for such new jobs that is above the average wage in the area, which principally engages in any one or more of the following operations:

a. Manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or

b. Is a target industry business as defined in s. 288.106(2)(t);

2. A business or organization establishing 25 or more new jobs to employ 25 or more full-time employees in this state, the

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

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

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

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

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

(a)1. A business or organization establishing 10 or more new jobs to employ 10 or more full-time employees in this state, paying an average wage for such new jobs that is above the average wage in the area, which principally engages in any of the operations referred to in subparagraph (15)(a)1.; or

2. A business or organization establishing 25 or more new jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the

facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site located within the same county, municipality, or both colocated with a commercial or industrial operation owned by the same business or organization under common control with the same business or organization, resulting in a net increase in employment of not less than 10 percent or an increase in productive output or sales of not less than 10 percent.

(b) Any business or organization located in an enterprise zone or brownfield area that increases operations on a site located within the same zone or area colocated with a commercial or industrial operation owned by the same business or organization under common control with the same business or organization.

(16) ~~(17)~~ "Permanent resident" means a person who has established a permanent residence as defined in subsection (17) ~~(18)~~.

(17) ~~(18)~~ "Permanent residence" means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

(18) ~~(19)~~ "Enterprise zone" means an area designated as an enterprise zone pursuant to s. 290.0065. This subsection expires

on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(19) ~~(20)~~ "Ex-servicemember" means any person who has served as a member of the United States Armed Forces on active duty or state active duty, a member of the Florida National Guard, or a member of the United States Reserve Forces.

Section 5. Subsection (2) of section 196.121, Florida Statutes, is amended to read:

196.121 Homestead exemptions; forms.—

(2) The forms shall require the taxpayer to furnish certain information to the property appraiser for the purpose of determining that the taxpayer is a permanent resident as defined in s. 196.012(16) ~~196.012(17)~~. Such information may include, but need not be limited to, the factors enumerated in s. 196.015.

Section 6. Subsections (6) and (8), paragraph (d) of subsection (9), and paragraph (d) of subsection (11) of section 196.1995, Florida Statutes, are amended to read:

196.1995 Economic development ad valorem tax exemption.—

(6) With respect to a new business as defined by s. 196.012(14)(c) ~~196.012(15)(c)~~, the municipality annexing the property on which the business is situated may grant an economic development ad valorem tax exemption under this section to that business for a period that will expire upon the expiration of the exemption granted by the county. If the county renews the exemption under subsection (7), the municipality may also extend its exemption. A municipal economic development ad valorem tax exemption granted under this subsection may not extend beyond the duration of the county exemption.

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

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

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

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

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

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

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

(g) Other information deemed necessary or appropriate by the department, county, or municipality.

(9) Before it takes action on the application, the board

of county commissioners or the governing authority of the municipality shall deliver a copy of the application to the property appraiser of the county. After careful consideration, the property appraiser shall report the following information to the board of county commissioners or the governing authority of the municipality:

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

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

(d) A finding that the business named in the ordinance meets the requirements of s. 196.012(14) or (15) ~~196.012 (15) or (16)~~.

Section 7. Section 196.175, Florida Statutes, is repealed.

Section 8. This act shall take effect July 1, 2012, and applies to assessments beginning January 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 615 Sale of Tobacco Products
SPONSOR(S): Business & Consumer Affairs Subcommittee and Horner
TIED BILLS: **IDEN./SIM. BILLS:** SB 1008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N, As CS	Livingston	Creamer
2) Finance & Tax Committee		Wilson	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (division) maintains a delinquent payment list relating to the alcoholic beverage industry for retailers who do not pay distributors within the statutorily allotted timeframe when buying alcoholic beverages on credit. There are no corresponding statutes requiring this type of delinquent payment mechanism for cigarette and other tobacco product retailers and tobacco distributors nor does the division maintain such a list.

Currently, the term (cigarette) manufacturer means a domestic person or entity that possesses a valid federal permit and that manufactures, fabricates, assembles, processes, or labels a finished cigarette.

The bill modifies the definition of manufacturer, to include a person or entity that provides for the use of a machine located at a retail establishment that enables a person to fabricate, assemble, or process tobacco products into a roll or tube for smoking.

The bill also addresses the extension of credit to retail dealers for the purchase of tobacco products. The bill authorizes credit for the sale of tobacco products to be extended to a retail dealer at the discretion of a wholesale dealer.

The bill further provides that when the wholesaler has obtained a civil judgment from an appropriate court for nonpayment of debt which has been incurred for the purchase of tobacco products by a tobacco retailer the wholesaler may petition the division to suspend or to deny renewal of the tobacco retailer's tobacco permit for reasons of nonpayment of debt. The tobacco retailer will be unable to renew the tobacco permit until the retail dealer submits proof to the division that arrangements for payment have been agreed to between the parties or that the civil judgment against the retail dealer has been satisfied in full.

The Revenue Estimating Conference has not reviewed this bill. Staff estimates the provisions in this bill will have an indeterminate positive state revenue impact as a result of additional taxes and license fees collected by the division from manufacturers.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current situation

Tobacco overview and definitions

The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of tobacco products and alcoholic beverages.[1]

Chapters 210, 386, and 569, F.S., provide the regulatory and tax structure for tobacco sales. Part I of chapter 210, F.S., provides for the taxation of cigarettes. Part II provides for the taxation of other tobacco products. Cigarettes are taxed in a different manner than other tobacco products and cigars are not subject to an excise tax. Tobacco products, cigars, and cigarettes are also subject to the sales tax.

Section 210.01(6), F.S., defines "wholesale dealer" to mean "any person located inside or outside this state who sells cigarettes to retail dealers or other persons for purposes of resale only." Section 210.01(7), F.S., defines "retail dealer" to mean any person located inside or outside this state other than a wholesale dealer engaged in the business of selling cigarettes."

Section 210.01(21), F.S., defines "manufacturer" to mean "any domestic person or entity with a valid permit under 26 U.S.C. s. 5712 that manufactures, fabricates, assembles, processes, or labels a finished cigarette."

Part II of chapter 210, F.S., defines "tobacco products" to mean loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), or cigars.

Section 210.01(1), F.S., defines "cigarette" to mean any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Tobacco licenses, permits, and penalties

Section 210.16, F.S., specifies, in part, that "the division may suspend for a reasonable period of time or revoke, in its discretion, the permits issued under the provisions of this part or chapter 569 to any person who has violated any other provision of this part or chapter 569." This section also provides that "in addition to the suspension or revocation of permits, the division may impose civil penalties against holders of permits for violations of this part or rules and regulations relating thereto."

Chapter 569, F.S., sets forth the licensing and regulatory scheme for persons selling tobacco products. The division is charged with the supervision of the distribution of cigarettes and other tobacco products, permitting of cigarette distributing agents, wholesale dealers, exporters and retail dealers, collection of related taxes and fees, and imposing penalties for violations of the tobacco laws.

[1] S. 561.02, F.S.

Proposed changes

Manufacturer definition

The bill modifies the definition of manufacturer, under s. 210.01(21), F.S., to include a person or entity that provides for, or leases, the use of a machine at a retail establishment that enables any person to fabricate, assemble, or process at that establishment tobacco products as defined in s. 210.25(11), into a roll or tube for smoking.

Tobacco sales on credit and license suspension

The bill also amends s. 210.16, F.S. to authorize credit for the sale of tobacco products to be extended to a retail dealer at the discretion of a wholesale dealer. In circumstances where the wholesaler has obtained a civil judgment from an appropriate court for nonpayment of debt which has been incurred for the purchase of tobacco products by a tobacco retailer, the bill allows the wholesaler to petition the division for additional administrative action.

The bill further provides, in s. 210.16, F.S., that when the wholesaler has obtained a civil judgment from an appropriate court for nonpayment of debt which has been incurred for the purchase of tobacco products by a tobacco retailer the wholesaler may petition the division to suspend or to deny renewal of the tobacco retailer's tobacco permit for reasons of nonpayment of debt. The tobacco retailer will be unable to renew the tobacco permit until the retail dealer submits proof to the division that arrangements for payment have been agreed to between the parties or that the civil judgment against the retail dealer has been satisfied in full.

B. SECTION DIRECTORY:

Section 1: Amends s. 210.01, F.S., to amend the definition of "manufacturer" for purposes of regulation and taxation of tobacco products.

Section 2: Amends s. 210.16, F.S., to authorize credit for the sale of tobacco products to be extended to a retail dealer at the discretion of a wholesale dealer, and establish, under specified conditions, for the suspension of the sale of tobacco products to retail dealers who are delinquent in their credit payments.

Section 3: Amends s. 210.181, F.S., to conform a cross reference.

Section 4: Provides for an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not reviewed this bill. Staff estimates the provisions in this bill will have an indeterminate positive state revenue impact as a result of additional taxes and license fees collected by the division from manufacturers.

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an impact on the retail establishments that provide services for machine rolled cigarettes as it relates to tobacco manufacturing license fees and taxes that will be required to be paid.

D. FISCAL COMMENTS:

None.

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 an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue 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

On January 31, 2012, the Business & Consumer Affairs adopted a strike-all amendment and an amendment to the strike-all amendment and passed the bill as a CS. The CS differs from the original bill as follows:

- removes provisions that would have established a delinquent list procedure for transactions between a tobacco distributor and a retail tobacco dealer based on language currently used for the extension of credit for the purchase of alcoholic beverage and established a collection mechanism for tobacco product payments which are delinquent;
- modifies the definition of manufacturer, to include a person or entity that provides for the use of a machine located at a retail establishment that enables a person to roll tobacco products into a tube for smoking; and
- provides for the suspension of a permit for the sale of tobacco products by a retail dealer who is delinquent in credit payments to a wholesale dealer.

This analysis reflects the changes made by the CS.

A bill to be entitled

An act relating to the sale of tobacco products; amending s. 210.01, F.S.; revising the definition of the term "manufacturer" to include persons that provide for the use or lease of cigarette manufacturing machines at retail establishments; amending s. 210.16, F.S.; authorizing credit for the sale of tobacco products to be extended to a retail dealer under specified conditions; providing for the suspension of the sale of tobacco products to retail dealers delinquent in their credit payments; amending s. 210.181, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (21) of section 210.01, Florida Statutes, is amended to read:

210.01 Definitions.—When used in this part the following words shall have the meaning herein indicated:

(21) "Manufacturer" means any domestic person or entity with a valid permit under 26 U.S.C. s. 5712 that manufactures, fabricates, assembles, processes, or labels a finished cigarette or provides for the use of, or leases, a machine at a retail establishment that enables any person to fabricate, assemble, or process at that establishment tobacco products as defined in s. 210.25(11) into a roll or tube for smoking.

Section 2. Subsections (4) and (5) of section 210.16, Florida Statutes, are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to that section to read:

210.16 Revocation or suspension of permit.—

(4) At the discretion of the wholesale dealer making the sale, credit for the sale of tobacco products may be extended to a retail dealer that has been issued a permit pursuant to chapter 569. Upon submission of proof to the division by a wholesale dealer, the division shall suspend or deny the renewal of a retail permit to any person or, if a corporation, to any officer or stockholder of the corporation who has failed to satisfy the terms of a civil judgment obtained against the person, corporation, officer, or stockholder for failure to pay for tobacco products purchased from a wholesale dealer. The license shall remain suspended until the retail dealer submits proof to the division that it has entered into an agreed payment plan with the wholesale dealer or satisfied the civil judgment in full.

Section 3. Subsection (1) of section 210.181, Florida Statutes, is amended to read:

210.181 Civil penalties.—

(1) Except as provided in s. 210.16(6) ~~210.16(5)~~, whoever knowingly omits, neglects, or refuses to comply with any duty imposed upon him or her by this part, or to do or cause to be done any of the things required by this part, or does anything prohibited by this part shall, in addition to any other penalty provided in this part, be liable for a fine of $1,000 or five

times the retail value of the cigarettes involved, whichever is greater.

Section 4. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 865 Pinellas Suncoast Transit Authority, Pinellas County
SPONSOR(S): Hooper
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	10 Y, 4 N	Tait	Hoagland
2) Finance & Tax Committee		Flemming PF	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Charter County and Regional Transportation System Surtax, a local discretionary sales surtax, may be levied by certain counties at a rate of up to 1%. Generally, the tax proceeds are for the development, construction, operation, and maintenance of fixed guideway rapid transit systems, bus systems, on-demand transportation services, and roads and bridges.

The Pinellas County Suncoast Transit Authority (Authority) is an independent special district that was created in 1970 to provide public transit services in the Pinellas County area. The Authority is authorized to levy an ad valorem tax on the taxable real property in the Authority area, with a maximum millage rate of 0.75 mills. The Authority's Proposed Operating and Capital Budget for Fiscal Year 2012 adopts a millage rate of 0.7305 mills, for a total of $32,823,710 in ad valorem taxes to be levied.

The bill requires the Authority to cease levying and collecting ad valorem tax revenue if Pinellas County levies the Charter County and Regional Transportation System Surtax, pursuant to s. 212.055(1), F.S., and offers the surtax proceeds or a portion thereof to the Authority and the Authority elects to accept funding through this source.

Pursuant to the current provisions of s. 212.055(1)(a), F.S., the decision to levy the discretionary sales surtax would be subject to approval by a majority vote of the county's electorate or by a charter amendment approved by a majority vote of the county's electorate.

The Economic Impact Statement says that the bill would benefit property holders in Pinellas County by reducing their property ad valorem rates by approximately 0.75 mills, or a total of $32.8 million annually, in the event a transportation surtax is ever approved.

According the *2011 Local Government Financial Information Handbook*, Pinellas County would receive an estimated $120,739,849 for each 1% assessed under local discretionary sales surtax levies.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Discretionary Sales Surtaxes

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions that are "subject to the state tax imposed on sales, use, services, rentals, admissions," and other authorized transactions, pursuant to ch. 212, F.S., and "communications services" as defined for purposes of ch. 202, F.S."[1] Discretionary sales surtax must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.[2] The surtax applies to the first $5,000 of any single taxable item when sold to the same purchaser at the same time.[3]

There are eight different types of local discretionary sales surtaxes currently authorized in law[4]:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax.

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

Charter County and Regional Transportation System Surtax[5]

Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under ch. 343 or ch. 349, F.S., may levy the Charter County and Regional Transportation System Surtax at a rate of up to 1%.[6] Pinellas County is authorized to levy the Charter County and Regional Transportation System Surtax.[7]

The levy is subject to approval by a majority vote of the county's electorate or by a charter amendment approved by a majority vote of the county's electorate.[8]

In addition to the Emergency Fire Rescue Services and Facilities Surtax and the School Capital Outlay Surtax, this surtax is not subject to a combined rate limitation that impacts other discretionary sales surtaxes.[9]

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[1] Section 212.054(2)(a), F.S.
[2] Section 212.052(2)(a), (3)(a)1., F.S.; *See also* Florida Revenue Estimating Conference, 2012 Florida Tax Handbook 207 (2012), *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2012.pdf.
[3] Section 212.054(2)(b)1., F.S.
[4] Section 212.055, F.S.
[5] Section 212.055(1), F.S.
[6] Section 212.055(1)(a), (b), F.S.
[7] Ch. 80-590, L.O.F. (designating Pinellas County as a charter county upon referendum, which was approved on Oct. 7, 1980).
[8] Section 212.055(1)(a), F.S.

The surtax proceeds shall be deposited into the county trust fund or remitted by the county's governing body to an expressway, transit, or transportation authority created by law.[10]

Authorized Uses of Proceeds

Generally, the tax proceeds are for the development, construction, operation, and maintenance of fixed guideway rapid transit systems, bus systems, on-demand transportation services, and roads and bridges.[11]

The surtax proceeds shall be applied to as many or as few of the following uses as the county's governing body deems appropriate.[12]

1. Deposited into the county trust fund and used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system.
2. Remitted by the county's governing body to an expressway or transportation authority created by law to be used at the authority's discretion for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval of the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges.
3. Used by the county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the county's governing body for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses.
4. Used by the county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the county's governing body for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to ch. 163, F.S., the county's governing body may distribute surtax proceeds to a municipality, or an expressway or transportation authority created by law to be expended for such purposes. Any county that has entered into interlocal agreements for the distribution of proceeds to one or more of its municipalities shall revise such agreements no less than every five years in order to include any municipalities created since the prior agreements were executed.

As it relates to the authorized uses of the surtax proceeds, the term *on-demand transportation services* means transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.[13]

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[9] Fla. Office Econ. & Demog. Resch., 2011 Local Government Financial Information Handbook167 (Oct. 2011), *available at* http://edr.state.fl.us/Content/local-government/reports/lgfih11.pdf.

[10] Section 212.055(1)(d)1., F.S.

[11] *Id.*

[12] Section 212.055(1)(d), F.S.

[13] Section 212.055(1)(e), F.S.

Pinellas Suncoast Transit Authority

The Pinellas County Suncoast Transit Authority (Authority) is an independent special district that was created in 1970[14] to provide public transit services in the Pinellas County area. The Authority's charter was codified in 2000.[15] The Authority's vision statement is "Quick, affordable transportation from where you are to where you want to go," and the Authority's mission is to provide "safe, affordable, public transit in our community." The mission statement goes on to say that the Authority helps to "guide land use decisions and support economic vitality to enhance our quality of life."[16]

The Authority's initial service area included the communities of Belleair, Belleair Bluffs, Clearwater, Dunedin, Indian Rocks Beach, Largo, Safety Harbor, and unincorporated areas directly between these municipalities. Pursuant to a charter provision allowing other municipalities and unincorporated areas to become part of the service area, the Authority later expanded to include St. Petersburg, Gulfport, Oldsmar, Seminole, Indian Shores, South Pasadena, Madeira Beach, North Redington Beach, Pinellas Park, Redington Beach, Redington Shores, Tarpon Springs, and additional unincorporated area. The Authority currently serves most of the unincorporated areas of Pinellas County and 21 of the county's 24 municipalities, which accounts for 98% of the county's population and 97% of its land area.[17] In addition, two of the cities that are not in the Authority area, the Cities of Treasure Island and St. Pete Beach, contract for service with the Authority.[18]

The Authority currently has 191 transit vehicles, and runs 37 bus routes, including 2 express routes to Hillsborough County.[19] During the 2010 Fiscal Year, the Authority had a total ridership of 13.1 million, with a mileage of 8.4 million miles and 582,686 service hours. In addition, there were more than 360,000 bikes on buses trips and 268,000 paratransit trips in accordance with the Americans with Disabilities Act.

The Authority is authorized to levy an ad valorem tax on the taxable real property in the Authority area, with a maximum millage rate of 0.75 mills. The Authority's Proposed Operating and Capital Budget for Fiscal Year 2012 (FY 2012) adopts a millage rate of 0.7305 mills, for a total of $32,823,710 in ad valorem taxes to be levied.[20] This an increase in the millage rate, which has been at 0.5601 mills since October 2007.

Other funding sources for the Authority include passenger fares, auxiliary revenue, non-transportation revenue, state reimbursement of fuel taxes, and state and federal grants. These funding sources comprise approximately 46% of the Authority's projected operating revenues for FY 2012, with the remaining revenue coming from the levying and collection of ad valorem taxes.[21]

Pinellas County Transportation Task Force

The Pinellas County Transportation Task Force (Task Force) was made up of 25 citizens and elected officials from the county, and met from June 2010 to December 2010.[22] Their goal was to focus on ways to capitalize on transportation investments and opportunities, and they worked with

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[14] Ch. 70-907, L.O.F., created the Authority as the Central Pinellas Transit Authority. Ch. 82-368, L.O.F., changed the name of the Authority to its present name: The Pinellas Suncoast Transit Authority.
[15] Ch. 2000-424, L.O.F.
[16] From the "2011 Pinellas Suncoast Transit Authority Vision Statement," *available at* http://www.psta.net/PDF/Vision%20Statement%202011.pdf (last accessed 2/14/12).
[17] "Synopsis of the Pinellas Suncoast Transit Authority," dated 10/19/09, *available at* http://www.psta.net/PDF/Synopsis.pdf (last accessed 2/14/12).
[18] *Id.*
[19] All data in the paragraph may be found on the "History of PSTA" page of the Authority's Web site, *available at* http://www.psta.net/history.php# (last accessed 2/14/12).
[20] *Pinellas Suncoast Transit Authority Proposed Operating and Capital Budget: Fiscal Year 2012, available at* http://www.psta.net/PDF/FY%202012%20Proposed%20Operating%20Budget.pdf (last accessed 2/14/12).
[21] *Id.*
[22] All information in this paragraph may be found in the *Pinellas County Transportation Task Force Report*, dated December 13, 2010, *available at* http://www.pinellascounty.org/ttf/pdf/TTF-Final-Report.pdf (last accessed 2/14/12).

representatives from area planning and transit agencies to formulate practical and fiscally sound transportation recommendations. The Task Force recommended that Pinellas County pursue levying the Charter County and Regional Transportation System Surtax, due to the potential scope of the transportation improvements that could be completed with the revenue generated from the surtax, as well as the fact that tourists would pay up to a third of the surtax. They recommended the county hold the referendum on levying the surtax sometime between the spring of 2012 and the spring of 2013. In addition, the Task Force was in favor of decreasing or eliminating the Authority's ad valorem tax; however, the Task Force agreed to not make a final recommendation to the Pinellas County Board of County Commissioners until a full plan with routes and cost estimates was completed.

Effect of Proposed Changes

The bill amends ch. 2000-424, L.O.F., to require the Authority to cease levying and collecting ad valorem tax revenue if Pinellas County levies a discretionary sales surtax for transportation purposes pursuant to s. 212.055(1), F.S., and offers the surtax proceeds or a portion thereof to the Authority and the Authority elects to accept funding through this source.

Pursuant to the current provisions of s. 212.055(1)(a), F.S., the decision to levy the discretionary sales surtax would be subject to approval by a majority vote of the county's electorate or by a charter amendment approved by a majority vote of the county's electorate.

The Economic Impact Statement says that the bill would benefit property holders in Pinellas County by reducing their property ad valorem rates by approximately 0.75 mills, or a total of $32.8 million annually, in the event a transportation surtax is ever approved.

According the *2011 Local Government Financial Information Handbook*, Pinellas County would receive an estimated $120,739,849 for each 1% assessed under local discretionary sales surtax levies.[23]

B. SECTION DIRECTORY:

Section 1: Amends ch. 2000-424, L.O.F., relating to the Pinellas County Suncoast Transit Authority, Pinellas County.

Section 4: Amends the provisions relating to the purposes and powers of the Authority to require the Authority to cease levying and collecting ad valorem tax revenue if Pinellas County levies a discretionary sales surtax for transportation purposes.

Section 8: Amends the provisions relating to the special district taxation for the Authority to require the Authority to cease levying and collecting ad valorem tax revenue if Pinellas County levies a discretionary sales surtax for transportation purposes.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? November 4, 2011

WHERE? *Gulf Coast Business Review*, a daily paper of general circulation published in Clearwater, Pinellas County, Florida and distributed in Pinellas County, Florida.

[23] Fla. Office Econ. & Demog. Resch., 2011 Local Government Financial Information Handbook167 (Oct. 2011), *available at* http://edr.state.fl.us/Content/local-government/reports/lgfih11.pdf.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

Under the provisions of s. 212.055(1), F.S., Pinellas County is currently authorized to levy the Charter County and Regional Transportation System Surtax at a rate of up to 1%, subject to approval by a majority vote of the county's electorate or by a charter amendment approved by a majority vote of the county's electorate. According the *2011 Local Government Financial Information Handbook*, Pinellas County receives an estimated $120,739,849 for each 1% assessed under local discretionary sales surtax levies.

The Economic Impact Statement says that the bill would benefit property holders in Pinellas County by reducing their property ad valorem rates by approximately 0.75 mills, or a total of $32.8 million annually, in the event a transportation surtax is ever approved.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Pinellas Suncoast Transit Authority, Pinellas County; amending chapter 2000-424, Laws of Florida; providing for alternative income revenues through a specified discretionary sales surtax under certain conditions; prohibiting the authority from levying and collecting ad valorem tax revenue after it elects to accept the discretionary sales surtax proceeds; providing an effective date.

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

Section 1. Paragraphs (i) and (j) of subsection (2) of section 4 of section 2 of chapter 2000-424, Laws of Florida, are redesignated as paragraphs (j) and (k), respectively, a new paragraph (i) is added to that subsection, and section 8 is amended, to read:

Section 4. Purposes and powers.—

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but not limited to, the following rights and powers:

(i) If Pinellas County levies a discretionary sales surtax for transportation purposes pursuant to section 212.055(1), Florida Statutes, and offers the surtax proceeds or a portion thereof to the authority and the authority elects to accept funding through this source, the authority shall cease levying and collecting ad valorem tax revenue as provided in section 8.

Section 8. Special district taxation.—

(1) The Pinellas Suncoast Transit Authority shall be deemed a special district and is authorized to levy an ad valorem tax on the taxable real property in the Pinellas Suncoast Transit Area at a rate sufficient to produce an amount that may be necessary for the purposes of this act, but not to exceed three-quarters of a mill; provided such millage limit is approved by a vote of the qualified electors who are residents of the transit area. Property taxes determined and levied under this section shall be certified by the authority to the county property appraiser, extended, assessed, and collected in like manner as provided by law for regular property taxes for the county or municipalities. The proceeds under this section shall be remitted by the tax collector to the treasurer of the authority who shall credit them to the funds of the authority for use for the purposes of this act. At any time after making a tax levy under this section and certifying the same to the county, the authority may issue tax anticipation notes of indebtedness in anticipation of the collection of such taxes.

(2) The authority shall cease levying and collecting ad valorem tax revenue under subsection (1) after the authority elects to accept discretionary sales surtax revenue as described in section 4(2)(i).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 933 Affordable Housing
SPONSOR(S): Community & Military Affairs Subcommittee; Rouson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	13 Y, 1 N, As CS	Duncan	Hoagland
2) Finance & Tax Committee		Wilson	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Public Housing

Florida law provides for the creation of city, county and regional housing authorities. The bill grants housing authorities the power to develop, acquire, lease, construct, rehabilitate, manage, or operate commercial projects that allow access to essential goods and services for persons of low income residing in such residential projects. Any revenue received by a housing authority from commercial projects that provide access to essential goods and services necessary for daily living of persons residing in housing projects must be used exclusively to upgrade and improve living conditions in the housing project or to preserve and rehabilitate public or affordable housing managed by the housing authority.

The bill expands the current housing authority exemption from property and debentures taxation to include all property used to provide access to essential goods and services necessary for daily living for persons residing in housing projects. In addition, the bill declares that facilities made available by housing authorities to provide access to essential goods and services necessary for daily living for persons residing in housing projects are a critical component of those housing projects and constitute a public use and a governmental function.

The current housing authority exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state is expanded to include all commercial projects that allow access to essential goods and services for persons of low income residing in housing projects.

Florida Housing Finance Corporation

The bill authorizes the Florida Housing Finance Corporation (FHFC) to utilize up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan (SAIL) Program funds appropriated by the Legislature and allocated by requests for proposals or other competitive solicitation for high priority affordable housing projects. Such projects include housing to support economic development and job creation initiatives, housing for veterans and their families, and housing for other special needs populations.

The Revenue Estimating Conference has not reviewed the provisions of this bill. Staff estimates this bill will have a negative impact on both state and local government revenue. See FISCAL COMMENTS.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Federal Government and Public Housing

Overview

Public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Public housing comes in the form of scattered single-family housing and multifamily housing. The U.S. Department of Housing and Urban Development (HUD) administers federal aid to local housing agencies that manage the housing for low-income residents at rents they can afford. HUD furnishes technical and professional assistance in planning, developing and managing these developments.[1] HUD administers various public housing programs including:[2]

- **Capital Fund**
  The Capital Fund provides funds to housing authorities to modernize public housing developments.
- **Demolition/Disposition** (Demo/Dispo)
  The Demo/Dispo program was created in an effort to help eliminate old, run down public housing.
- **Homeownership**
  A Public Housing Authority (PHA) may sell all, or a portion of, a public housing development to eligible residents or resident organizations, for purposes of homeownership. The PHA is required to submit a Homeownership Plan that has been approved by HUD.
- **HOPE VI**
  Used to revitalize the country's most distressed public housing developments by providing grants and flexibility to address the housing and social service needs of residents.
- **Housing Choice Vouchers** (Formerly Section 8)
  Allow very low-income families to choose and lease or purchase safe, decent, and affordable privately-owned rental housing.
- **Moving to Work Demonstration (MTW)**
  MTW is a demonstration program that allows housing authorities to design and test ways to give incentives to families to become economically self-sufficient, achieve programmatic efficiencies, reduce costs, and increase housing choice for low-income households.
- **Operating Fund**
  The Public Housing Operating Fund provides operating subsidies to housing authorities to assist in funding the operating and maintenance expenses of their dwellings. The subsidies are required to help maintain services and provide minimum operating reserves.
- **Resident Opportunities and Self Sufficiency (ROSS) and Neighborhood Networks (NN)**
  The ROSS program links services to public housing residents by providing grants for supportive services, resident empowerment activities and activities to assist residents in becoming economically self-sufficient.

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[1] U.S. Department of Housing and Urban Development, *HUD's Public Housing Program, available at* http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog (last visited February 5, 2012).

[2] U.S. Department of Housing and Urban Development, Public Housing Programs, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/programs (last visited February 5, 2012).

Rental Assistance Demonstration

In November 2011, Congress authorized the Rental Assistance Demonstration (RAD) to develop new tools to help preserve public and assisted rental housing. According to HUD:[3]

> One of the main objectives of RAD is to address the large backlog of capital needs that has accumulated over the years in public housing, estimated at $26 billion or about $23,365 per unit. The Capital Fund program provides the primary source of funding for repairs and renovations in public housing, but current funding levels only reach a small percentage of that backlog. Largely due to this chronic funding shortfall, over 150,000 Public Housing units have been lost to demolition or disposition over the past 15 years, and the inventory continues to lose thousands more units every year as properties continue to deteriorate. Regrettably, the structure of the Public Housing program makes it extremely difficult for PHAs to access private debt and equity. One of the main reasons behind converting public housing to long-term Section 8 rental assistance is to allow PHAs to finance their long-term capital needs, something which is common practice in every other affordable housing program.
>
> Under RAD, PHAs and owners of Mod Rehab properties will have the option of converting their current form of rental assistance for 60,000 units to either a:
>
> • Project-Based Voucher (PBV) Contract, which PHAs administer locally. The Department will offer administrative flexibility and waive certain current rules to make the PBV option a more viable financing tool; or
>
> • Project-Based Rental Assistance (PBRA) Contract, administered by the Department's Office of Multifamily Housing Programs. Congress has authorized a PBRA option for PH and Mod Rehab properties that is eligible for renewal under the Multifamily Assisted Housing Reform and Affordability Act (MAHRAA).

Assessment of Public Housing Agencies (Authorities)

The purpose of the Public Housing Assessment System is to improve the delivery of services in public housing and enhance trust in the public housing system among public housing agencies (PHAs) and residents, HUD, and the general public by providing a management tool for effectively and fairly measuring the performance of a PHA in essential housing operations, including rewards for high performers and consequences for poor performers. The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.[4]

The REAC conducts an assessment of and scores PHAs based on four indicators:[5]

- Indicator #1 – The physical condition of a PHA's properties.
- Indicator #2 – The financial condition of a PHA.
- Indicator #3 – The management operations of a PHA.
- Indicator #4 – The resident service and satisfaction feedback on a PHA's operations.

A PHA will receive a status designation corresponding to its final score as follows:[6]

- High Performer
- Standard Performer
- Troubled Performer

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[3] HUD Public Housing Management E-Newsletter, January 2012, Vol. 3, Issue1, *available at* http://portal.hud.gov/huddoc/phm-jan2012.pdf (last available February 5, 2012).

[4] 24 C.F.R. s. 902.1, Chapter IX – Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, *Public Housing Assessment System – General Provisions, available at* http://www.hud.gov/offices/pih/regs/fedreg.cfm (last visited February 5, 2012).

[5] *Id.*

[6] *Id.* at s. 902.67

State Government and Public Housing

Florida law provides that the role of state government in housing and urban development required by part I of ch. 421, F.S., (Housing Authorities Law), ch. 422, F.S., (Housing Cooperation Law), and ch. 423, F.S., (Tax Exemption of Housing Authorities) is the responsibility of the Department of Economic Opportunity (DEO).[7] Florida law recognizes that there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford. Providing accommodations, including the acquisition by a housing authority of property to be used for or in connection with housing projects, are deemed exclusively public uses and purposes for which public money may be spent and private properties acquired and are governmental functions of public concern.[8] DEO does not monitor, evaluate, or have oversight of housing authorities to ensure that housing authorities are in compliance with federal law.

Local and Regional Housing Authorities

Florida law authorizes the creation of city, county and regional housing authorities.[9] Of the 110 housing authorities in Florida,[10] 93 are special districts.[11] A city's governing body may by resolution make a determination that there is a need for a housing authority. The determination of the need for a city housing authority may be initiated by the city's governing body or upon the filing of a petition signed by 25 city residents requesting the governing body to make such determination.[12] The mayor, with the approval of the governing body, appoints no fewer than five and no more than seven persons as commissioners of the authority.[13] The powers of each housing authority are vested in the commissioners and action may be taken upon a majority vote of the commissioners.[14]

The creation and powers of county housing authorities is similar to the creation of city housing authorities. However, in counties, petitions must be signed by 25 county residents and the Governor appoints the commissioners.[15] A county housing authority's area of operation includes all of the county except that portion which lies within the territorial boundaries of any city as defined in the Housing Authorities Law. A regional housing authority may be created by two or more contiguous counties if a regional entity would be a more economically or administratively efficient unit. In the case of regional housing authorities, the Governor also appoints the commissioners.[16] The powers of a regional housing authority are analogous to those of a city or county housing authority.

No commissioner or employee of an authority may acquire any interest in any housing project or in any property included or planned to be included in any project, nor in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If a commissioner or employee of a housing authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he or she must immediately disclose such interest in writing to the authority. Failure to disclose such interest constitutes misconduct in office.[17]

Housing authorities have the power to:[18]

- Sue and be sued.
- Acquire, lease, and operate housing projects.

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[7] Section 421.001, F.S.
[8] Section 421.02, F.S.
[9] *See* ss. 421.04, 421.27, and 421.28, F.S.
[10] U.S. Department of Housing and Urban Development, Public & Indian Housing, Florida, *available at* http://www.hud.gov/offices/pih/pha/contacts/states/fl.cfm (last visited February 2, 2012).
[11] Department of Economic Opportunity, Division of Community Development, Special District Information Program, *available at,* http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm (last visited February 2, 2012).
[12] Section 421.04, F.S.
[13] Section 421.05, F.S.
[14] *Id.*
[15] Section 421.27, F.S.
[16] *See* s. 421.28, F.S.
[17] Section 421.06, F.S.
[18] Section 421.08, F.S.

- Provide for the construction, reconstruction, improvement, alteration, or repair of any housing project.
- Lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project.
- Own, hold, and improve real or personal property.
- Acquire by the exercise of the power of eminent domain any real property.
- Invest any funds held in reserves or sinking funds.
- Organize for the purpose of creating a for-profit or not-for-profit corporation, limited liability company, or other similar business entity pursuant to all applicable laws of the state in which the housing authority may hold an ownership interest or participate in its governance in order to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects. These projects may include nonresidential uses and may use public and private funds to serve individuals or families who meet the applicable income requirements of the state or federal program involved.

A housing authority has the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the county, the state or any political subdivision may be acquired without its consent.[19]

A housing authority is authorized to borrow money or accept grants or other financial assistance from the Federal Government for or in aid of any housing projects within its area of operation. A housing authority is also empowered to take over or lease or manage any housing project or undertaking constructed or owned by the Federal Government. In addition, an authority is authorized "to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance or operation of any housing project by such authority."[20]

Florida's Public Housing Units

In 2006, the Affordable Housing Study Commission issued a Report: A Preservation Strategy for Florida's Affordable Multifamily Housing. The Commission stated:[21]

> Originally, the federal government was committed to paying acquisition, construction, and capital costs, while PHAs were expected to pay operating costs from their residents' rental payments.
>
> Federal operating subsidies were formally established in 1970 to make up the difference between PHA rental income and operating expenses. As of early 2005, there were 38,827 public housing units in Florida. The majority of these units, 69 percent, are over 30 years old, and only 5 percent are under 20 years old.
>
> From a preservation perspective, the threat to public housing is the ongoing deterioration of an aging stock. Additionally, the physical condition of public housing properties is crucial to the ability of PHAs to rent the units and generate revenue. The capital needs of public housing have been chronically under-funded for much of the program's history, and the mechanisms to address maintenance and rehabilitation can be unwieldy. Early in the program's history, too little funding was provided to keep maintenance problems in check and today these long deferred maintenance issues continue to worsen.

Recent Funding

In June 2010, HUD awarded $64.8 million from the Capital Fund Program to Florida's public housing authorities to make capital improvements to their public housing units.[22]

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[19] Section 421.12, F.S. *See* chapters 73 and ch. 74, F.S.

[20] Section 421.21, F.S.

[21] The Affordable Housing Study Commission, *A Preservation Strategy for Florida's Affordable Multifamily Housing, Final Report 2006*, at 8, *available at* http://apps.floridahousing.org/StandAlone/AHSC/AHSC-AnnualReports.htm (last visited February 5, 2012).

On July 12, 2011, HUD announced the award of $55,885,727 from the Capital Fund Program to 81 public housing authorities in Florida.

Housing Cooperation Law

Florida law provides that any state public body, for the purpose of aiding and cooperating in the construction or operation of housing projects may:[23]

- Dedicate, sell or lease any of its property to a housing authority or the Federal Government.
- Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects.
- Furnish, close, pave, install, grade, or plan streets, roads, alleys, or sidewalks.
- Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of housing projects.
- Purchase or legally invest in any of the debentures of a housing authority.

Tax Exemption of Housing Authorities

Florida law provides property tax exemptions as well as state and local government tax and assessment exemptions for housing authorities. The law states:

> "Such housing projects, including all property of a housing authority used for or in connection therewith or appurtenant thereto, are exclusively for public uses and municipal purposes and not for profit, and are governmental functions of state concern. As a matter of legislative determination, it is found and declared that the property and debentures of a housing authority are of such character as may be exempt from taxation."[24]

In addition, the law states:

> "The housing projects, including all property of housing authorities used for or in connection therewith or appurtenant thereto, of housing authorities shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state, provided, however, that in lieu of such taxes or special assessments a housing authority may agree to make payments to any city, town, county or political subdivision of the state for services, improvements or facilities furnished by such city, town, county or political subdivision for the benefit of a housing project owned by the housing authority, but in no event shall such payments exceed the estimated cost to such city, town, county or political subdivision of the services, improvements or facilities to be so furnished."[25]

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC)[26] is a state entity primarily responsible for encouraging the investment of private capital in residential housing and stimulating the construction and rehabilitation of affordable housing in Florida.[27] The FHFC administers a number of multifamily

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[22] Florida Sun, *HUD Awards $65 Million to Public Housing Authorities in Florida To Improve, Preserve Public Housing Across the State*, June 24-30, 2010, vol.79, No. 25, at 2, *available at* http://www.bluetoad.com/publication/?i=41160&p=2 (last visited February 5, 2012).

[23] Section 422.04, F.S.

[24] Section 423.01(4), F.S.

[25] Section 423.02, F.S.

[26] The Florida Housing Finance Corporation (FHFC) is a public corporation within the Department of Economic Opportunity (DEO). However, the FHFC is a separate budget entity and is not subject to the control, supervision, or direction of DEO. Section 420.504, F.S.

[27] Section 420.502(7), F.S.

and single family housing programs that help local governments assist Floridians in obtaining safe, decent affordable housing.

- The rental housing programs include the Multifamily Mortgage Revenue Bond, Low Income Housing Tax Credits, State Apartment Incentive Loan (SAIL), Elderly Housing Community Loan, Florida Affordable Housing Guarantee and Home Investment Partnerships programs.
- Homeownership programs include the First Time Homebuyer Program, the Homeownership Loan Program and down payment assistance programs such as the Homeownership Assistance Program, HOME Down Payment Assistance, Homeownership Assistance for Moderate Income, and Three Percent Cash Assistance. In addition, the FHFC offers the Mortgage Credit Certificate program; and several Special Programs including the Predevelopment Loan Program, Demonstration Loans and the Affordable Housing Catalyst Program. Also, the FHFC allocates documentary stamp funds to local governments through the State Housing Initiatives Partnership Program (SHIP). The majority of SHIP funds are directed by statute toward home ownership activities.
- Federal housing programs, especially those administered by Housing and Urban Development, typically serve those with the lowest incomes.

Florida law grants the FHFC with specific powers necessary or convenient to carry out and effectuate the purposes for providing affordable housing.[28]

EFFECT OF PROPOSED CHANGES

Florida Housing Finance Corporation

CS/HB 933 authorizes the FHFC to utilize up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan (SAIL) Program funds appropriated by the Legislature and allocated by requests for proposals or other competitive solicitation for high priority affordable housing projects. Such projects include housing to support economic development and job creation initiatives, housing for veterans and their families, and housing for other special needs populations.

Public Housing

The bill provides that an important state interest is served by providing access to essential commercial goods and services necessary for daily living for persons served by housing authorities as those persons often have limited transportation capacity and significant family demands. Limited transportation capacity and significant family demands complicate daily living and make access to essential commercial goods and services difficult.

The bill provides the term "essential goods and services" and defines it to mean goods, such as groceries and clothing, and services, such as child care, K-12 education, financial services, job training and placement, and laundry facilities that are necessary for daily living and that may be difficult for persons of low income to access unless collocated with the housing project where they live and substantially serving persons of low income. The term "housing project" is amended to include any work or undertaking to provide access to essential goods and services. The definitions of other terms are amended to replace or remove outdated language.

The bill provides that the powers of housing authorities to carry out eminent domain would not extend to real property to be used to provide access to essential commercial goods and services. In addition, the bill provides that any revenue received by a housing authority from commercial projects that provide access to essential goods and services necessary for daily living of persons residing in housing projects must be used exclusively to upgrade and improve living conditions in the housing project or to preserve and rehabilitate public or affordable housing managed by the housing authority.

The bill amends a provision under the Housing Cooperation Law addressing the state's cooperation in undertaking housing projects to include commercial projects that allow access to essential goods and services for persons of low income residing in housing projects among the allowable projects.

[28] Sections 159.608 and 420.507, F.S.

The bill expands the current housing authority exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state to include all commercial projects that allow access to essential goods and services for persons of low income residing in housing projects. In addition, the bill declares that facilities made available by housing authorities to provide access to essential goods and services necessary for daily living for persons residing in housing projects are a critical component of those housing projects and constitute a public use and a governmental function.

The bill also amends several current statutory provisions to correct cross-references and replace or remove outdated language and terms relating to public housing.

B. SECTION DIRECTORY:

Section 1: Amends s. 420.507, F.S., relating to the powers of the Florida Housing Finance Corporation.

Section 2: Amends s. 421.02, F.S., relating findings and declaration of necessity.

Section 3: Amends s. 421.03, F.S., relating to definitions.

Section 4: Amends s. 421.08, F.S., relating to powers of housing authorities.

Section 5: Amends s. 421.09, F.S., relating to operation not-for-profit.

Section 6: Reenacts and amends s. 421.21, F.S., relating to aid from Federal Government; tax exemptions.

Section 7: Amends s. 421.32, F.S., relating to rural housing projects.

Section 8: Amends s. 422.02, F.S., relating to finding and declaration of necessity.

Section 9: Amends s. 422.04, F.S., relating to cooperation in undertaking housing projects.

Section 10: Amends s. 423.01, F.S., relating to finding and declaration of property tax exemption for housing authorities.

Section 11: Amends s. 423.02, F.S., relating to housing projects exempted from taxes and assessments; and payments in lieu of.

Section 12: Provides an effective date of July 1, 2012.

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:

Commercial projects located within a housing authority will benefit as they will be exempt from the paying the various taxes and assessments levied by both state and local governments.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has not reviewed the provisions of this bill. Staff estimates this bill will have a negative fiscal impact on both state and local government revenues. The negative fiscal impact is due to the expansion of the current housing authority exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state to include all commercial projects that allow access to essential goods and services for persons of low income residing in housing projects.

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

On February 7, 2012, the House Community & Military Affairs Subcommittee adopted an amendment authorizing the FHFC to utilize up to 10 percent of its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan (SAIL) Program funds appropriated by the Legislature and allocated by requests for proposals or other competitive solicitation for high priority affordable housing projects. Such projects include housing to support economic development and job creation initiatives, housing for veterans and their families, and housing for other special needs populations.

The analysis has been amended to reflect the adoption of this amendment.

A bill to be entitled

An act relating to affordable housing; amending s. 420.507, F.S.; authorizing the Florida Housing Finance Corporation to set aside a portion of its federal and state funding to fund housing for economic development initiatives, veterans' housing, and housing for other special needs populations; authorizing the use of competitive requests for proposal to fund projects; amending s. 421.02, F.S.; revising a declaration of necessity; providing that access to essential commercial goods and services for persons of low income served by housing authorities is a public use; amending s. 421.03, F.S.; reordering and revising definitions applicable to the Housing Authorities Law; revising the definition of the term "housing project"; defining the term "essential commercial goods and services"; amending s. 421.08, F.S.; prohibiting the use of eminent domain for certain purposes; expanding certain powers of housing authorities to include certain commercial projects providing essential goods and services; providing for the use of revenues received from such projects; amending s. 421.09, F.S.; conforming a cross-reference; reenacting and amending s. 421.21, F.S., relating to tax exemptions applicable to housing authorities created pursuant to certain federal programs; amending s. 421.32, F.S.; conforming a cross-reference; amending s. 422.02, F.S.; revising a declaration of necessity; providing that there

exists a shortage of access to essential commercial goods and services necessary for daily living for persons of low income; amending s. 422.04, F.S.; expanding certain powers of state public bodies to include certain commercial projects providing essential goods and services; amending s. 423.01, F.S.; revising and providing findings and declarations of property of tax exemption for housing authorities relating to access to essential commercial goods and services necessary for daily living for persons of low income; amending s. 423.02, F.S.; exempting certain commercial projects that allow access to essential goods and services for persons of low income residing in such housing projects from certain taxes and special assessments; providing organizational and editorial changes for purposes of clarifying various provisions; providing an effective date.

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

Section 1. Subsection (48) is added to section 420.507, Florida Statutes, to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(48) To utilize up to 10 percent of its annual allocation

of low-income housing tax credits, allocation of nontaxable revenue bonds, and State Apartment Incentive Loan Program funds appropriated by the Legislature and available to allocate by request for proposals or other competitive solicitation funding for high-priority affordable housing projects, such as housing to support economic development and job creation initiatives, housing for veterans and their families, and other special needs populations in communities throughout the state as determined by the corporation on an annual basis.

Section 2. Section 421.02, Florida Statutes, is amended to read:

421.02 Finding and declaration of necessity.—It is hereby declared that:

(1) There exist in the state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that such ~~the aforesaid~~ conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the state and impair economic values; and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident protection, and other public services and facilities.

(2) Blighted areas in the state cannot be revitalized, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, solely through the operation of private enterprise.

(3) The clearance, replanning, and reconstruction of the areas in which insanitary or unsafe housing conditions exist, ~~and~~ the providing of safe and sanitary dwelling accommodations, and the access to essential commercial goods and services necessary for daily living for persons of low income, including the acquisition by a housing authority of property to be used for or in connection with housing projects or appurtenant thereto, are exclusively public uses and purposes for which public money may be spent and private property acquired and are governmental functions of public concern.

(4) An important public purpose is served by providing access to essential commercial goods and services necessary for daily living for persons served by public housing authorities as those persons often have limited transportation capacity and significant family demands. Issues such as limited transportation capacity and significant family demands complicate daily living and make access to essential commercial goods and services difficult.

(5) ~~(4)~~ The necessity in the public interest for the provisions hereinafter enacted, ~~,~~ is hereby declared ~~as~~ a matter of legislative determination.

Section 3. Section 421.03, Florida Statutes, is amended to read:

421.03 Definitions.—As used ~~The following terms, wherever~~

~~used or referred to~~ in this part, except where the context clearly indicates otherwise, the term ~~shall have the following respective meanings for the purposes of this part, unless a different meaning clearly appears from the context~~:

(1) ~~(6)~~ "Area of operation":

(a) In the case of a housing authority of a city having a population of less than 25,000, includes ~~shall include~~ such city and the area within 5 miles of its ~~the~~ territorial boundaries ~~thereof~~.~~; and~~

(b) In the case of a housing authority of a city having a population of 25,000 or more includes ~~shall include~~ such city and the area within 10 miles from its ~~the~~ territorial boundaries. ~~thereof; provided~~ However, ~~that~~ the area of operation of a housing authority of a ~~any~~ city may ~~shall~~ not include any area that ~~which~~ lies within the territorial boundaries of another ~~some other~~ city ~~as herein defined;~~ and may ~~further provided that the area of operation shall~~ not extend outside ~~of~~ the boundaries of the county in which the city is located, and a ~~no~~ housing authority has no ~~shall have any~~ power or jurisdiction outside ~~of~~ the county in which the city is located.

(2) ~~(1)~~ "Authority" or "housing authority" means a ~~shall mean any of the~~ public corporation ~~corporations~~ created pursuant to ~~by~~ s. 421.04.

(3) ~~(2)~~ "City" means ~~shall mean~~ any city or town of the state having a population of more than 2,500, according to the last preceding federal or state census. The term means ~~"The city" shall mean~~ the particular city for which a particular

housing authority is created.

(4) ~~(5)~~ "Clerk" means ~~shall mean~~ the clerk of the city or the officer of the city charged with the duties customarily imposed on the clerk ~~thereof~~.

(5) ~~(11)~~ "Debentures" means ~~shall mean~~ any notes, interim certificates, debentures, revenue certificates, or other obligations issued by an authority pursuant to this chapter.

(6) "Essential commercial goods and services" means goods, such as groceries and clothing, and services, such as child care, K-12 education, financial services, job training and placement, and laundry facilities, that are necessary for daily living and that may be difficult for persons of low income to access unless collocated with the housing project where they live and substantially serving persons of low income.

(7) "Federal Government" means ~~shall include~~ the United States Government~~, the Federal Emergency Administration of Public Works~~ or any department, commission, ~~other~~ agency, or other instrumentality thereof~~, corporate or otherwise, of the United States~~.

(8) ~~(3)~~ "Governing body" means ~~shall mean~~ the city council, the commission, or other legislative body charged with governing the city, as the case may be.

(9) "Housing project" means ~~shall mean~~ any work or undertaking:

(a) To demolish, clear, or remove buildings from any slum area, which~~; such work or undertaking~~ may embrace the adaption of such area to public purposes, including parks or other recreational or community purposes; ~~or~~

(b) To provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income, which~~; such work or undertaking~~ may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes; ~~or~~

(c) To provide access to essential commercial goods and services; or

(d)~~(c)~~ To accomplish a combination of the foregoing.

.

The term ~~"housing project"~~ also applies ~~may be applied~~ to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

(10)~~(4)~~ "Mayor" means ~~shall mean~~ the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(11)~~(13)~~ "Obligee of the authority" or "obligee" includes ~~shall include~~ any holder of debentures, trustee or trustees for any such holders, or lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal Government when it is a party to any contract with the authority.

(12)~~(10)~~ "Persons of low income" means ~~shall mean~~ persons

or families who lack the amount of income which is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(13) ~~(12)~~ "Real property" includes ~~shall include~~ all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(14) ~~(8)~~ "Slum" means ~~shall mean~~ any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

Section 4. Section 421.08, Florida Statutes, is amended to read:

421.08 Powers of authority.—

(1) An authority shall constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this chapter, and having all the powers necessary or convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others ~~herein~~ granted in this chapter:

(a) ~~(1)~~ To sue and be sued; to have a seal and to alter it ~~the same~~ at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to appear in

court through any of its officers, agents, or employees, for the exclusive purpose of filing eviction papers; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority.

(b) ~~(2)~~ Within its area of operation, to prepare, carry out, acquire, lease, and operate housing projects and~~;~~ to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof.

(c) ~~(3)~~ To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof.~~; provided, however, that~~

1. Notwithstanding any other power or provision in this chapter, the authority may ~~shall~~ not construct, lease, control, purchase, or otherwise establish, in connection with or as a part of any housing project or any other real or any other property under its control, any system, work, facilities, plants, or other equipment for the purpose of furnishing utility service of any kind to such projects or to any tenant or occupant thereof if ~~in the event that~~ a system, work, facility, plant, or other equipment for the furnishing of the same utility service is being ~~actually~~ operated by a municipality or private concern in the area of operation or the city or the territory immediately adjacent thereto~~; provided, further~~, but this does not ~~that nothing herein shall be construed to~~ prohibit the construction or acquisition by the authority of any system,

work, facilities, or other equipment for the sole and only purpose of receiving utility services from any such municipality or such private concern and then distributing such utility services to the project and to the tenants and occupants thereof.~~; and,~~

2. Notwithstanding ~~anything to the contrary contained in this chapter or in~~ any other provision of law, the authority may ~~to~~ include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor~~,~~ and ~~comply~~ with any conditions which the Federal Government may have attached to its financial aid of the project.

(d)~~(4)~~ To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property, except real property to be used to provide access to essential commercial goods and services; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; and to procure or agree to the procurement

of insurance or guarantees from the Federal Government of the payment of any such debts or parts thereof, whether or not incurred by the ~~said~~ authority, including the power to pay premiums on any such insurance.

(e) ~~(5)~~ To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control and ~~,~~ to purchase its debentures at a price not exceeding ~~more than~~ the principal amount thereof and accrued interest, with all debentures so purchased to be canceled.

(f) ~~(6)~~ Within its area of operation: to investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning, and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low income; to administer fair housing ordinances and other ordinances as adopted by cities, counties, or other authorities who wish to contract for administrative services and to cooperate with the city, the county, or the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies, and experimentation on the subject of housing.

(g) ~~(7)~~ Acting through one or more commissioners or other person or persons designated by the authority: ~~,~~ to conduct

examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and ~~to~~ issue commissions for the examination of witnesses who are outside ~~of~~ the state, ~~or~~ unable to attend before the authority, or excused from attendance; and to make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

(h) ~~(8)(a)~~ To organize for the purpose of creating a for-profit or not-for-profit corporation, limited liability company, or other similar business entity pursuant to all applicable laws of this state in which the housing authority may hold an ownership interest or participate in its governance in order to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects and commercial projects that allow access to essential goods and services for persons of low income residing in such residential projects.

1. These projects may include nonresidential uses and may use public and private funds to serve individuals or families who meet the applicable income requirements of the state or federal program involved; whose income does not exceed 150

percent of the applicable median income for the area, as established by the United States Department of Housing and Urban Development; and who, in the determination of the housing authority, lack sufficient income or assets to enable them to purchase or rent a decent, safe, and sanitary dwelling. These corporations, limited liability companies, or other business entities may join partnerships, joint ventures, or limited liability companies pursuant to applicable laws or may otherwise engage with business entities in developing, acquiring, leasing, constructing, rehabilitating, managing, or operating such projects.

2. ~~(b)~~ The creation by a housing authority of such a corporation, limited liability company, or other business entity that is properly registered pursuant to all applicable laws before the effective date of this act is ratified and validated if the creation of such corporation, limited liability company, or other business entity would have been valid had this act been in effect at the time such corporation, limited liability company, or other business entity was created and registered.

3. ~~(c)~~ Proceedings or acts performed by a housing authority or a corporation, limited liability company, or other business entity authorized pursuant to subparagraph 2. ~~paragraph (b)~~ are ratified and validated if such proceedings or acts were in furtherance of the purposes set forth in this chapter and would have been valid had this act been in effect at the time such proceedings or acts were performed.

(i) ~~(9)~~ Notwithstanding s. 112.061, to ~~the governing board of an authority may~~ approve and implement policies for per diem,

travel, and other expenses of its officials, officers, board members, employees, and authorized persons in a manner consistent with federal guidelines.

(j) ~~(10)~~ To exercise all or any part or combination of powers ~~herein~~ granted in this section. ~~No~~ Provisions of law relating ~~with respect~~ to acquisition, operation, or disposition of property by other public bodies do not apply ~~shall be applicable~~ to an authority unless the Legislature ~~shall~~ specifically states so ~~state~~.

(2) Any revenue received by a housing authority from commercial projects that provide access to essential goods and services necessary for daily living of persons residing in housing projects must be used exclusively to upgrade and improve living conditions in the housing project or to preserve and rehabilitate public or affordable housing managed by the housing authority.

Section 5. Subsection (2) of section 421.09, Florida Statutes, is amended to read:

421.09 Operation not for profit.—

(2) This section does not prohibit or restrict the activities or operations of a business entity created under s. 421.08(1)(h) ~~421.08(8)~~.

Section 6. Section 421.21, Florida Statutes, is reenacted and amended to read:

421.21 Aid from Federal Government; tax exemptions.—

(1) In addition to the powers conferred upon an authority by other provisions of this chapter, an authority is empowered to borrow money or accept grants or other financial assistance

from the Federal Government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the Federal Government, and to these ends, to comply with such conditions and enter into such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance, or operation of any housing project by such authority.

(2) In addition to the powers conferred upon an authority by subsection (1) and other provisions of this chapter, an authority is empowered to borrow money or accept grants or other financial assistance from the Federal Government under s. 202 of the Housing Act of 1959 (Pub. L. No. 86-372) or any law or program of the United States Department of Housing and Urban Development, which provides for direct federal loans in the maximum amount, as defined therein, for the purpose of assisting certain nonprofit corporations to provide housing and related facilities for elderly families and elderly persons.

(a) Housing authorities created under this section are authorized to execute mortgages, notes, bills, or other forms of indebtedness together with any agreements, contracts, or other instruments required by the United States Department of Housing and Urban Development in connection with loans made for the purposes set forth in this subsection.

(b) This provision relating to housing facilities for the

elderly is cumulative and in addition to the powers given to housing authorities under this chapter. All powers granted generally by law to housing authorities in Florida relating to issuance of trust indentures, debentures, and other methods of raising capital ~~shall~~ apply also to housing authorities in connection with their participation in programs of the United States Department of Housing and Urban Development.

(3) It is the legislative intent that the tax exemption of housing authorities provided by chapter 423~~, shall~~ specifically applies ~~apply~~ to any housing authority created under this section.

Section 7. Section 421.32, Florida Statutes, is amended to read:

421.32 Rural housing projects.—County housing authorities and regional housing authorities are specifically empowered and authorized to borrow money, accept grants, and exercise their other powers to provide housing for farmers of low income and domestic farm labor as defined in s. 514 of the Federal Housing Act of 1949. In connection with such projects, any such housing authority may enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to ensure ~~assure~~ the achievement of the objectives of this law. Such leases, agreements, or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing

authority deems it necessary and the parties to such instrument so stipulate. In providing housing for farmers of low income, county housing authorities and regional housing authorities are ~~shall~~ not ~~be~~ subject to the limitations provided in ss. 421.08(1)(c) ~~421.08(3)~~ and 421.10(3). ~~Nothing contained in~~ This section may not ~~shall~~ be construed as limiting any other powers of any housing authority.

Section 8. Section 422.02, Florida Statutes, is amended to read:

422.02 Finding and declaration of necessity.—It has been found and declared in the Housing Authorities Law that there exist in the state unsafe and insanitary housing conditions and a shortage of safe and sanitary dwelling accommodations and access to essential commercial goods and services necessary for daily living for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is found and declared that the assistance herein provided for the remedying of the conditions set forth in the Housing Authorities Law constitutes a public use and purpose and an essential governmental function for which public moneys may be spent and other aid given; that it is a proper public purpose for any state public body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the state public body derives immediate benefits and

advantages from such an authority or project; and that the provisions hereinafter enacted are necessary in the public interest.

Section 9. Section 422.04, Florida Statutes, is amended to read:

422.04 Cooperation in undertaking housing projects.—

(1) For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine:

(a) Dedicate, sell, convey, or lease any of its property to a housing authority or the Federal Government.~~;~~

(b) Cause parks;~~,~~ playgrounds;~~,~~ recreational, community, educational, water, sewer, or drainage facilities; commercial projects that allow access to essential goods and services for persons of low income residing in housing projects; or any other works~~, which~~ it is otherwise empowered to undertake~~,~~ to be furnished adjacent to or in connection with housing projects.~~;~~

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places ~~which~~ it is otherwise empowered to undertake.~~;~~

(d) Plan or replan, zone or rezone any part of such state public body; make exceptions from building regulations and ordinances; and, with respect to any city or town, ~~also may~~ change its map.~~;~~

(e) Enter into agreements, which may extend over any

period, notwithstanding any provision or rule of law to the contrary, with a housing authority or the Federal Government respecting action to be taken by such state public body pursuant to any of the powers granted by this chapter.~~;~~

(f) Do any and all things, necessary, or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects.~~;~~

(g) Purchase or legally invest in any of the debentures of a housing authority and exercise all of the rights of any holder of such debentures.~~;~~

(h) Not require any changes to be made in a housing project or the manner of its construction or take any other action relating to such construction with respect to any housing project which a housing authority has acquired or taken over from the Federal Government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation, and other protection.~~; no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction;~~

(i) Incur the entire expense of ~~In connection with~~ any public improvements made by the ~~a~~ state public body in exercising the powers herein granted~~, such state public body may incur the entire expense thereof~~.

(2) Any law or statute to the contrary notwithstanding, any sale, conveyance, lease, or agreement provided for in this section may be made by a state public body without appraisal,

public notice, advertisement, or public bidding.

Section 10. Section 423.01, Florida Statutes, is amended to read:

423.01 Finding and declaration of property of tax exemption for housing authorities.—It has been found and declared in the Housing Authorities Law and the Housing Cooperation Law that:

(1) There exist in the state housing conditions that ~~which~~ constitute a menace to the health, safety, morals, and welfare of the residents of the state;

(2) These conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety, fire and accident prevention, and other public services and facilities;

(3) The public interest requires the remedying of these conditions by the creation of housing authorities to undertake projects for slum clearance and for providing safe and sanitary dwelling accommodations and access to essential commercial goods and services necessary for daily living for persons who lack sufficient income to enable them to live in decent, safe, and sanitary dwellings without overcrowding; ~~and~~

(4) Facilities made available by housing authorities to provide access to essential goods and services necessary for daily living for persons residing in housing projects are a critical component of those housing projects and constitute a public use and a governmental function; and

(5) ~~(4)~~ Such housing projects, including all property of a

housing authority used for or in connection therewith or appurtenant thereto and all property used to provide access to essential goods and services necessary for daily living for persons residing in such housing projects, are exclusively for public uses and municipal purposes and not for profit~~,~~ and are governmental functions of state concern. As a matter of legislative determination, it is found and declared that the property and debentures of a housing authority are of such character as may be exempt from taxation.

Section 11. Section 423.02, Florida Statutes, is amended to read:

423.02 Housing projects exempted from taxes and assessments; payments in lieu thereof.—The housing projects, including all property of housing authorities used for or in connection therewith or appurtenant thereto and all commercial projects that allow access to essential goods and services for persons of low income residing in such housing projects, of housing authorities shall be exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state.~~, provided,~~ However, ~~that~~ in lieu of such taxes or special assessments, a housing authority may agree to make payments to any city, town, county, or political subdivision of the state for services, improvements, or facilities furnished by such city, town, county, or political subdivision for the benefit of a housing project owned by the housing authority, but ~~in no event shall~~ such payments may not exceed the estimated cost to such city, town, county, or political subdivision of the services, improvements, or

facilities to be so furnished.

Section 12. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1033 Lealman Special Fire Control District, Pinellas County
SPONSOR(S): Community & Military Affairs Subcommittee, Ahern
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Nelson	Hoagland
2) Finance & Tax Committee		Flieger	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The CS for HB 1033 amends the special act charter for the Lealman Fire Control District ("the district") in Pinellas County. The bill provides that if a municipality annexes unincorporated territory within district boundaries before July 1, 2016, the district will continue as the sole provider of fire and rescue services for the annexed area. A municipality may levy any applicable taxes, assessments, or fees on the annexed territory, but is required to pay the district an amount equal to the amount of taxes, assessments, or fees that would have been collected by the district. These payments continue in perpetuity unless the district is relieved of all fire, rescue or emergency medical service responsibilities in the annexed territory. If litigation is required to enforce these provisions, the prevailing party is entitled to an award of attorney fees and costs.

The bill also lowers the millage cap of the district from 10 to 5.75 mills, and provides an effective date of upon becoming law.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 191, F.S., the "Independent Special Fire Control District Act"

An "independent special fire control district" is defined as an independent special district[1] created by a special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district.[2] Currently, there are 56 such districts in Florida.[3]

Chapter 191, F.S., the "Independent Special Fire Control District Act," provides general and special powers for fire control districts, and addresses district creation, expansion and merger, and funding mechanisms. Section 191.002, F.S., sets forth the act's purpose, which is to:

- provide standards, direction and procedures concerning district operations and governance;
- provide greater uniformity in operations and authority;
- provide greater uniformity in financing authority without hampering the efficiency and effectiveness of currently authorized and implemented methods and procedures of raising revenue;
- improve communication and coordination between special fire control districts and other local governments with respect to short-range and long-range planning to meet the demands for service delivery while maintaining fiscal responsibility; and
- provide uniform procedures for electing members of district governing boards to ensure greater accountability to the public.

Unless otherwise exempted by special or general law, this 1997 act requires each district to comply with its provisions. The act further provides that it is the intent of the Legislature that the act supersedes all special acts or general laws of local application provisions that contain the charter of a district and which address the same subjects as the act, except where such laws address district boundaries and geographical subdistricts for the election of governing board members. Chapter 191, F.S., also does not repeal any authorizations providing for the levying of ad valorem taxes, special assessments, non-ad valorem assessments, impact fees or other charges.

District Funding Mechanisms

Section 191.009, F.S., authorizes special fire control districts to levy ad valorem taxes, special assessments, user charges and impact fees.

Ad Valorem Taxes

An elected board may levy ad valorem taxes on all taxable property in the district to construct, operate and maintain district facilities and services, to pay the principal of, and interest on, general obligation bonds of the district, and to provide for any sinking or other funds established in connection with such bonds. An ad valorem tax levied by the board may not exceed 3.75 mills unless a higher amount has been previously authorized by law, subject to a referendum as required by the State Constitution and

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[1] *See*, s. 189.403, F.S., for a definition of "independent special district."

[2] Section 191.003(5), F.S. The term does not include a municipality, a county, a dependent special district as defined in s. 189.403, F.S., a district providing primarily emergency medical services, a community development district established under ch. 190, F.S., or any other multiple-power district performing fire suppression and related services in addition to other services.

[3] http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm, last visited January 24. 2012.

the act. The levy of ad valorem taxes must be approved by referendum called by the board when the proposed levy of ad valorem taxes exceeds the amount authorized by prior special act, general law of local application, or county ordinance approved by referendum. The tax is assessed, levied and collected in the same manner as county taxes.

Non-Ad Valorem Assessments

A district also may levy non-ad valorem assessments to construct, operate and maintain district facilities and services. The rate of such assessments must be fixed by resolution of the board pursuant to statutory procedures. Non-ad valorem assessment rates set by the board may exceed the maximum rates established by special act, county ordinance, the previous year's resolution, or referendum in an amount not to exceed the average annual growth rate in Florida personal income over the previous five years. Proposed non-ad valorem assessment increases which exceed the rate set the previous fiscal year or the rate previously set by special act or county ordinance, whichever is more recent, by more than the average annual growth rate in Florida personal income over the last five years, or the first-time levy of non-ad valorem assessments in a district, must be approved by referendum.

User Charges

A district may provide a reasonable schedule of user charges for the following services:

- special emergency services, including firefighting occurring in structures outside the district;
- fighting fires occurring in or at refuse dumps or as a result of an illegal burn;
- responding to or assisting or mitigating emergencies that could threaten the health and safety of persons, property or the environment, to which the district has been called, including a charge for responding to false alarms; and
- inspecting structures, plans and equipment to determine compliance with fire safety standards.

Impact Fees

If the general purpose local government has not adopted an impact fee for fire services which is distributed to the district for construction within its jurisdictional boundaries, a district may establish a schedule of impact fees to pay for the cost of new facilities and equipment. A district also may enter into agreements with general purpose local governments to share the revenues from fire protection impact fees.

Independent special fire control districts also are authorized to issue various types of bonds, including general obligation bonds, assessment bonds, revenue bonds, notes, bond anticipation notes or other evidences of indebtedness.[4]

Municipal Annexation within an Independent Special District

Chapter 171, F.S., the "Municipal Annexation or Contraction Act," contemplates a municipality's annexation of property within the jurisdictional boundaries of an independent special district.[5] If the municipality elects to assume the special district's service responsibilities, the municipality and the district may enter into an interlocal agreement which provides for the orderly transfer of service responsibilities. This agreement also must address the prevention of loss of any district revenues which may be detrimental to the continued operations of the district, and the status and rights of any adversely affected employees.[6]

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[4] *See,* s. 191.012, F.S.

[5] *See,* s. 171.093, F.S.

[6] If the municipality elects to assume the district's responsibilities pursuant to an interlocal agreement, the district's boundaries contract to exclude the annexed area at the time and in the manner as provided in the agreement.

If the municipality and the district are unable to enter into an interlocal agreement, the district remains the service provider in the annexed area for a period of four years. During the four-year period, the municipality is required to pay the district an amount equal to the ad valorem taxes or assessments that would have been collected had the property remained in the district.[7] By the end of the four-year period, or any mutually agreed-upon extension, the municipality and the district are required to enter into an agreement for the equitable distribution of the district's property and associated indebtedness, or the matter proceeds to circuit court.

During the four-year period, or any mutually agreed upon extension, district service and capital expenditures within the annexed area must be rationally related to the annexed area's service needs. Service and capital expenditures within the annexed area also must be rationally related to the percentage of district revenue received on behalf of the residents of the annexed area when compared to the district's total revenue. A capital expenditure greater than $25,000 cannot be made by the district for use primarily within the annexed area without the express consent of the municipality.

If the municipality elects not to assume the district's responsibilities, the district remains the service provider for the annexed area, the geographical boundaries of the district continue to include the annexed area, and the district may continue to levy ad valorem taxes and assessments on the real property located within the annexed area.

Pinellas County

Pinellas County residents receive fire protection and emergency medical services through a complex system requiring cooperation between 14 municipalities and four independent special fire districts (East Tarpon Lake, Lealman, Palm Harbor and Pinellas Suncoast Fire and Rescue District). This system evolved over time as the county became more densely populated and developed.[8] Ad valorem taxes levied on property are the primary funding source for these local government services, which had an estimated countywide cost of $210.9 million in Fiscal Year 2008-2009.[9]

The Office of Program Policy Analysis & Government Accountability (OPPGA) report presented to the Joint Legislative Auditing Committee on March 8, 2010, recommended that Pinellas County would benefit from the establishment of a broad-based planning entity to oversee a more coordinated approach to planning for fire protection and emergency medical services, and the creation of a system for reporting and tracking related financial information.

The Lealman Special Fire Control District

The Lealman Special Control Fire District ("the district") was created in 2000. Pending referendum approval, ch. 2000-426, L.O.F, established geographic boundaries and an elected governing board for the district, provided the powers of the district, and authorized district ad valorem taxing authority of up to 10 mills. On November 7, 2000, district electors approved creation of the district.

The district serves an unincorporated area between St. Petersburg and Pinellas Park,[10] which consists of approximately 11 square miles and less than 50,000 residents, and presently employs 50 full-time personnel including staff and firefighters.[11]

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[7] If the municipality elects to assume the district's responsibilities and the municipality and the district are unable to enter into an interlocal agreement, and the district continues to remain the service provider in the annexed area, the geographical boundaries of the district contract to exclude the annexed area on the effective date of the beginning of the four-year period. The district may not levy ad valorem taxes on the annexed property in the calendar year in which its boundaries contract, but may assess user charges and impact fees within the area while it remains the service provider.

[8] Office of Program Policy Analysis & Government Accountability, February 2010, Report No. 10-25.

[9] *Ibid.* One of the independent special fire districts, Pinellas Suncoast Fire and Rescue District, receives its funding from a fire services assessment.

[10] Seminole is on the west end, and Kenneth City lies in the middle of the fire control district.

[11] http://lealmanfire.com/statistics.html.

Lealman is located in a relatively low-income area of unincorporated Pinellas County, and relies on commercial property within its boundaries to support its tax base. Since 2000, neighboring cities have selectively annexed the most tax-desirable properties in the community, such as industrial parks, restaurants, car dealerships and other businesses, and thus shifted approximately $400,000 per year in fire taxes onto remaining district residents. As a direct result of the annexations, the district must levy a high millage rate.[12]

In 2002-2003, the district's millage rate was 5.32 mills, and in 2004-2005, the rate was 4.99. The district's millage rates and total revenues for the past six years were as follows:

Year	Millage Rate	Total Revenues
2005-2006	4.70	$4,747,506
2006-2007	4.30	$5,396,963
2007-2008	3.69	$5,045,579
2008-2009	3.98	$4,971,340
2009-2010	4.48	$4,737,720
2010-2011	4.48	$4,363.0080

Thus, although the current district millage rate is less than it was in 2002, it has increased since Fiscal Year 2008-2009, while district revenues have correspondingly decreased. The average Pinellas County fire service millage rate has increased from 2.40 in 2002 to 2.72 in 2011, with the highest rates levied by Lealman. High Point and Feather Sound come in as close seconds, with millage rates of 4.1916.

Recently, the drop in property values has reduced annexation pressure from the cities. However, it is assumed that annexation activity will increase along with property values. Another problem associated with annexation is the fact that the original fire control district, Lealman Fire/Rescue Company, entered into a 1990 countywide mutual aid agreement under which the closest fire unit goes to a fire or accident regardless of the jurisdiction. This agreement requires Lealman to respond to events in areas that have been annexed from the district and from which it receives no tax revenues.[13]

The original charter for the district provided that property within its boundaries annexed by a municipality would be treated as lying within the corporate boundaries of the municipality, and no longer subject to a levy of ad valorem taxes by the district. This act also provided that the property was excluded from the district effective the next January 1 following annexation.[14]

The charter was amended in 2002[15] by the Legislature effective January 1, 2003, to protect the district from annexation in that it provided that the district would continue to provide services to any annexed area and continue as the sole taxing authority (although a municipality or fire control district that annexed district land could collect the tax and pay the district for such services at its annually adopted

[12] Chris Lyon, Lewis, Longman & Walker, P.A, attorney for the district.
[13] It is noted that, pursuant to Section 9 of this agreement, a party may withdraw upon 90 days written notice.
[14] Chapter 2000-426, L.O.F.
[15] Also, this year, the Pinellas County Planning Department issued a "Lealman Incorporation Feasibility Study," responding to requests from Lealman residents to the Board of County Commissioners, to determine the feasibility of incorporating Lealman. The residents wanted to preserve the integrity of their community, and to protect the tax base of the special fire control district. Taxable values in Lealman were found to be significantly lower (approximately one-half) than those in the rest of the unincorporated county. The study found that if Lealman were to incorporate, the new government would have to look at other revenue sources for basic operating expenses that ad valorem revenues would not cover. The report estimated that if Lealman were to incorporate, taxes and fees would increase significantly, between 3.6 and 68.6 percent.

standard rate). These provisions were scheduled to essentially revert to original charter language effective January 1, 2008.[16]

In 2007, the Legislature created the Lealman Special Fire Control District Task Force to review the foregoing provisions governing district land annexation, and consider whether the future repeal of those changes should be rescinded. The Legislature also amended the district charter to reflect original charter language effective July 1, 2008, rather than January 1 of that year.[17] The Task Force issued a report to the Pinellas County Legislative Delegation on October 29, 2007, which recommended that the most productive way to move forward was to pursue interlocal agreements between the various parties covering the issues of annexation and reimbursement for fire services.

Lealman entered into a settlement agreement with the City of Pinellas Park dated February 7, 2007, resolving Lealman *Special Fire Control District v. City of St. Petersburg and City of Pinellas Park*, Case Number: 05-3587-CI-013, pending in the Pinellas County Circuit Court, which provides that the city will not annex property within the district for a period of 10 years.[18]

Additionally, Lealman entered into an interlocal agreement with the City of Seminole on November 13, 2007, which provides that the city will not annex within the district for a period of 15 years.

On August 13, 2010, Lealman filed a two-count petition against the Town of Kenneth City. *Lealman Special Fire Control District v. Town of Kenneth City*, Case No. 10-000046AP-88B, was assigned to the appellate division of the Sixth Judicial Circuit in Pinellas County. The actions filed by the district seek to quash the town's annexation of 16 properties that were formerly within the district's boundaries on grounds that the annexations violated applicable laws. Specifically, the district has alleged that the town's annexations failed to comply with procedural requirements; created enclaves, pockets or finger areas; failed to result in a reasonable, compact, urban municipal boundary; and deprived the district of revenue and increased the tax burden on the district's remaining taxpayers as the district continues to be obligated under existing mutual aid agreements to respond to many of the annexed properties. Additionally, the district seeks to compel the town to comply with the provisions in ch.171, F.S. Specifically, the district has requested the court compel the town to coordinate with the district on the orderly transition of fire and rescue services within the annexed properties, and pay the district its lost ad valorem revenue for fire district services for a four-year period pursuant to s. 171.093, F.S.[19]

At the time of the filing of the action, the district requested abatement of the suit so the parties could participate in the intergovernmental dispute resolution process provided for in ch. 164, F.S. The court entered an order abating the action pending the parties' full participation in that process. To date, the parties have participated in the initial phase of dispute resolution, conflict assessment. The parties have made several attempts to engage in the second phase of the process, the joint public meeting, but have experienced scheduling difficulties. [20]

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[16] Chapter 2002-352, L.O.F.

[17] Chapter 2007-288, L.O.F.

[18] A later settlement stipulation executed by the parties on May 21, 2008, appears to make this moratorium effective until May 21, 2016.

[19] A letter provided to the legislature dated March 15, 2010, from the Town of Kenneth City Major, Teresa Zemaitis, indicated that the town had a contract with Lealman for fire services, after closing its own volunteer fire department almost 15 years earlier. During this time, Lealman was the first responder and the surrounding fire districts would assist as per the mutual aid agreement. When Kenneth City annexed approximately 20 properties worth approximately $17,000 annually in ad valorem taxes, Lealman cancelled the contract, which was worth over $200,000 annually for the next five years. The town currently is under contract with Pinellas Park for fire services, and has reopened its fire station in the center of town. If Kenneth City is to grow, i.e., annex, it must do so into the district, which surrounds the town.

[20] Draft memo to Chris Lyon from Maggie D. Mooney-Portale, Esq., Lewis, Longman & Walker, P.A. dated January 25, 2012.

The City of St. Petersburg does not propose to annex property within the district.[21]

Effect of Proposed Changes

The CS for HB 1033 amends ch. 2000-426, L.O.F., as amended, the charter for the Lealman Fire Control District in Pinellas County. The bill provides that, notwithstanding s. 171. 093, F.S., if a municipality annexes unincorporated territory within the boundaries of the district before July 1, 2016, the district will continue as the sole provider of fire and rescue services for the annexed area. A municipality may levy any applicable taxes, assessments, or fees on the annexed territory, but is required to pay the district an amount equal to the amount of taxes, assessments, or fees that would have been collected by the district, using the millage rate as of the effective date of the bill, or any lower rate that may be levied by the district. The payments continue in perpetuity unless the district is relieved of all fire, rescue or emergency medical service responsibility in the annexed territory. If litigation is required to enforce these provisions, the prevailing party is entitled to an award of attorney fees and costs.

The bill creates an exception to s. 171.093, F.S., in that a municipality may not elect to provide fire and rescue services to any district property it annexes within the next four years, and must make payments for these services to the district in perpetuity, unless the district agrees otherwise. The four-year sunset for the bill's requirements apparently is intended to coincide with the expiration of the settlement agreement between the district and the City of Pinellas Park.[22]

This bill also lowers the district's millage cap from 10 to 5.75 mills. This revision continues to allow funding flexibility for the district as it currently has a millage rate of 4.48, and has never levied a greater rate than 5.32. *See*, the III. COMMENTS, A. CONSTITUTIONAL ISSUES, portion of this analysis regarding the need for a referendum when authorizing special district millage caps.

The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends ch. 2002-426, L.O.F., relating to the Lealman Special Fire Control District.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? November 6, 2011

WHERE? The *St. Petersburg Times*, a daily newspaper of general circulation published in Pinellas County.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

[21] Chris Lyon, Lewis, Longman & Walker, P.A.
[22] January 11, 2012, e-mail from Chris Lyon.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 9(b), art. VII of the State Constitution, authorizes ad valorem taxes "for all other special districts a millage authorized by law approved by vote of the electors . . . ." It has been the practice of House Bill Drafting to advise that referendum approval be included not only in acts that raise a millage rate, but also in acts that reduce the rate of such authorized millage, as this, too, is a millage "authorized by law," arguably within the intent of the constitutional provision.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill in that it provides an exemption to s. 171.093, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2012, the Community & Military Affairs Subcommittee adopted a strike-all amendment that:

- corrects a supremacy clause, to provide a specific exemption to s. 171.093, F.S.;
- removes unnecessary language providing that the act did not require a referendum to approve the levy of an ad valorem tax at a millage rate less than previously approved by referendum;
- allows an annexing municipality to cease making payments to the district if the district is relieved of all fire, rescue or emergency medical service responsibility in the annexed territory.

This analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to the Lealman Special Fire Control District, Pinellas County; amending chapter 2000-426, Laws of Florida, as amended; lowering the millage rate for the district; providing for future annexation; providing an effective date.

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

Section 1. Sections 8 and 11 of chapter 2000-426, Laws of Florida, as amended by chapter 2007-288, Laws of Florida, are amended to read:

Section 8. Taxes; non-ad valorem assessments; impact fees; user charges; bond issuance.—

(1) The District shall also hold all powers, functions, and duties set forth in this Act and chapters 189, 191, and 197, Florida Statutes, as amended from time to time, including, but not limited to, ad valorem taxation, bond issuance, other revenue-raising capabilities, budget preparation and approval, liens and foreclosure of liens, use of tax deeds and tax certificates as appropriate for non-ad valorem assessments, and contractual agreements; however, an ad valorem tax levied by the Board for operating purposes, exclusive of debt service on bonds, may not exceed 5.75 ~~10~~ mills if approved by a majority vote of qualified electors of the district voting in a referendum election providing for such millage rate. The District may be financed by any method established in this Act,

chapter 189, or chapter 191, Florida Statutes, as amended from time to time.

(2) The methods for assessing and collecting non-ad valorem assessments, fees, or service charges shall be as set forth in chapter 170, chapter 189, chapter 191, or chapter 197, Florida Statutes, as amended from time to time.

Section 11. Annexation of territories by municipalities.—

(1) For the purposes and requirements of this Act, after the annexation by a municipality of any unincorporated area within the Lealman Special Fire Control District, the annexed area shall be treated as lying within the corporate boundaries of the annexing municipality and shall not be subject to a levy of the ad valorem tax that is authorized by this Act.

(2) Notwithstanding section 171.093, Florida Statutes, if a municipality annexes any unincorporated territory situated within the defined boundaries of the District from the effective date of this Act until July 1, 2016, the District shall continue as the primary provider of fire, rescue, and emergency medical services for the annexed territory. Any municipality that annexes such territory may levy any applicable taxes, assessments, or fees on the annexed territory but must, by May 1 of each subsequent year after such annexation, pay the District for its services in an amount equal to the amount of taxes, assessments, or fees which would have been collected by the District from the annexed territory during that year had the territory not been annexed, using the millage rate in effect on the effective date of this act, or any lower rate that may be levied by the District. Such payments shall continue in

perpetuity unless the District is relieved of all fire, rescue, or emergency medical service responsibility in the annexed territory, with the exception of an isolated response to a local or areawide disaster, such as a hazardous material incident, tornado, hurricane, or major fire. If litigation is required to enforce the provisions of this Act, the prevailing party shall be entitled to an award of attorney fees and costs. This subsection shall not apply to annexations of unincorporated territory situated within the defined boundaries of the District after July 1, 2016.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1299 North Lake County Hospital District, Lake County
SPONSOR(S): Community & Military Affairs Subcommittee, Metz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Nelson	Hoagland
2) Finance & Tax Committee		Aldridge	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The North Lake County Hospital District is an independent special district that was created by the Florida Legislature. CS/HB 1299 codifies and revises the hospital district charter to:

- revise the public purpose of the district, limiting it to indigent care;
- limit persons from seeking election to the board who have served as an officer or member of a board of a hospital physically located in the district, or a parent corporation or foundation of such a hospital, within the previous two years;
- require notice of district meetings to be published online on a publicly accessible website maintained by the district;
- discontinue payments of district tax proceeds to Florida Hospital Waterman, Leesburg Regional Medical Center, and LifeStream Behavioral Center;
- require financial integrity and compliance audits of providers;
- sunset the district in 2017, unless the electors approve its continuation; and
- provide language for a referendum.

The bill has an effective date of upon becoming law.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The North Lake County Hospital District

The North Lake County Hospital District is an independent special district that was created by the Florida Legislature pursuant to ch. 95-508, L.O.F. This special act ratified the merger of the Northwest Lake County Hospital District (created pursuant to ch. 78-546, L.O.F.[1]) and the Northeast Lake County Hospital District (created pursuant to ch. 63-1509, L.O.F.[2]), which were combined into a single independent taxing district by concurrent resolutions on February 9, 1990.[3] The expressed intent of the Legislature was to "provide uniform and adequate funding for indigent and other health care services in Lake County...." While the previous special acts for the hospital districts provided authorization to levy a tax not to exceed one mill, this act stated that the district "shall levy" an ad valorem tax of one mill.

The district had all of its prior special acts codified in ch. 2002-348, L.O.F., which was subsequently amended by ch. 2004-460, L.O.F. The current stated purpose of the district is to "ensure continued hospital services" for its residents.

The North Lake County Hospital District is governed by a board of trustees composed of six persons elected by the eligible voters residing within the district. All trustees must be duly qualified electors who reside in the district. Three trustees must reside in the Northeast Territory, and three trustees must reside in the Northwest Territory.[4] Vacant seats are filled through appointment by the sitting board of trustees, and appointees serve until the expiration of the term for which they are appointed. Any member of the board may be removed by the Governor at any time, for cause.

Trustees serve four-year terms, for a maximum of eight years. A trustee serves without pay, and is required to provide the Lake County Board of County Commissioners a bond for the faithful performance of his or her duties in the sum of $1,000.

Four trustees constitute a quorum, and a vote of at least four trustees is necessary for the transaction of district business. The board of trustees may select a chair, vice chair, secretary and treasurer. The board is required to keep true and accurate minutes and records of all business transacted, which are open and subject to the inspection of district residents during normal business hours.

The North Lake County Hospital District, through its board of trustees, has the power of eminent domain, and all powers of a body corporate.

All tax proceeds generated in the Northeast Territory of the district, less one-half of the amount reserved by the board to pay for its maintenance and services, must be paid to Florida Hospital Waterman, Inc.,[5] upon written request by the Waterman Foundation that the funds are needed for health care.

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[1] This act provided that the district was authorized to levy a tax not to exceed one mill to provide medical and services to indigents, subject to referendum approval.

[2] This act provided that the district was authorized to levy a tax not to exceed one mill. The proceeds of the tax were to be expended "for support and maintenance of The Waterman Memorial Hospital," and a referendum was provided for that allowed electors to choose the hospital district in which they desired their area to be included.

[3] In 1989, the Uniform Special District Accountability Act provided for the merger of special districts through adoption of concurrent resolutions by the governing bodies of each special district pursuant to s. 189.4042, F.S.

[4] Both of these territories are defined by legal description in Section 1 of the district charter.

[5] Florida Hospital Waterman was founded in 1938 as a legacy of Frank Waterman, president of the Waterman Fountain Pen Company. Florida Hospital Waterman has progressed from an 18-bed county hospital to a 204-bed acute care facility. In 1992, Florida Hospital Waterman merged with the Adventist Healthcare System and became part of a worldwide network. http://www.fhwat.org/AboutUs.aspx, last visited on February 10, 2012.

All tax proceeds generated from within the Northwest Territory of the district, less one-half of the amount reserved annually by the board to pay its maintenance and services, must be paid to Leesburg Regional Medical Center, Inc.,[6] upon written request by the Leesburg Regional that the funds are needed for health care. In 2010, Leesburg Regional received hospital district funding of approximately $4.5 million.[7]

After submission of a written request by LifeStream Behavioral Center[8] to Florida Hospital Waterman, Inc., and Leesburg Regional Medical Center, Inc., certifying that funds are needed for indigent health care, the following payments are required from their respective share of the above-described tax funds:

- for each year after calendar year 1993, LifeStream is paid $100,000 or 1/20 of one mill of the tax moneys due Waterman from the Northeast Territory, whichever is greater; plus
- $100,000 or 1/20 of one mill of the tax moneys due Leesburg Regional from the Northwest Territory, whichever is greater.

If either of the two providers refuses to pay LifeStream in any given year, during the next fiscal year of the district, its board is required to directly pay LifeStream an amount equal to the funds withheld during the previous year by the provider payable from funds which would otherwise be payable to the provider.

The obligation to pay tax revenues to LifeStream permanently terminates if a countywide health taxing district is created and funded pursuant to ch. 154, F.S.,[9] or LifeStream loses, relinquishes, or forfeits its accreditation as a hospital.

Leesburg Regional Medical Center Charitable Foundation, Inc., and its parent corporation; Florida Hospital Waterman Foundation, Inc., and its parent corporation; and LifeStream Behavioral Center are required to file annual audited financial statements with the district.

The board is authorized to pay from district funds all its expenses and all expenses necessarily incurred with the development of the district as well as the fees and expenses of a certified public accountant and an attorney. The board is required to include a reserve amount in its annual budget.

At least once each year, the board is required to file a complete financial statement with the Lake County Clerk of the Circuit Court. Notice of the statement must be filed with the clerk and published in a newspaper regularly published in Lake County, and the statement must be made available at all reasonable times to district residents for their inspection. The board is required to comply with all financial disclosure and reporting requirements provided by general law.

According to a statement provided by the sponsor of the bill, as a practical matter, the board functions primarily as a fiscal agent for the tax exempt hospital corporations, i.e., Leesburg Regional, Waterman and LifeStream. In response to a public records request, the board stated that it has not adopted any bylaws, rules, regulations, policies or procedures, and simply levies the millage rate allowed by the district's enabling law. Although the board has retained an attorney and accountant to act on its behalf, it has no office, website, or telephone number, and no employees or retained auditors to provide

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[6] Leesburg Regional Medical Center, part of Central Florida Health Alliance, is a 322-bed acute care hospital serving Lake, Sumter and Marion counties that has grown from a small community hospital built in 1963 to a comprehensive medical center. http://www.cfhalliance.org/AboutUs_LRMC.htm, last visited on February 9, 2012.

[7] August 19, 2011, letter from Phyllis Baum, Leesburg Regional Medical Center Chief Executive Officer.

[8] LifeStream is a behavioral health and social services organization that provides treatment, education, care management and rehabilitation services to children, adolescents and adults. Located in Central Florida, LifeStream primarily serves the residents of Lake and Sumter Counties. Beginning in 1969 as a component of Waterman Memorial Hospital in Eustis, LifeStream became an independent non-profit organization in 1971. Since then, LifeStream has grown to 21 facilities and 52 programs to help those who suffer from mental illness and substance abuse achieve recovery and resiliency. http://www.lsbc.net/Aboutus.aspx, last visited February 9, 2012.

[9] Section 154.331, F.S., provides that each county may establish a dependent special district pursuant to the provisions of ch. 125, F.S., or, by ordinance, create an independent special district to provide funding for indigent and other health and mental health care services throughout the county.

oversight for the tax revenues. A review of the minutes of board meetings over the past 20 years revealed that only three board meetings were held annually, and most were of relatively short duration.[10]

Effect of Proposed Changes

CS/HB 1299 provides for the codification of all special acts relating to the North Lake County Hospital District. It is the stated intent of the Legislature in enacting this law to provide a single, comprehensive special act charter. The district boundaries remain the same.

Public Purpose

The bill establishes a new public purpose for the district: to provide a means to pay for indigent care. This language is more restrictive than current law which provides that the purpose of the district is to "...ensure continued hospital services for the residents of the North Lake County Hospital District...." Indigent care may be provided to residents of the district through the use of health care facilities not owned and operated by the board.

The impact of this change may be that either more eligible individuals are served, or that the district has lower overall expenditures and subsequently lower taxes are paid by individuals and businesses.

Indigent Care

The term "indigent care" is defined by the bill to mean medically necessary health care provided to residents of the district who are determined to be qualified pursuant to the provisions of the Florida Health Care Responsibility Act, s. 154.304(9), F.S., and the Florida Health Care Indigency Eligibility Certification Standards.[11] Section 154.304(9), F.S., provides that a "qualified indigent person" or "qualified indigent patient" means a person who has been determined to have an average family income, for the 12 months preceding the determination, which is below 100 percent of the federal nonfarm poverty level;[12] who is not eligible to participate in any other government program that provides hospital care; who has no private insurance or has inadequate private insurance; and who does not reside in a public institution as defined under the medical assistance program for the needy under Title XIX of the Social Security Act, as amended.[13]

Eligibility for Office

New language is added to the district charter, which provides that beginning with the general election in 2014, and in each general election thereafter, a person is ineligible to seek election to the board if that person served, within the previous two years, as an officer or member of a board of directors of a hospital physically located in the district, a parent corporation of such a hospital, or a foundation of such a hospital. This restriction should assist district trustees in maintaining their objectivity, and avoiding appearances of conflicts of interest.

Notice of Annual Meetings

The bill requires notice of district meetings to be published online on a publicly accessible website maintained by the district, as well as a daily newspaper of general circulation. This change will require the district to develop a website, and make the notices for its meetings more available to the public.

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[11] Rule 59H-1.0035(30), F.A.C.

[11] Rule 59H-1.0035(30), F.A.C.

[12] See s. 154.304(9), F.S. The 2011 Poverty Guidelines for the 48 Contiguous States and the District of Columbia provide maximum incomes of $10,890 for families of one, $14,710 for families of two; $18,530 for families of three; and $22,350 for families of four. The poverty guidelines do not make a distinction between farm and non-farm families. http://aspe.hhs.gov/poverty/11fedreg.shtml.

[13] Rule 59H-1.0035(30), F.A.C., contains similar language along with restrictions with regard to assets.

Filling of Unexpired Terms after Removal by Governor

If any member of the board is removed by the Governor, for cause, the vacancy no longer is filled through appointment by the remaining board members, but will now be appointed by the Governor for the unexpired term. This change will help the board avoid the appearance of cronyism in these matters.

District Powers

The district charter no longer specifies that the district has the power of eminent domain. The district is authorized to adopt an official seal, maintain an office, sue and be sued, make and execute agreements and contracts, employ staff, apply for and receive grants, and adopt and promulgate policies, rules and procedures.

The bill authorizes the district to levy an ad valorem tax not to exceed one mill. Currently, the district charter provides that the district "may levy an ad valorem tax...of 1 mill" and this language apparently has been interpreted to mean that the district may not levy a lesser amount. The new language should clarify that the district may levy a tax of one mill, or lower.

The requirements for the board to pay tax proceeds to Florida Hospital Waterman, Inc., and Leesburg Regional Medical Center, Inc. are deleted. Also eliminated is the provision authorizing funding for LifeStream Behavioral Center.

Permitted Uses of Tax Funds

The CS for HB 1299 adds a new section to the district charter that indicates the authorized uses for funds received through the district's taxing power:

- reasonable expenses incurred by the district to administer and enforce the act, including the use of private vendors;
- indigent care provided by licensed hospitals physically located in the district;
- indigent care provided by licensed primary care clinics physically located in the district that are approved by the board, if the care does not overlap or duplicate care available through other public health clinics physically located in the district and serving medically indigent residents;
- maximizing public or private grant or matching funds available for indigent care; and
- contracts with the Lake County Board of County Commissioners for services performed by county personnel to carry out the purpose of the district.

These provisions establish much clearer guidelines for the use of taxpayer dollars by the district, and emphasize its mission to provide indigent care.

Restrictions

The bill provides that the board may not issue bonds, raise tax revenue from any other source, or impose non-ad valorem assessments. Funds received through the district's taxing power and any interest thereon may not be used:

- to compensate for a provider's inability to collect debts arising from serving persons who are not eligible for indigent care under the act;
- to cover shortfalls or deficiencies in the amounts paid by Medicare or private insurance from patients who are not eligible for indigent care under the act;
- to compensate for normal business overhead or expenses;
- for capital expenditures incurred by or for a provider;
- for indigent care based on assumptions, models, studies, or expert analyses or opinions; or

- indigent care in excess of the actual cost of providing such care; however, the payment for indigent care provided may not exceed the amount payable by the Medicare program for identical or substantially similar care in the district's territory.

Fiscal Responsibility, Transparency and Accountability

The bill states that the board must annually determine and approve a balanced district budget and millage in accordance with ch. 200, F.S., its charter, and generally accepted accounting principles. This provision essentially mirrors current language, with exception of the reference to ch. 200, F.S., relating to determination of millage.

At least once each year, the board is required to post online on a publicly accessible website maintained by the district, and publish once in a daily newspaper of general circulation in the district, a detailed financial statement. This provision eliminates the current requirement that the board file such statement with the Clerk of the Circuit Court, and adds the requirement to publish it on the Internet.

Any provider receiving funds from the district is subject to an audit of its records relative to the patients for whom payment is sought in order to ensure compliance with the act. All auditors must contractually agree to comply with applicable patient confidentiality rules, including the Health Insurance Portability and Accountability Act of 1996[14] and rules implementing that act.

The district is required to conduct financial integrity and compliance audits of providers receiving payments in any one fiscal year in excess of 10 percent of the district's tax revenue in that year, and may initiate other audits of any provider at any time, to ensure compliance with the act and to provide transparency and accountability to the taxpayers. All audit reports become public records upon acceptance by the board. If, upon completion of an audit, it is determined that a payment made by the district was not in compliance with the act, a rebuttable presumption is created that the district is entitled to a recoupment of the amounts in question. Notice to the provider and an opportunity to present evidence rebutting the presumption in an informal setting is required. Pending judicial determination, the district may set off the amounts in question against other amounts owed to the provider. If informal resolution cannot be reached between the parties, a formal mediation conference must be requested by the board of trustees. Venue for any legal proceedings is in the Lake County Circuit Court.

The board of trustees is required to adopt and promulgate eligibility verification criteria and procedures designed to ensure that all recipients of indigent care for which payment is sought are qualified by the provider as medically indigent persons and residents of the district. Any indigent care for which payment is requested must be certified by the provider as medically necessary.

If estimated payments are made to a provider, to ensure public oversight, accountability, and public benefit, the hospital or clinic must maintain these funds in a separate account and document each payment or draw down from the account so that a complete audit record is established. The separate account and all direct support documentation that is part of the audit record is subject to disclosure as provided in ch. 119, F.S., which provides that public records be available for inspection, except if exempted.

All hospitals receiving payments from the district in a given fiscal year, and their parent corporations and foundations, must file annual audited financial statements with the district.

Additionally, the board is required to provide each member of the Lake County Legislative Delegation:

- all financial statements and reports of the district;
- all audit reports of the district and all providers that are the subjects of audits initiated by the district; and

[14] HIPAA; Pub. L. No. 104-191, 110 Stat. 1936.

- within 120 days after the end of its fiscal year, an annual report for the previous fiscal year providing a detailed review of the performance of the district containing actual data and analyses of patients served, the names and types of providers used, the ratio of administrative to direct patient expenditures, problems encountered, and recommendations for improvement, including proposed legislative changes to the district's special act.

Financial Disclosure and Notice

Members of the board are subject to the financial disclosure requirements provided in general law. This reflects current language, and refers to the financial disclosure requirements provided in part III of ch. 112, F.S., the "Code of Ethics for Public Officers and Employees."

Except as otherwise expressly required by the act, the board is subject to the reporting, notice and public meetings requirements of ss.189.415,[15] 189.417,[16] and 189.418,[17] F.S. All meeting and workshop notices and minutes of meetings and workshops must also be posted online on the publicly accessible website maintained by the district.

Sovereign Immunity

For purposes of sovereign immunity pursuant to s. 768.28(2), F.S., the bill provides that any primary care clinic physically located in the district, the main purpose of which is to provide indigent care and which directly delivers that care for compensation from the district, and any health care provider who volunteers his or her services to the primary care clinics to provide indigent care without receiving personal financial compensation, is conclusively deemed to be primarily acting as an instrumentality of the state. This language, in effect, appears to provide an exemption to s. 766.1115, F.S., the "Access to Health Care Act," which provides sovereign immunity for volunteer, uncompensated services of a health care professional where the health care provider receives no compensation from a governmental contractor.

District Duration and Continuation

The district expires and will be dissolved at the end of its fiscal year in 2017 without further action by the Legislature. However, the district may be continued at the end of that period for 10 years if a majority of the electors approve its continuation in the 2016 general election. The district is subject to a continuation vote every 10 years thereafter. If the district is dissolved without further action by the Legislature as provided in the act, all property owned by the district is transferred to, and all indebtedness of the district is assumed by, the Lake County Board of County Commissioners. This provision is in keeping with s. 189.4045(2), F.S., which provides for financial allocations when a special district is dissolved.

Section 189.4042(2), F.S., provides that the dissolution of an independent special district created and operating pursuant to a special act may only be effectuated by the Legislature unless otherwise provided by general law. However, for any independent district that has ad valorem taxation powers, the same procedure required to grant such independent district ad valorem taxation powers is also required to dissolve or merge the district. In keeping with previous practice and the purpose of these laws, a more appropriate method for the Legislature to dissolve this district may be to pass a local bill specifically repealing the district's special act, subject to referendum.

The bill provides referendum language, and an effective date of upon becoming law.

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[15] Section 189.415, F.S., requires each independent special district to submit to each local general-purpose government in which it is located a public facilities report and an annual notice of any changes.

[16] Section 189.417, F.S., requires the governing body of each special district to file quarterly, semiannually, or annually a schedule of its regular meetings with the local governing authority or authorities. It also requires such meetings to be noticed and open to the public.

[17] Section 189.418, F.S., relates to special district reports, audits and budgets.

B. SECTION DIRECTORY:

Section 1: Provides for codification of all special acts relating to the North Lake County Hospital District.

Section 2: Codifies, reenacts, amends and repeals chs. 2002-348 and 2004-460, L.O.F., relating to the North Lake County Hospital District.

Section 3: Re-creates the North Lake County Hospital District and its charter.

Section 4: Repeals chs. 2002-348 and 2004-460, L.O.F.

Section 5: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 7, 2011.

WHERE? The *Orlando Sentinel*, a daily newspaper of general circulation published in Lake County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [x] No []

IF YES, WHEN? November 8, 2016.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, the district is anticipated to receive revenues of $8.4 million in Fiscal Year 2012-2013 and $8.1 million in Fiscal Year 2013-2014, based on current revenue projections using a projected decline in property values of eight percent in FY 12-13 and three percent in 13-14.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill specifically authorizes district rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill in that it appears to provide exemptions to s. 766.1115, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2012, the Community & Military Affairs Subcommittee adopted a strike-all amendment that:

- deletes language requiring a formal mediation conference as a condition precedent to the filing of a lawsuit, and adds language directing the board of trustees to request such a conference;
- reduces the period that former officers or members of other hospital boards are ineligible to seek election to the district board from four to two years;
- clarifies the due date for the district's annual report.

A bill to be entitled

An act relating to the North Lake County Hospital District, Lake County; codifying special laws relating to the district; providing legislative intent; amending, codifying, reenacting, and repealing chapters 2002-348 and 2004-460, Laws of Florida, relating to the district; re-creating the district and re-creating and reenacting the charter; providing definitions; providing a public purpose; prohibiting a person from seeking election to the board of trustees if the person has previously served on the board of directors of certain entities within a specified time; requiring publication of the annual meeting notice on a publicly accessible website; providing general powers of the district, including the power to levy an ad valorem tax not to exceed a specified millage; establishing permitted uses of tax funds; providing restrictions on the district board's activities; prescribing requirements of the board for fiscal responsibility, transparency, and accountability; providing financial disclosure requirements and reporting, notice, and public meeting provisions for the board; providing for sovereign immunity; providing for expiration of the district at a specified time without further legislative action and permitting continuation of the district by referendum at the end of 10-year intervals; providing for a referendum; providing an effective date.

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

Section 1. This act constitutes the codification of all special acts relating to the North Lake County Hospital District. It is the intent of the Legislature in enacting this law to provide a single, comprehensive special act charter for the district, including all current authority granted to the district by its several legislative enactments and any additional authority granted by this act.

Section 2. Chapters 2002-348 and 2004-460, Laws of Florida, relating to the North Lake County Hospital District, are codified, reenacted, amended, and repealed as provided in this act.

Section 3. The North Lake County Hospital District is re-created, and the charter is re-created and reenacted to read:

Section 1. ESTABLISHMENT OF DISTRICT; BOUNDARIES.—

A. This act may be cited as the "North Lake County Hospital District Act."

B. There is created and established as an independent special taxing district of the state a hospital district in Lake County to be known as the "North Lake County Hospital District," which shall comprise and include the territory within Lake County described as follows:

Beginning at the range line dividing ranges 26 and 27 east at its intersection with the township line separating townships 20 and 21 south of the

Tallahassee meridian; thence north on said range line to the township line dividing townships 19 and 20 south; thence east on said township line to the Wekiva River; thence north along the thread of the said Wekiva River to the St. Johns River; thence in a northerly and northwesterly direction through the thread of the St. Johns River to the southwest shore of Lake George; thence north along the west shore of Lake George to the range line dividing ranges 26 and 27 east; thence south on said range line to the township line dividing townships 17 and 18 south; thence west on said township line to the northeast corner of section 1, township 18 south, range 25 east; thence run south along the east range line for range 25 to the southeast corner of section 36, township 18 south, range 25 east; thence run east along the North boundary of section 6, township 19 south, range 26 east, to the waters of Lake Eustis; thence southwesterly along the waters of Lake Eustis to the center of the mouth of Dead River; thence southwesterly along the center of Dead River to an extension of the west boundary of section 24, township 19 south, range 25 east, extended south into Lake Harris; thence run southwesterly across Lake Harris to the intersection of the eastern boundary of section 12, township 20 south, range 24 east, with the waters of Lake Harris; thence run southeasterly and south/southeasterly along the shoreline of Lake Harris

and Little Lake Harris to the south boundary line of section 24, township 20 south, range 25 east; thence run west to the northwest corner of section 27, township 20 south, range 25 east; thence run south to the southwest corner of section 34, township 20 south, range 25 east; thence run east along the township line separating townships 20 and 21 south, to the Tallahassee Meridian to the point of beginning (hereinafter the "Northeast Territory").

and

Begin at the northwest (NW) corner of section 6, in township 18 south, range 24 east, and run east along the north township line of township 18 south, to the northeast corner of section 1, township 18 south, range 25 east; thence run south along the east range line of range 25 to the southeast corner of section 36, township 18 south, range 25 east; thence run east along the north boundary of section 6, township 29 south, range 26 east, to the waters of Lake Eustis; thence southwesterly along the waters of Lake Eustis to the center of the mouth of Dead River; thence southwesterly along the center of Dead River to an extension of the west boundary of section 24, township 19 south, range 25 east, extended south into Lake Harris; thence run southwesterly across Lake Harris to the point that the eastern boundary of section 12,

township 20 south, range 24 east intersects with the waters of Lake Harris; thence run in a general southeasterly direction along the waters of Lake Harris to the point that the southern boundary of section 24, township 20 south, range 25 east, and the waters of Lake Harris intersect; thence run west along the south boundary of sections 24, 23, and 22, township 20 south, range 25 east, to the southwest (SW) corner of said section 22, township 20 south, range 25 east; thence run south along the west boundary of sections 27 and 34, township 20 south, range 25 east to the southwest (SW) corner of section 34, township 20 south, range 25 east; thence run west along the south line of said township 20 to western boundary of Lake County, and west boundary of range 24 east; thence north along the west boundary of said range 24 to the point of beginning (hereinafter the "Northwest Territory").

Section 2. DEFINITIONS.—As used in this act and for purposes of this act, the term:

A. "Board of trustees" and "board" mean the Board of Trustees of the North Lake County Hospital District.

B. "District" means the North Lake County Hospital District.

C. "Indigent care" means medically necessary health care provided to residents of the North Lake County Hospital District who are determined to be qualified pursuant to the provisions of the Florida Health Care Responsibility Act, section 154.304(9),

Florida Statues, and the Florida Health Care Indigency Eligibility Certification Standards, Florida Administrative Code, rule 59H-1.0035(30).

D. "Provider" means a licensed hospital or primary care clinic physically located in the district.

Section 3. PUBLIC PURPOSE OF THE DISTRICT.—The public purpose of the district is to provide a means to pay for indigent care provided in accordance with this act. Indigent care may be provided to residents of the district in accordance with this act through the use of health care facilities not owned and operated by the board of trustees. The provision of such indigent care is found and declared to be a public purpose and necessary for the preservation of the public health of the residents of the district.

Section 4. MEMBERSHIP AND ORGANIZATION OF THE GOVERNING BOARD OF THE DISTRICT.—

A. General.—

1. The district shall be governed by a board of trustees composed of six persons to be elected by the electors residing within the district in a general election. The trustees currently serving on the board shall continue in their capacity to the completion of their terms. The term of office of each trustee shall be 4 years and a trustee may not serve more than two terms for a maximum of 8 years. The term of office shall expire on the date of the general election held 4 years after the date on which that trustee was elected. All elections for the office of trustee shall be conducted in the same manner as elections for county commissioners.

2. The members of the board of trustees shall serve without pay. Each member shall give a bond to the Board of County Commissioners of Lake County and its successors in office for the use and benefit of the district for the faithful performance of his or her duties in the sum of $1,000 with a surety company qualified to do business in this state as surety, which bond shall be approved and accepted by the Clerk of the Circuit Court of Lake County. The premiums on such bond shall be paid by the district as part of the expenses of the district.

3. Four of the trustees shall constitute a quorum, and a vote of at least four of the trustees is necessary for the transaction of any business of the district. The board of trustees may select from among its membership a chair, vice chair, secretary, and treasurer. The board of trustees shall cause true and accurate minutes and records to be kept of all business transacted by them and shall keep full, true, and complete books of account and minutes, which minutes and books shall be open and subject to the inspection of the residents of the district at all reasonable times during normal business hours. Any person desiring to do so may obtain a copy of the minutes and books of account or such portions thereof as he or she may desire upon payment of the costs of reproduction.

B. Election of the board of trustees.—

1. Registration of electors.—Any person who is a resident of the district, at least 18 years of age, and registered with the Supervisor of Elections for Lake County is eligible to vote for the election of members of the board of trustees.

2. Qualifications of candidate.—All trustees must be duly

qualified electors who reside in the district. Three trustees must reside in the Northeast Territory and three trustees must reside in the Northwest Territory. Beginning with the general election in 2014 and in each general election thereafter, a person is not eligible to seek election to the board of trustees if that person served, within the previous 2 years before the election, as an officer or member of a board of directors of a hospital physically located in the district, a parent corporation of such a hospital, or a foundation of such a hospital.

3. Vacancies.—Vacant trustee seats shall be filled through appointment by the Governor; appointees shall serve until the expiration of the term for which they are appointed.

C. Annual meeting.—The annual meeting shall be held before January 31 of each year at such time and place within the district as is determined by the board of trustees. Notice of the date, time, and place of the annual meeting shall be published online on a publicly accessible website maintained by the district and in a daily newspaper of general circulation, in a section other than the legal ad or classified ad sections, in the district once per week for 2 consecutive weeks. The date of the first publication of such notice must be at least 15, and not more than 30, days before the annual meeting. The agenda at the annual meeting of the board of trustees shall include, but is not limited to:

1. Call to order.

2. Presentation and approval of minutes of the last annual meeting and of any special meeting held since that meeting.

3. Financial report.

4. Presentation of the annual report of the board of trustees.

5. Transaction of any business that may properly be brought before the board.

6. Election of officers of the board of trustees.

D. Special meetings.—Special meetings of the board of trustees may be called at any time by the chair or upon the written request of four members of the board of trustees. Notices of special meetings of the board of trustees shall be published online on a publicly accessible website maintained by the district and by publication in a daily newspaper of general circulation in the district at least 7 days before such meeting, stating the date and place and general matters of the business to be considered.

E. Removal of members from the board of trustees.—Any member of the board of trustees may be removed by the Governor at any time, for cause, in which event such vacancy or vacancies thereby occurring shall be filled through appointment by the Governor for the unexpired term.

Section 5. POWERS, FUNCTIONS, AND DUTIES.—

A. General powers.—The district may:

1. Adopt an official seal and alter it at pleasure.

2. Maintain an office within the district's geographical territory at a place it may designate.

3. Sue and be sued in its own name and plead and be impleaded, but with all sovereign immunity and limitations provided by the State Constitution and general law.

4. Make and execute agreements of lease, contracts, and other instruments necessary in the exercise of its powers and functions under this act.

5. Lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any facilities or property for the use of the district to carry out the purpose of the district in its reasonable judgment.

6. Employ attorneys, accountants, and such other employees and agents as may be necessary, in its reasonable judgment, to carry out the purpose of the district, and fix their reasonable compensation.

7. Levy an ad valorem tax in the district not to exceed 1 mill on the dollar of the value of all nonexempt property within that area of Lake County which comprises the district. Such tax shall be paid into the district fund.

8. Cooperate with, apply for and receive grants from, or contract with other governmental agencies or private individuals or entities as may be necessary, convenient, or proper in connection with any of the powers and duties authorized by this act and to carry out the public purpose of the district in its reasonable judgment.

9. Adopt and promulgate policies, rules, and procedures for the efficient and effective operation of the district and to ensure the proper implementation of this act.

10. Do all things necessary to carry out the purpose of the district and to ensure the proper implementation of this act.

B. Collection of taxes.—It is the duty of the Property

Appraiser of Lake County to assess, and the Tax Collector of Lake County to collect, the ad valorem tax levied by the board of trustees upon the taxable property in the district. The tax collector shall collect such tax as levied by the board of trustees in the same manner as other taxes are collected and shall pay the same over to the board of trustees within the time and in the manner prescribed by law for the payment of the Tax Collector of Lake County taxes to the county depository. It is the duty of the Department of Revenue to assess all such property in accordance with section 193.085, Florida Statutes. The amount of each county or state taxes and the taxes for the district shall be assessed by the officer respectively as are county taxes upon such property, and such tax shall be remitted by the collecting officer to the board of trustees. All such taxes shall be held by the board of trustees and paid out by them for purposes of this act.

C. Liens and foreclosures.—Liens and foreclosure of liens resulting from failure to pay ad valorem taxation shall be treated as liens and foreclosures resulting from other ad valorem taxes.

Section 6. PERMITTED USES OF TAX FUNDS.—Consistent with the public purpose of the district, the use of funds received through the district's taxing power and any interest thereon may be used:

A. For reasonable expenses incurred by the district to administer and enforce this act, including the use of private vendors.

B. To pay for indigent care provided by licensed hospitals

physically located in the district according to policies and procedures adopted by the board of trustees pursuant to and consistent with this act.

C. To pay for indigent care provided by licensed primary care clinics physically located in the district that are approved by the board of trustees, if the care does not overlap or duplicate care available through other public health clinics physically located in the district and serving medically indigent residents of the district.

D. To maximize public or private grant or matching funds available for indigent care, including, but not limited to, Medicaid Supplemental Hospital Funding Programs, the Low-Income Pool Program, the Disproportionate Share Hospital Program, and similar programs.

E. To contract with the Lake County Board of County Commissioners for services performed for the district by personnel employed by the county, as well as logistical and technical support, to carry out, in its reasonable judgment, the purpose of the district.

F. To lower the millage rate in succeeding years.

Section 7. RESTRICTIONS.—

A. The district board may not issue bonds, raise tax revenue from any other source, or impose non-ad valorem assessments.

B. Funds received through the district's taxing power and any interest thereon may not be used:

1. To compensate for a provider's inability to collect debts arising from serving persons who are not eligible for

indigent care under this act.

2. To cover shortfalls or deficiencies in the amounts paid by Medicare or private insurance from patients who are not eligible for indigent care under this act.

3. To compensate for normal business overhead or expenses.

4. For capital expenditures incurred by or for a provider.

5. For indigent care based on assumptions, models, studies, or expert analyses or opinions.

6. For indigent care in excess of the actual cost of providing such care; however, the payment for indigent care provided may not exceed the amount payable by the Medicare program for identical or substantially similar care in the territory of the district.

Section 8. FISCAL RESPONSIBILITY, TRANSPARENCY, AND ACCOUNTABILITY.—

A. The board of trustees shall annually determine and approve a balanced district budget and millage in accordance with chapter 200, Florida Statues, this act, and generally accepted accounting principles.

B. At least once each year, the board of trustees shall post online on a publicly accessible website maintained by the district and publish once in a daily newspaper of general circulation in the district a complete detailed statement of all moneys received and disbursed by it since the creation of the district as to the first published statement and since the last published statement as to any other year. The statement must include the sources from which the funds were received, the balance on hand at the time of the published statement, and a

complete statement of the financial condition of the district.

C. Any provider receiving funds from the district is subject to an audit of its records relative to the patients for whom payment is sought in order to ensure compliance with this act. All auditors must contractually agree to comply with applicable patient confidentiality rules, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA; Pub. L. No. 104-191, 110 Stat. 1936) and rules implementing that act.

D. The district must conduct financial integrity and compliance audits of providers receiving payments in any one fiscal year in excess of 10 percent of the district's tax revenue in that year, and may initiate other audits of any provider at any time, to ensure compliance with this act and to provide transparency and accountability to the taxpayers. All audit reports become public records upon acceptance by the board of trustees. If, upon completion of an audit, it is determined that payment was made by the district that was not in compliance with this act, a rebuttable presumption is created that the district is entitled to a recoupment of the amounts in question. Notice to the provider and an opportunity to go forward with evidence rebutting the presumption in an informal setting shall be provided. Pending any judicial determination, the district may set off the amounts in question against any other amounts owed or to be owed to the provider. If informal resolution cannot be reached between the parties, a formal mediation conference shall be requested by the board of trustees. Venue for any legal proceedings is in the Circuit Court of Lake

County.

E. The board of trustees shall adopt and promulgate eligibility verification criteria and procedures designed to ensure that all recipients of indigent care for which payment is sought under this act are qualified by the provider as medically indigent persons and residents of the district.

F. Any indigent care for which payment is requested in whole or in part from the district must be certified by the provider as medically necessary.

G. A provider requesting payment under this act must certify, under penalty of perjury, that the eligibility verification procedures adopted by the board of trustees have been complied with and that he or she, in good faith, believes that the person is qualified to receive indigent care under this act.

H. If estimated payments are made to a provider eligible to receive payment from the district, to ensure public oversight, accountability, and public benefit, the hospital or clinic shall maintain such funds in a separate accounting fund and document each payment or draw down from that account so that a complete audit record is established. The separate account and all direct support documentation that is part of the audit record is subject to disclosure as provided in chapter 119, Florida Statutes.

I. Annual financial statements.—All hospitals receiving any payments from the district in a given fiscal year, and their parent corporations and foundations, shall each file annual audited financial statements with the district.

J. The board of trustees shall timely provide to each member of the Lake County Legislative Delegation:

1. All financial statements and reports of the district.

2. All audit reports of the district and of all providers that are the subjects of audits initiated by the district.

3. Within 120 days after the end of its fiscal year, which shall be the same as the fiscal year for Lake County government, an annual report for the previous fiscal year providing a detailed review of the performance of the district containing actual data and analyses of patients served, the names and types of providers used, the ratio of administrative to direct patient expenditures, problems encountered, and recommendations for improvement, including proposed legislative changes to this act.

Section 9. FINANCIAL DISCLOSURE AND NOTICE.—

A. Members of the board of trustees are subject to the financial disclosure requirements provided in general law.

B. Except as otherwise expressly required in this act, the board of trustees is subject to the reporting, notice, and public meetings requirements of sections 189.415, 189.417, and 189.418, Florida Statutes. All meeting and workshop notices and minutes of meetings and workshops shall be posted online on a publicly accessible website maintained by the district.

Section 10. AMENDMENTS TO THE CHARTER.—This act may not be amended except by action of the Legislature.

Section 11. SOVEREIGN IMMUNITY.—For purposes of sovereign immunity pursuant to section 768.28(2), Florida Statutes, any primary care clinic physically located in the district the main purpose of which is to provide indigent care and which directly

delivers that care for compensation from the district as provided in this act, and any health care provider who volunteers his or her services to the primary care clinics to provide indigent care without receiving personal financial compensation, shall be conclusively deemed to be primarily acting as an instrumentality of the state.

Section 12. COMPREHENSIVE PLANNING.—Except as may otherwise be required by general law, comprehensive planning is not required by this act.

Section 13. ESTABLISHMENT AND DISSOLUTION OF THE DISTRICT.—The district, established pursuant to section 189.4042, Florida Statutes, is reestablished by this act as a special district under chapter 189, Florida Statutes. The district may be dissolved by action of the Legislature.

Section 14. DURATION AND CONTINUATION.—The district expires and shall be dissolved at the end of its fiscal year in 2017 without further action by the Legislature. However, the district may be continued at the end of that period for 10 years if in the general election in 2016 a majority of the electors voting in a referendum called for that purpose approve its continuation. The district is subject to a continuation vote in like manner every 10 years thereafter. If the district is dissolved without further action by the Legislature as provided in this act, all property owned by the district is transferred to, and all indebtedness of the district is assumed by, the Lake County Board of County Commissioners effective upon such dissolution.

Section 15. REFERENDUM.—The Board of County Commissioners

of Lake County shall call, and the Supervisor of Elections of Lake County shall conduct, in conjunction with the general election to be held on November 8, 2016, or such other general election date as provided by general law, a referendum as follows:

CONTINUATION OF THE NORTH LAKE COUNTY HOSPITAL DISTRICT

Shall the independent special district known as the North Lake County Hospital District with authority to levy each year an ad valorem tax not to exceed 1 mill to fund indigent care to qualified residents of the district be continued for another 10 years?

Yes

No

Section 4. Chapters 2002-348 and 2004-460, Laws of Florida, are repealed.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1319 County Boundary Lines
SPONSOR(S): Community & Military Affairs Subcommittee; Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 2 N, As CS	Nelson	Hoagland
2) Finance & Tax Committee		Flemming PF	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution provides for the state to be divided into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of any public debt. Since 1925, the Legislature has passed approximately 32 general laws revising existing county boundary lines.

The CS for HB 1319 relocates a 129-acre piece of property known as Beau Rivage, from St. Lucie County to Martin County, by amending general law to revise the counties' boundaries. The bill also provides for the transfer of all public roads and associated rights-of-way within the property at issue. Additionally, the bill requires the governing bodies of the two counties to enter into an interlocal agreement by October 1, 2014, which addresses fiscal impact, infrastructure improvement projects, and a plan for transitioning county services, buildings, infrastructure, waterways, and employees.

This boundary revision is contingent upon its approval in a referendum of the qualified electors residing in Beau Rivage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Constitution/Statutes Relating to County Boundaries

Section 1 (a) of Art. VIII of the State Constitution, provides that:

> [t]he state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

Chapter 7, F.S., describes the boundary lines for Florida's 67 counties. Since 1925, the Legislature has passed approximately 32 general laws revising existing county boundaries.[1]

St. Lucie and Martin Counties; the Beau Rivage Area

St. Lucie and Martin Counties are contiguous, non-charter counties located in southeastern Florida. The Beau Rivage area consists of 129 acres, which abut the north fork of the St. Lucie River in St. Lucie County. The area is divided into six subdivisions, and features 223 single family homes and 27 vacant lots. Although Beau Rivage is part of St. Lucie County, the area is not directly connected to the rest of the county by a county-owned or maintained right-of-way. Beau Rivage's 550-plus residents all have Stuart, Florida, addresses and can only travel into the rest of the St. Lucie county via Martin County roads. By interlocal agreement between the St. Lucie and Martin county school boards, students residing in Beau Rivage may attend Martin County schools.[2]

Beau Rivage homeowners have asked that their property be included in Martin County, citing concerns about the provision of emergency services.[3] According to St. Lucie County, the actual reason for the request is that the St. Lucie County School District has considered discontinuing the interlocal agreement.[4]

Effect of Proposed Changes

This bill revises the boundaries of Martin and St. Lucie counties. It amends s. 7.43, F.S., to expand the boundaries of Martin County and s. 7.59, F.S., to contract the boundaries of St. Lucie County, thus transferring the Beau Rivage area. The bill also provides that all public roads and associated public rights-of-way within the subject property be transferred from the jurisdiction of St. Lucie County to Martin County.

Additionally, the bill requires that the governing bodies of the two counties enter into an interlocal agreement by October 1, 2014, which addresses infrastructure improvement projects and includes a "financially feasible" plan for transitioning county services, buildings, infrastructure, waterways and employees.

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[1] Edward A. Fernald & Elizabeth D. Purdum, ATLAS OF FLORIDA 99 (1992) (noting 30 changes to county boundaries since 1925); The remaining two changes to county boundaries since 1992 were included in the following: Ch. 2007-222, L.O.F. (Broward and Palm Beach counties), and Ch. 94-313, L.O.F (Citrus and Levy counties).

[2] Senate staff analysis for CS/SB 800 dated January 25, 2012, referencing information received from the St. Lucie County Property Appraiser's Office on December 20, 2011.

[3] *See* Letter from Chris Dzadovsky, chairman of the St. Lucie County Board of County Commissioners to Representative Gayle Harrell and Senator Joe Negron, pg. 2 (Jan. 27, 2012) (on file with Fla. H.R. Community & Military Affairs Subcommittee).

[4] *Id.*; See section III.C., *infra*, of the analysis for the St. Lucie County Board of County Commissioners' remarks regarding this issue.

The interlocal agreement must include a gradual transfer of the income generated from the area being incorporated into Martin County, to be completed by October 1, 2024, and the transfer must have minimal fiscal impact on St. Lucie County. The term "minimal fiscal impact" is described to mean that the loss of gross aggregate taxes that would have been collected by St. Lucie County minus the gross aggregate cost of services that would have been provided to the residents of the area does not result in a loss of revenue to St. Lucie County greater than 10 percent. Compensation paid by Martin County must encompass the value of the infrastructure transferred minus depreciation with the loss to St. Lucie County also not to exceed 10 percent.

The act is contingent upon its approval by a majority vote of the qualified electors residing in Beau Rivage in a referendum to be held by the St. Lucie County Board of County Commissioners and conducted by the Supervisor of Elections in conjunction with the next general, special or other election held in the county.

B. SECTION DIRECTORY:

Section 1: Amends s. 7.43, F.S., altering the boundary lines for Martin County, Florida.

Section 2: Amends s. 7.59, F.S., altering the boundary lines for St. Lucie County, Florida.

Section 3: Creates an unnumbered section of law that transfers public roads and rights-of-way from St. Lucie county to Martin county.

Section 4: Creates an unnumbered section of law that requires St. Lucie and Martin counties to enter into an interlocal agreement.

Section 5: Provides for the act to take effect upon approval by referendum.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The State may have expenditures associated with the change in county boundaries.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Revenue Sharing

A number of taxes are distributed to counties pursuant to an allocation formula including the Constitutional Fuel Tax, County Fuel Tax, County Revenue Sharing Program and Local Government Half-Cent Sales Tax Program. Components of the allocation formulas are often a county's land area or population.

While no calculations have been undertaken, given the relative size and population of St. Lucie and Martin counties, and the limited acreage involved, the transfer should not have a significant effect on the portion of state shared revenues received by each county.

Taxes and Assessments

St. Lucie County will lose any revenues associated with taxes and assessments paid by the property transferred to Martin County, while Martin County will gain these revenues. According to the St. Lucie County Property Appraiser's Office, the 2011 taxable value of the Beau Rivage Area is $59,549,039.[5]

2. Expenditures:

St. Lucie County will no longer have expenditures associated with the transferred property, while Martin County will assume these expenditures.

St. Lucie County may have expenses associated with the referendum.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Area residents will no longer be subject to St. Lucie County taxing authorities, because they will be within the jurisdiction of Martin County. In 2010, Martin County had a population of 146,318[6] and a taxable value of $17,492,910,077.[7] Total taxes levied per capita were $947. St. Lucie County had an estimated 277,789[8] residents and a taxable value of $15,165,938,592.[9] Total taxes levied per capita in St. Lucie County were $453.[10]

Ad valorem millage rates in the two counties for 2010 were as follows:

St. Lucie County[11]		Martin County[12]	
County	6.9331	County	5.6076
School	8.1770	School	6.9560
Special Districts	3.6909	Special Districts	1.0108

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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[5] *Id.*
[6] County Profile, Martin County, Office of Economic & Demographic Research, http://edr.state.fl.us/Content/area-profiles/county/martin.pdf.
[7] Ad Valorem Tax Profiles, Counties: CY 1996-2010, Office of Economic & Demographic Research, http://edr.state.fl.us/Content/local-government/data/data-a-to-z/advaltxco.xls.
[8] County Profile, St. Lucie County, Office of Economic & Demographic Research, http://edr.state.fl.us/Content/area-profiles/county/stlucie.pdf.
[9] Ad Valorem Tax Profiles, Counties: CY 1996-2010, Office of Economic & Demographic Research, http://edr.state.fl.us/Content/local-government/data/data-a-to-z/advaltxco.xls.
[10] *Id.*
[11] County Profile, St. Lucie County, Office of Economic & Demographic Research, http://edr.state.fl.us/Content/area-profiles/county/stlucie.pdf.
[12] County Profile, Martin County, Office of Economic & Demographic Research, http://edr.state.fl.us/Content/area-profiles/county/martin.pdf.

2. Other:

Notice Requirement for Special Laws

The language in the bill that requires an interlocal agreement between St. Lucie and Martin Counties appears to have the characteristics of a local law. As explained by case law, " 'a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal.' "[13]

A "special law" is defined as a special or local law.[14] A special law is to be noticed as provided by general law,[15] unless the bill is conditioned on a referendum of the electors of the area affected.[16] It is unclear whether a referendum of the Beau Rivage area would satisfy this requirement as the transfer may affect all county residents.

Nevertheless, the Senate sponsor of the companion bill[17] published notices of the proposed general bill on October 19, 2011, in the *Stuart News*, a daily newspaper of general circulation published in Martin County, and in the *St. Lucie News-Tribune*, a newspaper of general circulation published in St. Lucie County.[18]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

St. Lucie and Martin Counties

The Board of County Commissioners of St. Lucie County has described its concerns and objections as follows (paraphrased):[19]

- The proposed action to move county boundaries without the consent of the affected county is unprecedented in this State and inconsistent with local home rule.
- In taking such action, the Legislature should consider that the conditions existing in Beau Rivage also exist in other areas of the state including portions of Martin County adjacent to Palm Beach County. Is this precedent for the Legislature to consider such changes in other places without the consent of the affected jurisdictions?
- The Board has met three times in the past year in various public forums to hear and consider the request and has on each occasion elected not to support the change as there remain multiple solutions to all of the issues raised such as interlocal service agreements or a long-term extension of the school board agreement.
- Much of the purported reason for the change is a concern about provision of life safety services. Martin and St. Lucie counties have mutual aid agreements for the provision of law enforcement, fire and emergency medical services. The reality of the situation is the neighborhood is often "double-served" as Martin County and St. Lucie County both frequently respond to calls. The St.

[13] Department of Business Regulation v. Classic Mile, Inc., 541 So. 2d 1155, 1157 (Fla. 1989) (quoting State ex rel. Landis v. Harris, 1633 So. 237, 240 (Fla. 1934)).
[14] Art. X, s. 12(g), Fla. Const.
[15] *See* s. 11.02, F.S.
[16] Art. III, s. 10, Fla. Const.
[17] Senator Joe Negron, sponsor of SB 800.
[18] A digital copy of the notices can be found by navigating to October 19, 2011, at the following website: http://www.legalnotice.org/pl/tcpalm/landing1.aspx.
[19] Letter from Chris Dzadovsky, chairman of the St. Lucie County Board of County Commissioners to Representative Gayle Harrell and Senator Joe Negron (Jan. 27, 2012) (on file with Fla. H.R. Community & Military Affairs Subcommittee).

Lucie County Fire District Chief has stated publicly that the fire district's response times to calls in Beau Rivage are well under accepted standards.

- The real reason residents have requested this change is related to schools. Neighborhood children have attended Martin County schools as the result of an agreement that has been in place for many years. In 2009, the St. Lucie County School District determined it was not in their financial interest to continue the agreement and notified residents that their children would soon be required to attend St. Lucie County schools. The request to become part of Martin County came to the Board not long after the residents were notified of that action.
- With most proposed legislation, a detailed fiscal impact analysis is conducted to show the impact of new laws on affected parties. No fiscal impact analysis has been conducted in this case to show the impact on a relatively poorer county such as St. Lucie County versus the relatively wealthier Martin County. As representatives of the taxpayers of St. Lucie County, the Board is unanimously opposed to the passage of this legislation as it would negatively impact St. Lucie County's tax base.

The Martin County Board of County Commissioners are "neutral" on the bill although they prefer that the interlocal agreement be completed earlier than the 2014 date, and they do not support a 10-year time frame for the transfer of taxes, rather preferring a five-year period.[20]

House Local Bill Policy

As noted in section III.A. above, there are aspects of this bill which are characteristic of a local bill. The Florida House of Representatives' Local Bill Policy was not followed with regard to these parts of the bill. This policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level without the need for a referendum[21]; (2) the legislative delegation must hold a local public hearing in the area affected[22]; and (3) at or after the local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or by a higher threshold if so required by the delegation's rules.[23] House Local Bill Policy also requires that no local bill be considered by a committee or subcommittee without a completed Economic Impact Statement.[24]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At its January 31, 2012, meeting, the Community & Military Affairs Subcommittee adopted an amendment that revised the legal description of the boundary lines for St. Lucie and Martin counties.

This analysis is drafted to the Committee Substitute.

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[20] E-mail from Kate Parmelee, Intergovernmental and Grants Coordinator, Martin County Board of County Commissioners, to Fla. H.R. Community & Military Affairs Subcommittee (Jan. 25, 2012) (on file with Fla. H.R. Community & Military Affairs Subcommittee).

[21] Fla. H.R. Econ. Aff. Comm, Local Bill Policies and Procedures Manual 8 (2011-2012), *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2605&Session=2012&DocumentType=General%20Publications&FileName=2011%20-%202012%20Local%20Procedures%20Manual.pdf

[22] *Id.* at 3.

[23] *Id.*

[24] *Id.* at 9.

A bill to be entitled

An act relating to county boundary lines; amending s. 7.43, F.S.; incorporating a portion of St. Lucie County into Martin County; revising the legal description of Martin County; amending s. 7.59, F.S.; revising the legal description of St. Lucie County, to conform; transferring roads; providing for transition pursuant to an interlocal agreement; providing requirements for such agreement; providing for Martin County to compensate St. Lucie County for certain loss of revenue; providing effective dates, including an effective date contingent on approval at a referendum.

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

Section 1. Section 7.43, Florida Statutes, is amended to read:

7.43 Martin County.—The boundary lines of Martin County are as follows: Beginning at the northwest corner of township thirty-eight south, range thirty-seven east; thence east, concurrent with the south boundary line of St. Lucie County, to the southwest corner of section thirty-one, township thirty-seven south, range forty-one east; thence north on the west line of said section thirty-one and section thirty, township thirty-seven south, range forty-one east, 6,459 feet to a point lying within the water body of the north fork of the St. Lucie River; thence departing said line within the north fork of the St. Lucie River a bearing direction (State Plane Coordinate System,

Florida East Zone) of 41 degrees north, 4 minutes west, a distance of 6,155 feet, more or less, to a point lying within the water body of the north fork of the St. Lucie River; thence departing said point a bearing direction (State Plane Coordinate System, Florida East Zone) of 45 degrees north, 16 minutes east, a distance of 2,355 feet, more or less, to a point intersecting with the north shore of the north fork of the St. Lucie River and the west edge of the Howard Creek as concurrent with the City of Port St. Lucie municipal boundary limits; thence departing said intersecting shore and edge lines following along the City of Port St. Lucie municipal boundary line north along the west edge of Howard Creek to the south line of the northeast quarter of section twenty-four, township thirty-seven south, range forty east; thence east along said south line of the northeast quarter to the intersection of the east 924.15 feet of section twenty-four, township thirty-seven south, range forty east; thence north along said east 924.15-foot line of section twenty-four, township thirty-seven south, range forty east, to the intersection of the north line of the south 508.15 feet of the northeast quarter of section twenty-four, township thirty-seven south, range forty east; thence east along said south 508.15-foot line of the northeast quarter of said section twenty-four, township thirty-seven south, range forty east, to an intersection with the west line of township thirty-seven south, range forty-one east, also being the existing Martin County boundary line; thence north concurrent with the Martin County boundary line, along the west line of sections nineteen and eighteen, township thirty-seven south, range forty-one east,

~~other sections~~ to the northwest corner of section eighteen, township thirty-seven south, range forty-one east; thence east on the north line of said section eighteen and other sections to the waters of the Atlantic Ocean; thence easterly to the eastern boundary of the State of Florida; thence southward along the coast, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida, to the south line of section twenty, township forty south, range forty-three east, produced easterly; thence west on the south line of said section twenty, and other sections, to the southwest corner of section twenty-two, township forty south, range forty-two east; thence south on the east line of section twenty-eight, township forty south, range forty-two east, to the southeast corner of said section twenty-eight; thence west on the south line of said section twenty-eight and other sections to the east shore of Lake Okeechobee; thence continue west in a straight course to the northeast corner of section thirty-six, township forty south, range thirty-four east, being the southwest corner of section thirty, township forty south, range thirty-five east; thence northeasterly in a straight course to the line of normal water level on the boundary of Lake Okeechobee at its intersection with the line dividing ranges thirty-six and thirty-seven east, township thirty-eight south; thence north on said range line to the place of beginning.

Section 2. Section 7.59, Florida Statutes, is amended to read:

7.59 St. Lucie County.—The boundary lines of St. Lucie County are as follows: Beginning on the eastern boundary of the

State of Florida at a point where the north section line of section thirteen, township thirty-seven south, range forty-one east, produced easterly, would intersect the same; thence westerly on the north line of said section and other sections to the northwest corner of section eighteen, township thirty-seven south, range forty-one east; thence south along the range line between ranges forty east and forty-one east which is concurrent with the St. Lucie County and Martin County boundary lines to the intersection with the north line of the south 508.15 feet of the northeast quarter of section twenty-four, township thirty-seven south, range forty east; thence west along the south 508.15-foot line of the northeast quarter of section twenty-four, township thirty-seven south, range forty east and concurrent with the municipal boundary line of the City of Port St. Lucie to the intersection of the east 924.15-foot line of section twenty-four, township thirty-seven south, range forty east; thence south along the east 924.15-foot line of section twenty-four, township thirty-seven south, range forty east and continuing along the municipal boundary line of the City of Port St. Lucie, to the intersection of the south line of the northeast quarter of section twenty-four, township thirty-seven south, range forty east; thence west along the south line of the northeast quarter of section twenty-four, township thirty-seven south, range forty east to the intersection with the west edge of Howard Creek; thence southerly and along with the west edge of Howard Creek being concurrent with the municipal boundary line of the City of Port St. Lucie to the intersection of the north shore of the north fork of the St. Lucie River and the

west edge of Howard Creek as concurrent with the City of Port St. Lucie municipal boundary; thence departing said north shore of the north fork of the St. Lucie River and the municipal boundary line of the City of Port St. Lucie, a bearing direction (State Plane Coordinate System, Florida East Zone) of south 45 degrees, 16 minutes west, 2,355 feet more or less, to a point within the body of water of the north fork of the St. Lucie River; thence departing said point a bearing direction (State Plane Coordinate System, Florida East Zone) of south 41 degrees, 4 minutes east, 6,155 feet more or less to a point located in the body of the north fork of the St. Lucie River which intersects with the west line of section thirty, township thirty-seven south, range forty-one east; thence south 6,459 feet along the west line of sections thirty and thirty-one, township thirty-seven south, range forty-one east, to the intersection with ~~on the range line between ranges forty and forty-one east, to~~ the township line between townships thirty-seven and thirty-eight south; also being the southwest corner of section thirty-one, township thirty-seven, range forty-one east; thence west on the said township line to the range line dividing ranges thirty-six and thirty-seven east; thence north on said range line, concurrent with the east boundary of Okeechobee County, to the northwest corner of township thirty-four south, range thirty-seven east; thence east on the township line dividing townships thirty-three and thirty-four south, to the Atlantic Ocean; thence continuing easterly to the eastern boundary of the State of Florida; thence southerly along said east boundary, including the waters of the Atlantic Ocean within

the jurisdiction of the State of Florida, to the place of beginning.

Section 3. All public roads, and the public rights-of-way associated therewith, lying within the limits of the lands being incorporated into Martin County as described in sections 1 and 2 are transferred from the jurisdiction of St. Lucie County to the jurisdiction of Martin County on the effective date of the change in county boundaries pursuant to this act.

Section 4. The governing bodies of St. Lucie County and Martin County must enter into an interlocal agreement by October 1, 2014, which addresses infrastructure improvement projects and includes a financially feasible plan for transitioning county services, buildings, infrastructure, waterways, and employees. The interlocal agreement must include a gradual transfer of income generated from the area being incorporated into Martin County from St. Lucie County, to be completed by October 1, 2024. Such transfer must have minimal fiscal impact on St. Lucie County. For purposes of this section, the term "minimal fiscal impact" means that the loss of gross aggregate taxes that would have been collected by St. Lucie County minus the gross aggregate cost of services that would have been provided to the residents of the area being incorporated does not result in a loss of revenue to St. Lucie County greater than 10 percent of the revenue that would have been received by St. Lucie County. Compensation paid by Martin County must be agreed upon for the value of the infrastructure transferred minus depreciation with the loss to St. Lucie County not to exceed 10 percent.

Section 5. This act shall take effect only upon its

approval by a majority vote of those qualified electors residing in the area being transferred from St. Lucie County to Martin County as described in section 1 voting in a referendum to be held by the Board of County Commissioners and conducted by the Supervisor of Elections of St. Lucie County in conjunction with the next general, special, or other election to be held in St. Lucie County, in accordance with the provisions of law relating to elections currently in force, except that this section shall take effect upon becoming a law.

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 BF	Langston
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

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[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

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[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 fee[24] 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 counties[25] 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,

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[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.

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 #: CS/HB 1417 State Investments
SPONSOR(S): Oliva
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 4 N, As CS	Meadows	Williamson
2) Finance & Tax Committee		Wilson	Langston
3) State Affairs Committee			

SUMMARY ANALYSIS

The State Board of Administration (SBA) is created in Art. IV, s. 4(e) of the Florida Constitution. The SBA members are the Governor, the Chief Financial Officer, and the Attorney General. The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Florida Constitution. The SBA has responsibility for managing investments for the Florida Retirement System (FRS) Pension Plan and for administering the FRS Investment Plan.

The SBA's ability to invest the FRS assets is governed by a "legal list" of investments provided in current law. The "legal list" of guidelines specific to the investment of FRS Pension Plan assets includes the ability of the SBA to invest 10 percent of any fund in alternative investments.

CS/HB 1417 authorizes the SBA to invest up to 20 percent of any fund in alternative investments, up from 10 percent.

The bill should have no direct impact on state or local government revenues or expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The State Board of Administration (SBA) is established by Article IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The SBA members are commonly referred to as "Trustees." The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Florida Constitution.

The SBA has responsibility for managing investments for the Florida Retirement System (FRS) Pension Plan and for administering the FRS Investment Plan, which represent approximately $125.1 billion (85 percent) of the $147.5 billion in assets managed by the SBA, as of November 30, 2011.[1] The SBA also manages 33 other investment portfolios, with combined assets of $21.7 billion[2], including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.

The SBA must follow fiduciary standards of care when investing assets, subject to certain limitations.[3] A six-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures.[4]

The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type. The "legal list" of guidelines[5] specific to the investment of FRS Pension Plan assets includes the authorization to invest no more than 10 percent of assets in alternative investments[6], alternative investment vehicles[7], and other non publicly-traded investments.[8] The cap on alternative investments was last changed in 2008, when it was raised from five percent to 10 percent.[9]

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[1] *See* State Board of Administration of Florida, *Monthly Performance Report to the Trustees*, November 30, 2011, *issued* December 31, 2011, at 7 (on file with the Government Operations Subcommittee).
[2] *Id.*
[3] *See* s. 215.44, F.S.
[4] *See* s. 215.444, F.S.
[5] The legal list of guidelines specific to the investment of FRS Pension Plan assets includes:
- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than three percent of equity assets should be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the board; and in such case, no more than 10 percent of equity assets can be invested in the equity securities of any one corporation.
- No more than 80 percent of assets should be placed in corporate fixed income securities.
- No more than 25 percent of assets should be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 20 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 35 percent of assets should be invested in foreign securities.
- No more than 10 percent of assets should be invested in alternative investments, alternative investment vehicles, and other non publicly-traded investments.

[6] Section 215.4401(3)(a)1., F.S., defines an "alternative investment" as "an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager."
[7] Section 215.4401(3)(a)2., F.S., defines an "alternative investment vehicle" as "the limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company."
[8] *See* s. 215.47, F.S.
[9] *See* chapter 2008-31, L.O.F.

Currently, the SBA has nine percent of its funds invested in alternative investments.[10] Current alternative investments include strategic investments[11] and private equity[12].[13] As of November 30, 2011, the pension plan had $5.7 billion in private equity, and $4.9 billion in strategic investments.[14] The SBA's current allocation to alternative investments is relatively low compared to other large and leading public and corporate pension plans.[15]

Hewitt EnnisKnupp[16] (HEK) performed asset liability studies on the SBA's investment strategy in 2010 and 2011. The recommendations from the studies provided by HEK would require the SBA to have increased authority to allocate funds to alternative investments.[17] HEK's recommendations to increase the allocation to alternative investments were approved by the SBA Trustees and the SBA Investment Advisory Council in both 2010 and 2011.[18]

Effect of Proposed Changes

The bill authorizes the SBA to invest up to 20 percent of any fund in alternative investments, up from the current 10 percent.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.47, F.S., to increase the amount of money that may be invested in alternative investments by the SBA.

Section 2: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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[10] Information provided by electronic mail on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

[11] Strategic investments may include: debt oriented funds, infrastructure, absolute return funds, long and short equity, global macro and multi-strategy funds, commodities, and timberland. Definition provided by electronic mail, on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

[12] Private equity is investment strategies that provide working capital to companies in order to nurture expansion, new product development, or the restructuring of operations, management, or ownership. Definition provided by electronic mail, on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

[13] Information provided by electronic mail, on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

[14] *See* State Board of Administration of Florida, *Monthly Performance Report to the Trustees*, November 30, 2011, *issued* December 31, 2011, at 7 (on file with the Government Operations Subcommittee).

[15] Analysis of HB 1417, State Board of Administration, January 10, 2012, at 2 (on file with the Government Operations Subcommittee).

[16] Hewitt EnnisKnupp is an advisor to institutional investors, including numerous large public pension funds such as the one overseen by the SBA.

[17] Analysis of HB 1417, State Board of Administration, January 10, 2012, at 2 (on file with the Government Operations Subcommittee).

[18] *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The increase in alternative investment capacity will allow for greater access to state investments for portfolio investment managers.

D. FISCAL COMMENTS:

The bill may have impacts, unknown at this time, on returns earned by the SBA on its invested funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2012, the Government Operations Subcommittee passed a proposed committee substitute for House Bill 1417. The committee substitute removes from the bill changes made to the Lawton Chiles Endowment Fund.

The analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

A bill to be entitled

An act relating to state investments; amending s. 215.47, F.S.; increasing the amount of money that may be invested in alternative investments by the State Board of Administration; providing an effective date.

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

Section 1. Subsection (15) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(15) With no more, in the aggregate, than 20 ~~10~~ percent of any fund in alternative investments~~, as defined in s. 215.4401(3)(a)1.,~~ through participation in an alternative investment vehicle as those terms are ~~the vehicles~~ defined in s. 215.4401(3)(a)~~2.~~, or in securities or investments that are not publicly traded and ~~are~~ not otherwise authorized by this section.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1495 Spring Lake Improvement District, Highlands County
SPONSOR(S): Community & Military Affairs Subcommittee; Albritton
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Duncan	Hoagland
2) Finance & Tax Committee		Aldridge	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Spring Lake Improvement District (District) is an independent water control district located in Highlands County and created in 1971. The District is responsible for the construction, operation, and maintenance of the water management system for drainage and flood control and is governed by ch. 298, F.S., relating to drainage and water control. The District consists of 3,359 acres and serves approximately 3,800 residents.

The bill revises the provisions relating to the election of the District's Board of Supervisors to reflect the results of a referendum approved by the electors in 1998 and removes obsolete language. The bill also:

- Removes the authority for the District to condemn any land or property within the District as provided in ch. 73, F.S., relating to eminent domain, and ch. 74, F.S., relating to the proceedings supplemental to eminent domain.

- Provides that the aggregate principal amount of bonds outstanding at any one time may not exceed 15 percent of the assessed value of the taxable property within the District based on the tax records when the new bond issue was authorized. If the District wishes to issue bonds in excess of 15 percent of the assessed value of the taxable property within the District, then the amount of the excess bond issuance must be approved by a majority vote of landowners voting on a one-acre one-vote basis by referendum.

- Grants the District the power to construct and maintain facilities for and take measures to control mosquitoes and other arthropods of public health importance. This provision is subject to a referendum of the landowners voting on a one-acre one-vote basis on the question of granting the District the power to provide mosquito control services.

The bill provides an effective date of upon becoming a law; however, if the referendum on the question of whether the District should be granted the authority to provide mosquito services fails, then the act will be repealed on December 31, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Spring Lake Improvement District (District) is an independent water control district located in Highlands County and created in 1971.[1] The District is responsible for the construction, operation, and maintenance of the water management system for drainage and flood control. The District consists of 3,359 acres[2] and serves approximately 3,800 residents.[3]

The District is governed by a five-member board of supervisors (Board). Three supervisors are elected on a one-acre one-vote basis, two are popularly elected.[4] Each supervisor is entitled to compensation in an amount not to exceed $100 per month.[5] The Board exercises the powers granted to the District under its charter[6] and the state law governing drainage and water control.[7]

The District's authority includes the power to:[8]

- Contract and be contracted with; to sue and be sued in the name of the District; to adopt and use a seal; to acquire by purchase, gift, devise, eminent domain, or otherwise, property, real or personal, or any estate, within the District, to be used for the purpose of water control.
- Adopt a water control plan;[9] and to construct, operate, and maintain a system of main and lateral canals, drains, ditches, levees, dikes, dams, sluices, lockes, revetments, reservoirs, holding basins, floodways, pumping stations, siphons, culverts, and storm sewers to drain and reclaim the lands within the District and to connect some or any of them with roads and bridges.
- Clean out, straighten, widen, open up, or change the courses and flow, alter, or deepen any canal, ditch, drain, river, water course, or natural stream to drain and reclaim lands within the District.
- Hold, control, and acquire by donation, purchase, or condemnation, any easement, reservation, or dedication in the District. To condemn as provided in chapters 73 and 74, F.S., or acquire, by purchase or grant for use in the District, any land or property within the District.
- Issue general obligation bonds, revenue bonds, assessment bonds, or any other bonds or obligations to pay all or part of the cost of acquisition, construction, reconstruction, extension, repair, improvement, maintenance, or operation of any project, to provide for any facility, service, or other activity of the District and to provide for the retirement or refunding of any bonds or obligations of the District.

During the 2010 legislative session, CS/HB 1487 was filed proposing to grant the District the authority to modify its charter. The bill was subject to a referendum on the question of whether the district shall

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[1] Chapter 71-669, L.O.F.

[2] Spring Lake Improvement District, General Information, About Spring Lake Improvement District, *available at* http://www.springlakefl.com/About/GeneralInformation/tabid/68/Default.aspx (last visited February 2, 2012).

[3] Joe DeCerbo, District Manager, Spring Lake Improvement District, via email forwarded to House Community & Military Affairs Subcommittee staff on February 2, 2012.

[4] On March 10, 1998, a referendum of the qualified electors of the District was held to decide whether certain members of its Board of Supervisors could be elected on a one-person one-vote basis pursuant to s. 189.4051, F.S. The resulting board has 3 members elected by via one-acre one vote and 2 members elected via popular election. Florida House of Representatives, *Local Bill Staff Analysis of HB 1487*, Local Government Council and Finance & Tax Committee, April 14, 2005.

[5] Section 9 of s. 3, ch. 2005-342, L.O.F.

[6] Chapter 2005-342, L.O.F.

[7] *See* ch. 298, F.S.

[8] Section 10 of s. 3, ch. 2005-342, L.O.F.

[9] "Water control plan" means the comprehensive operational document that describes the activities and improvements to be conducted by a water control district authorized under ch. 298, F.S., and includes any district "plan of reclamation," "water management plan," or "plan of improvement" that details the system of water management improvements implemented by the water control district. Section 298.005, F.S.

have the authority to provide public safety and security services, fire rescue services with the approval of the county, and mosquito control services; to construct and maintain district transportation facilities and educational facilities with the approval of the county school board; to establish district departments, committees and boards; and compensate its supervisors up to $250 per month with supermajority approval of the board. The bill was effective upon approval by referendum.[10] However, the referendum was not approved by the voters so the provisions in the bill did not become law.

In 2011, the Spring Lake Improvement District Board asked the Florida Attorney General if the District had the authority to use its funds for the control of arthropods. According to the letter submitted to the Attorney General, the District initiated mosquito spraying in 1980 and have owned and operated mosquito control equipment and supplies since that time. On February 25, 2011, the Attorney General opined that it did not appear that the District is authorized to use District funds for the control of arthropods.[11]

Effect of Proposed Changes

Board of Supervisors

The bill modifies the provisions relating to the election of the board of supervisors (Board) to reflect the current structure of the Board based on the referendum[12] approved by the District's qualified electors in March 1998. The bill provides that the Board is governed by a five-member Board of Supervisors and the composition of the Board, terms of office, and the qualification of the supervisors, are determined pursuant to the provisions in the "Uniform Special District Accountability Act of 1989" (Special District Act).[13] As provided in current law, all supervisors must be landowners within the District.

Supervisors elected on a one-acre one-vote basis must be elected at a landowner meeting held annually in November. The landowner meetings must be held in accordance with the drainage and water control provisions governing landowners' meetings and the annual election of supervisors[14] established in state law. The remaining supervisors are elected pursuant to the provisions established in the Special District Act. The bill establishes the terms of office for supervisors elected on a one-acre one-vote basis and all other supervisors.

Powers of the District

The bill removes the authority for the District to condemn any land or property within the District as provided in ch. 73, F.S., relating eminent domain, and ch. 74, F.S., relating to the proceedings supplemental to eminent domain.

With respect to the District's authority to issue general obligation bonds, revenue bonds, assessment bonds, or any other bonds, the bill provides that the aggregate principal amount of bonds outstanding at any one time may not exceed 15 percent of the assessed value of the taxable property within the District based on the tax records when the new bond issue was authorized. If the District wishes to issue bonds in excess of 15 percent of the assessed value of the taxable property within the District, then the amount of the excess bond issuance must be approved by a majority vote of landowners voting on a one-acre one-vote basis by referendum.

The bill grants the District the power to construct and maintain facilities for and take measures to control mosquitoes and other arthropods of public health importance. This provision is subject to a referendum of the landowners voting on a one-acre one-vote basis. The referendum must occur by July 1, 2012.

The bill further provides that the act is effective upon becoming a law; however, if the referendum on the question of whether the District should be granted the authority to provide mosquito services fails, then the act will be repealed on December 31, 2012.

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[10] Chapter 2010-266, L.O.F.

[11] Op. Atty. Gen. Fla AGO 2011-02 (Feb. 25, 2011)

[12] *Supra* note 6.

[13] *See* s. 189.4051, F.S., relating to elections; special requirements and procedures for districts with governing boards elected on a one-acre/one-vote basis.

[14] *See* ss. 298.11 and 298.12, F.S.

B. SECTION DIRECTORY:

Section 1: Amends ss. 6 and 10 of s. 3, ch. 2005-342, L.O.F., relating to the District's board of supervisors and its powers.

Section 2: Repeals ch. 2010-266, L.O.F.

Section 3: Requires a referendum of the District's landowners and provides a ballot question.

Section 4: Provides an effective date upon becoming a law with repeal date should the referendum fail.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 9, 11, 2011

WHERE? *The News-Sun*, a tri-weekly newspaper published at Sebring in Highlands, County, Florida

B. REFERENDUM(S) REQUIRED? Yes [X] No []

IF YES, WHEN? No later than July 1, 2012.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

According to the economic impact statement, the cost of mosquito control for fiscal years 2012-2013 and 2013-2014 is $25,000 per year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is effective upon becoming a law. However, if the referendum required in section 3 of the bill pertaining to the District's authority to provide mosquito control services fails, then the act is repealed. As a consequence, other provisions in the bill that do not require approval by referendum would also be repealed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2012, the Community & Military Affairs Subcommittee adopted an amendment requiring the Spring Lake Improvement District to conduct a referendum of landowners voting on a one-acre one-vote basis on the question of granting the District the power to provide mosquito control services. The amendment also contains a ballot question and the act is repealed on December 31, 2012, should the vote to provide mosquito control services fail.

The analysis has been updated to reflect the amendment adopted by the subcommittee.

A bill to be entitled

An act relating to Spring Lake Improvement District, Highlands County; amending chapter 2005-342, Laws of Florida; amending board, election, and term of office provisions; deleting provisions relating to eminent domain; providing a limitation on the amount of bonds the district can issue; providing the authority to conduct mosquito control; repealing chapter 2010-266, Laws of Florida; removing language proposing changes to the district charter which did not take effect for failure of adoption at a referendum; requiring a referendum and providing a ballot statement; providing for repeal of the act if the referendum fails; providing an effective date.

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

Section 1. Section 6 and subsections (1), (9), and (23) of section 10 of section 3 of chapter 2005-342, Laws of Florida, are amended, present subsection (27) of section 10 of section 3 is renumbered as subsection (28), and a new subsection (27) is added to section 10 of section 3 of that chapter, to read:

Section 6. Board; election; organization, terms of office, quorum; report and minutes.—

(1) The board of the district shall <u>be elected and shall</u> exercise the powers granted to the district under this act and under chapter 298, Florida Statutes. ~~The board shall consist of the number of members, and each member shall hold office for the~~

~~term of years until his or her successor shall be chosen and shall qualify, as set forth in section 189.4051, Florida Statutes. All members of the board shall be landowners within the district.~~

(2) The district is governed by a five-member board of supervisors. The composition of the board, as well as the terms of office and qualification of supervisors, shall be determined pursuant to section 189.4051, Florida Statutes. All supervisors shall be landowners within the district.

(3) Those supervisors elected on a one-acre/one-vote basis shall be elected at a meeting of the landowners to be held in November of each year. All landowners' meetings shall be held pursuant to sections 298.11 and 298.12, Florida Statutes. The remaining supervisors shall be elected pursuant to section 189.4051, Florida Statutes, and shall be district residents and registered voters.

(4) The terms of office for those supervisors elected on a one-acre one-vote basis shall begin with the next regularly scheduled board meeting after the election. The terms of office for all other supervisors shall begin with the next regularly scheduled board meeting after certification of the election by the Highlands County Supervisor of Elections. Before entering upon his or her official duties, all supervisors

~~(2) In the month of November of each year commencing November of 1992, there shall be held a meeting of the landowners of the district at a location within the district in Highlands County for the purpose of electing one supervisor for a term of 3 years. The president of the board at the time of the~~

~~November 1992 election shall have his or her term extended until the November 1994 election. The secretary of the board at the time of the November 1992 election shall have his or her term extended until the November 1993 election. The remaining position of supervisor shall stand for election at the November 1992 meeting of landowners. Notice of said landowners meeting shall be published once a week for 2 consecutive weeks in a newspaper in Highlands County which is in general circulation within the district, the last said publication to be not less than 14 days nor more than 28 days before the date of the election. The landowners when assembled at such meeting shall organize by electing a chair who shall conduct the meeting. At such meeting each landowner shall be entitled to cast one vote per acre of land owned by him or her and located within the district, for each person to be elected. A landowner may vote in person or by proxy in writing. Fractions of an acre shall be treated as 1 acre, entitling the landowner to one vote with respect thereto. The person receiving the highest number of votes for the office of supervisor shall be declared elected as such supervisor. The owners and proxy holders of district acreage who are present at a duly noticed landowners meeting shall constitute a quorum for the purpose of holding such election or any election thereafter. The provisions of this section do not exempt the district from the election provisions of section 189.4051, Florida Statutes.~~

~~(3) Each supervisor before entering upon his or her official duties~~ shall take and subscribe to an oath of office as prescribed in section 298.13, Florida Statutes.

(5) ~~(4)~~ All supervisors shall hold office for the terms for which they are elected or appointed and until their successors shall be chosen and qualify. In case of a vacancy in the office of any supervisor the remaining ~~supervisor or~~ supervisors constituting a quorum of at least three ~~(even though less than a quorum)~~ may fill such vacancy by appointment of a new supervisor ~~or supervisors~~ for the unexpired term of the supervisor who vacated his or her office.

(6) ~~(5)~~ As soon as practicable after each election, the board shall organize by choosing one of their number as president of the board and by electing a secretary, who need not be a member of the board.

(7) ~~(6)~~ A majority of the members of the board shall constitute a quorum.

(8) ~~(7)~~ The board shall keep a permanent record book entitled "Record of Proceedings of Spring Lake Improvement District," in which the minutes of all meetings, resolutions, proceedings, certificates, bonds given by all employees, and any and all corporate acts, shall be recorded. Such record book shall at reasonable times be open to the inspection of any landowner, taxpayer, resident, or bondholder of the district, and such other persons as the board may determine to have a proper interest in the proceedings of the board. Such record book shall be kept at any office or other regular place of business maintained by the board in Highlands County.

(9) ~~(8)~~ Whenever any election shall be authorized or required by this act to be held by the landowners at any particular or stated time or day, and if for any reason such

election is not held at such time or on such day, then in such event the power or duty to hold such election shall not cease or lapse, but such election shall be held thereafter when practicable, and in accordance with the procedures provided by this act.

Section 10. Powers of the district.—The district shall have, and the board may exercise, any or all of the following powers:

(1) To contract and be contracted with; to sue and be sued in the name of the district; to adopt and use a seal; to acquire by purchase, gift, devise, ~~eminent domain, (except as limited herein),~~ or otherwise, property, real or personal, or any estate therein, within the district, to be used for any of the purposes of this act.

(9) To hold, control, and acquire by donation or~~,~~ purchase~~, or condemnation,~~ any easement, reservation, or dedication in the district, for any of the purposes herein provided. ~~To condemn as provided by chapters 73 and 74, Florida Statutes, or acquire, by purchase or grant for use in the district, any land or property within the district necessary for the purposes of this act.~~

(23) To issue general obligation bonds, revenue bonds, assessment bonds, or any other bonds or obligations authorized by the provisions of this act or any other law, or any combination of the foregoing, to pay all or part of the cost of the acquisition, construction, reconstruction, extension, repair, improvement, maintenance, or operation of any project or combination of projects, to provide for any facility, service,

or other activity of the district and to provide for the retirement or refunding of any bonds or obligations of the district, or for any combination of the foregoing purposes. However, the aggregate principal amount of bonds outstanding at any one time may not exceed 15 percent of the assessed value of the taxable property within the district as shown on the pertinent tax records at the time of the authorization of any new bond issue. If the district wishes to issue bonds in excess of this amount, the amount of the excess bond issuance must be approved by a majority vote of landowners voting on a one-acre/one-vote basis in a referendum.

(27) To construct and maintain facilities for and take measures to control mosquitoes and other arthropods of public health importance.

(28) ~~(27)~~ To exercise any and all other powers conferred upon drainage districts by chapter 298, Florida Statutes.

Section 2. Chapter 2010-266, Laws of Florida, is repealed.

Section 3. By July 1, 2012, the Spring Lake Improvement District shall conduct a referendum of landowners voting on a one-acre/one-vote basis on the question of granting the Spring Lake Improvement District the power to provide mosquito control services. The referendum question shall be posed as follows:

Shall the Spring Lake Improvement District be authorized to provide mosquito control services?

____ Yes

____ No

Section 4. This act shall take effect upon becoming a law; however, if the referendum required in section 3 fails to receive approval from a majority of landowners voting on a one-acre/one-vote basis, this act shall stand repealed on December 31, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7117 PCB ENUS 12-02 Energy
SPONSOR(S): Energy & Utilities Subcommittee, Plakon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy & Utilities Subcommittee	15 Y, 0 N	Keating	Collins
1) Finance & Tax Committee		Aldridge	Langston

SUMMARY ANALYSIS

In an effort to establish a framework by which to encourage the appropriate development of renewable energy projects in Florida, the bill accomplishes the following:

- Revises the ten-year site plan process to specifically require electric utilities to provide information concerning actual and planned renewable energy production.
- Reinstates the sales tax exemption for equipment, machinery, and other materials for renewable energy technologies; the renewable energy technologies investment corporate income tax credit; and the renewable energy production corporate income tax credit.
- Clarifies that renewable energy producers not licensed as electric utilities are qualified to receive a tax refund.
- Requires the Department of Economic Opportunity to analyze and evaluate the economic benefits for certain renewable energy projects prior to a public interest determination by the Public Service Commission (PSC).
- Authorizes a utility to petition the PSC for a determination that a proposed renewable energy facility is in the public interest and provides a list of criteria for the PSC to consider in making that determination. Allows for cost recovery of reasonable and prudent costs incurred by a utility for an approved project. Requires the PSC to adopt rules to establish a public interest determination process, including competitive bidding. Provides an effective date of July 1, 2013 for the rules to take effect.
- Requires the PSC to consider the need to improve the balance of power plant fuel diversity and supply reliability within the state and within the generation portfolio of the applicant when considering the need for a proposed power plant larger than 75 megawatts.
- Streamlines the permitting process for biofuel feedstock crops and revises financial assurance requirements.
- Requires the Department of Agriculture and Consumer Service (DACS) to conduct a statewide forest inventory analysis.

In addition, the bill addresses the following issues:

- Authorizes DACS to establish a website regarding cost savings associated with energy efficiency and conservation measures.
- Provides that the rates, terms and conditions of electric vehicle charging services by a non-utility are not subject to regulation by the PSC. Requires DACS to adopt rules related to sales at electric vehicle charging stations (labeling, price posting, methods of sale, etc.). Directs the PSC to conduct a study on the potential effects of electric vehicle charging stations on both energy consumption and the electric grid.
- Requires the PSC, in consultation with DACS, to contract for a study to evaluate the effectiveness of the Florida Energy Efficiency and Conservation Act, subject to a specific appropriation.
- Requires coordination between the Department of Management Services and the DACS in further developing the state energy management plan for state buildings over 5,000 square feet.
- Establishes the Office of Public Counsel within the Financial Services Commission (FSC). Provides for appointment and removal of the Public Counsel by the FSC. Provides for a type two transfer of the Office of Public Counsel from the legislature to the FSC.
- Expands use of the local government infrastructure surtax proceeds, if a local government ordinance authorizing such use is approved by referendum.
- Expands the Renewable Fuel Standard to include "alternative fuel," as defined in the bill.

The Revenue Estimating Conference estimates that provisions of the bill will reduce General Revenue by -$1.8 million in FY 2012-13 (-$15.8 million recurring); state trust fund revenue by a negative insignificant recurring amount; and local government revenue by a recurring -$0.2 million beginning in FY 2012-13.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Office of Energy, Department of Agriculture and Consumer Services

Background and Creation

In response to the energy crisis in the 1970s, the State Energy Office was established by the Legislature in 1975[1]. Prior to becoming a part of the Department of Agriculture and Consumer Services, it has been housed in the Department of Administration, the Department of Community Affairs, the Department of Environmental Protection, and the Executive Office of the Governor. In 2006, the Legislature established the Florida Energy Commission, as an arm of the Legislature, to develop recommendations for legislation to establish a state energy policy.[2]

During the 2007 Legislative Session, the issue of fragmentation of energy policy governance began to be raised. At that time, there were many public sector entities playing a role in developing, implementing, or coordinating some aspect of Florida's energy policies: the Florida Energy Office within the Department of Environmental Protection; the Department of Community Affairs; the Florida Building Commission; the Department of Agriculture and Consumer Services; the Department of Management Services; the Department of Financial Services; the Public Service Commission; the Florida Energy Commission; and a host of colleges and universities.

In 2008[3], the Legislature established the Florida Energy and Climate Commission (Commission or FECC) as the state entity for recommending, implementing, and coordinating Florida's energy policy and for coordinating all federal energy programs delegated to the state. The measure, in effect, merged the Department of Environmental Protection's Florida Energy Office with the Legislature's Florida Energy Commission and administratively placed the new entity within the Executive Office of the Governor. In 2009, the Senate failed to confirm the membership of the Commission.

In 2011[4], the Legislature abolished the Florida Energy and Climate Commission and transferred all of the powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts of the FECC from the Executive Office of the Governor to the Department of Agriculture and Consumer Services.

Among its responsibilities, the Department of Agriculture and Consumer Services' Office of Energy administers tax incentive programs; administers the provisions of the Florida Energy and Climate Protection Act; works cooperatively with other state entities regarding energy-related matters; and provides energy policy recommendations to the Legislature.

2012 Policy Recommendations to the Legislature

On January 12, 2012, Commissioner of Agriculture Adam Putnam presented the following policy recommendations to the House Energy and Utilities Subcommittee:

[1] Chapter 75-256, L.O.F.
[2] Former s. 377.901(5), F.S.
[3] Section 46, ch. 2008-227, L.O.F.
[4] Chapter 2011-142, L.O.F.

Infrastructure Investment

Proposal 1 — Reinstate the following tax incentives at the recommended caps and clearly define eligible cost. Reinstatement of these tax incentives will promote the development of renewable energy infrastructure which would give Florida an advantage over other states when investors are looking to build plants.

- Renewable Energy Technologies Sales Tax Exemption- $1 million per year;
- Renewable Energy Technologies Investment Corporate Income Tax Credit - Increase the recent cap of $6.5 million to $10 million per year; and
- Renewable Energy Production Corporate Income Tax Credit - Remains the same at $0.01 for each kilowatt-hour of energy produced and sold with a cap of $5 million per year.

In order to avoid misinterpretations of which entities are eligible for tax credits, clarify that an "electric utility" refers to those utilities that sell electricity on a retail basis.

Reporting Requirements

Proposal 2 — Require the Department of Agriculture and Consumer Services (DACS) to develop a comprehensive statewide forest inventory analysis identifying where available biomass is located and ensuring forest sustainability.

Proposal 3 — Require utilities who file 10-year site plans with the Public Service Commission (PSC), to report the amount of renewable energy resources produced, purchased and proposed in Florida over the 10 year planning horizon and how it will impact present and future capacity and energy needs.

Power Plant (over 75 MW) Need Determination Process

Proposal 4 —Require the PSC to take into account the need to diversify Florida's energy generation fuel supply during a Need Determination proceeding. By placing value on fuel diversity, opportunities for alternative sources of energy improve, strengthening Florida's energy security.

Public Interest Determination for Renewable Energy Projects

Proposal 5 — Require the PSC to establish criteria for evaluating proposed renewable energy facilities or negotiated renewable energy power purchase agreements and establish reporting criteria. The requirement would create a consistent framework by which the PSC would evaluate renewable proposals and determine whether they are in the public interest, establish what information utilities must provide, and what criteria renewable projects will be evaluated against. Given this new framework, remove the current law that requires the PSC to adopt rules for a renewable portfolio standard.

Based on the criteria established in Proposal 5, require the PSC to set an investor-owned utility limit of 1 percent or 75 MW, whichever is less, of its overall generation capacity portfolio in any one year of approved renewable energy investments where those investment costs are above the least cost alternative. Placing a cap on the overall effect on the utilities' generation portfolio will avoid unreasonable rate impacts on customers.

Proposal 6 — Allow a utility to invest in a PSC approved financing project with renewable energy facilities in Florida. Currently this type of utility financing project is allowed with government solid waste facilities, but not with private renewable energy facilities. A joint utility and private renewable energy financing project would allow the utility to recover its expenses and a reasonable profit. This would promote investment by utilities in renewable energy facilities, when such a contract is determined by the PSC to be in the public interest.

Energy Efficiency

Proposal 7 — Require all buildings in the state building fleet, 5,000 square feet or more of conditioned space, to report their energy consumption, and requires the Department of Management Services to go to rule making in coordination with DACS to establish standard and uniform benchmarking and reporting requirements. Currently this reporting is not standardized across state agencies making the reporting incomplete and inaccurate.

Proposal 8 —The legislature should direct DACS's Office of Energy in coordination with the Florida Energy Systems Consortium to evaluate methods to promote energy conservation and efficiency. Further, it should provide the consumer clear guidance on energy efficiency savings. The report should be completed by March 1, 2013, and presented to the Governor and the legislature. Also, the legislature should require the PSC to evaluate how the Florida Energy Efficiency and Conservation Act (FEECA) statutes provide conservation and efficiency programs that are in the public interest and without undue burden on the customer.

Removing Barriers to Future Investments

Proposal 9 —Clarify that electric vehicle charging stations are a service to the public and not the retail sale of electricity. This ensures that government entities or businesses installing and providing this service are not subject to the undue burden of regulatory fees that may be instituted by the PSC if they were to be considered retailers of electricity.

- Would direct the Florida Building Commission in coordination with DACS and the PSC to adopt rules to standardize the building and electric codes, permitting, and installation of the charging stations.
- Also would direct DACS to adopt rules to address definitions, method of sale, labeling requirements and price posting requirements to allow for consistency for consumers and the industry.
- The PSC is also instructed to conduct a study of the effects of the charging stations on energy consumption in the state as well as the effects on the grid.

Proposal 10 — Require DACS in consultation with the University of Florida/Institute for Food and Agriculture Sciences to determine whether a plant material is exempt from the regulatory permitting process based on scientific evidence and practical experience. This would streamline the permitting process for feedstock crops for biofuels.

Proposal 11 — Task the PSC to evaluate its current interconnection and net metering rules.

Ten-Year Site Plans

Present Situation

Section 186.801, F.S., requires each electric utility in the state to submit, at least once every 2 years, a Ten-Year Site Plan that provides an estimate of the utility's power-generating needs and the general location of its proposed power plant sites. As a matter of practice, the PSC requires each utility to submit a plan on an annual basis. Upon preliminary study of a plan, the PSC must classify each plan as "suitable" or "unsuitable." However, it is recognized that Ten-Year Site Plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the PSC. In its preliminary study, the PSC must review:

- The need, including the need as determined by the commission, for electrical power in the area to be served.
- The effect on fuel diversity within the state.
- The anticipated environmental impact of each proposed electrical power plant site.
- Possible alternatives to the proposed plan.

- The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.
- The extent to which the plan is consistent with the state comprehensive plan.
- The plan with respect to the information of the state on energy availability and consumption.

Effect of Proposed Changes

The bill adds three items to the list of matters that the PSC must review when conducting its preliminary study of a utility's Ten-Year Site Plan. These items are:

- The amount of renewable energy resources the utility produces or purchases.
- The amount of renewable energy resources the utility plans to produce or purchase over the 10-year planning horizon and the means by which such production or purchases will be achieved.
- The utility's indication of how the production and purchase of renewable energy resources affect the utility's present and future capacity and energy needs.

The addition of these items will provide decision-makers with annual information on the current and long-term outlook for new renewable energy generation in Florida's generation mix. These changes do not require utilities to increase their production or purchase of renewable energy.

Local Government Infrastructure Surtax

Present Situation

Energy Efficiency and Conservation

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida on a state and local level. For example, in Chapter 2008-227, L.O.F., the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In Chapter 2008-191, L.O.F., the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.

In 2010, the Legislature found that, "In order to make [renewable energy improvements or energy conservation and efficiency improvements] more affordable and assist property owners who wish to undertake such improvements...there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance."[5]

Local Discretionary Sales Surtaxes

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions, pursuant to ch. 212, F.S., and communications services as defined for purposes of ch. 202, F.S. Discretionary sales surtax must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.[6] The surtax applies to the first $5,000 of any single taxable item when sold to the same purchaser at the same time.[7]

[5] Section 163.08(1)(b), F.S.
[6] *2012 Florida Tax Handbook*, p. 207.
[7] Section 212.054(2)(b)1., F.S.

There are eight different types of local discretionary sales surtaxes currently authorized in law:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax.

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

Local Government Infrastructure Surtax

Section 212.055(2)(a)1., F.S., provides that the Local Government Infrastructure Surtax shall be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the members of the county's governing body and approved by voters in a countywide referendum.[8] If the proposal to levy the surtax is approved by a majority of the electors, the levy shall take effect. The levy may only be extended by voter approval in a countywide referendum. There is no state-mandated limit on the length of levy for surtax ordinances enacted after July 1, 1993.[9]

All counties are eligible to levy this surtax.[10] During the 2012 calendar year, three counties will be levying at the 0.5 percent rate and 15 counties will be levying at the 1 percent rate.[11] Specifically, the following counties will be levying this surtax during the 2012 calendar year:

County	Percentage
Charlotte	1%
Clay	1%
Duval	0.5%
Escambia	1%
Flagler	0.5%
Glades	1%
Highlands	1%
Hillsborough	0.5%
Indian River	1%
Lake	1%
Leon	1%
Monroe	1%
Osceola	1%
Pasco	1%
Pinellas	1%
Putnam	1%
Sarasota	1%
Wakulla	1%

Source: *2012 Florida Tax Handbook*, pp. 212-213.

[8] In lieu of action by the county's governing body, municipalities representing a majority of the county's population may initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum on the issue.
[9] If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.
[10] The Local Government Infrastructure Surtax is one of four surtaxes subject to a combined rate limitation. A county cannot levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.
[11] *2012 Florida Tax Handbook*, pp. 212-213.

The following chart estimates what these counties will collect for the current and upcoming fiscal year and provides historical statewide collection amounts for the Local Government Infrastructure Surtax:

Fiscal Year	Total Collections
2012-2013 estimate	$659,170,463
2011-2012 estimate	$624,214,453
2010-2011	$604,273,430
2009-2010	$593,680,024
2008-2009	$629,887,765
2007-2008	$658,207,195
2006-2007	$685,978,662

Source: *2012 Florida Tax Handbook*, p. 218.

Pursuant to s. 212.055(2)(d), F.S., school districts, counties and municipalities[12] may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources; or
- To finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

For purposes of s. 212.055(2)(d), F.S., the term "infrastructure" means the following:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs.
- A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.
- Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008, F.S.
- Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government.[13]
- Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing.[14]

Any Local Government Infrastructure Surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the proceeds to be deposited in a trust fund for the purpose of funding economic development projects having a general public purpose of improving local economies, including the

[12] Pursuant to s. 212.055(2)(d), F.S., proceeds of the surtax may also be expended within another county in the case of a negotiated joint county agreement.

[13] Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

[14] The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

funding of operational costs and incentives related to economic development.[15] This intention must be on the ballot statement.

A county with a total population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern that imposed the surtax before July 1, 1992, may use the proceeds and accrued interest of the surtax for any public purpose if the county satisfies all of the following criteria:

- The debt service obligations for any year are met;
- The county's comprehensive plan has been determined to be in compliance with part II of ch. 163, F.S; and
- The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66, F.S., authorizing additional uses of the proceeds and accrued interest.[16]

Pursuant to s. 125.66(2)(a), F.S., a board of county commissioners at any regular or special meeting may enact or amend any ordinance, if notice of intent to consider the ordinance is given at least 10 days prior to the meeting by publication in a newspaper of general circulation in the county. A copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners.

The notice of proposed enactment must state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where the proposed ordinance(s) may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Effect of Proposed Changes

The bill amends s. 212.055(2)(d), F.S., which provides specifications for which the Local Government Infrastructure Surtax may be used.

As listed in the Current Situation Section, school districts, counties and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources; or
- To finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

The bill adds the following to the list of authorized uses of the surtax proceeds:

- To provide loans, grants, or rebates to residential property owners, with preference given to low-income elders, Florida veterans of the Armed Forces, and disabled adults, who make energy efficiency improvements to their residential property, if a local government ordinance authorizing such use is approved by referendum.

The bill defines "energy efficiency improvement" as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;

[15] Section 212.055(2)(d)2., F.S.
[16] Section 212.055(2)(f)1., F.S.

- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

A local government choosing to expend funds under this new provision would be required to enact or amend its ordinance pursuant to s. 125.66, F.S., and have the ordinance approved by referendum in a subsequent election.

Sales and Use Tax Exemption for Renewable Energy Technologies

Present Situation

In 2006, the Legislature authorized a sales tax exemption,[17] in the form of a tax refund, for renewable energy technologies in Florida, occurring between July 1, 2006, and June 30, 2010. Taxpayers applying for the exemptions were required to submit an application to the Energy Office[18] to determine eligibility before submitting a sales tax refund claim to the Department of Revenue. The exemption applied to the following items:

- Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of $2 million in taxes each state fiscal year for all taxpayers.
- Commercial stationary hydrogen fuel cells, up to a limit of $1 million in taxes each state fiscal year for all taxpayers.
- Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-100), including fueling infrastructure, transportation, and storage, up to a limit of $1 million in taxes each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualified for the exemption.

The sales tax exemptions for hydrogen-powered vehicles and hydrogen fuel cells were not well subscribed to during the duration of the program; however, the sales tax exemption for materials used in the distribution of biodiesel and ethanol made gains in use each year, reaching 100 percent of the funds being expended by the last year of the program. The program expired on July 1, 2010.

Effect of Proposed Changes

The bill reinstates the biofuel portion of the sales and use tax exemption for another four years (FY 2012-2013 through FY 2015-2016) and expands it to include materials used in the distribution of other renewable fuels, up to a limit of $1 million in taxes each state fiscal year for all taxpayers.

The bill defines "renewable fuel" as a fuel produced from biomass that is used to replace or reduce the quantity of fossil fuel present in motor fuel or diesel fuel. "Biomass" means biomass as defined in s. 366.91, F.S.,[19] "motor fuel" means motor fuel as defined in s. 206.01, F.S.,[20] and "diesel fuel" means diesel fuel as defined in s. 206.86, F.S.[21]

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[17] See former s. 212.08(7)(ccc), F.S.

[18] When the legislation was passed, the Energy Office was in the Department of Environmental Protection. Subsequently, in 2008, the office was moved to the Executive Office of the Governor, under the Florida Energy and Climate Commission.

[19] Section 366.91(2)(a) , F.S., defines "biomass" as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."

[20] Section 206.01(9), F.S., defines "motor fuel" as "all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle."

[21] Section 206.86, F.S., defines "diesel fuel" as "all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle."

[21] Section 220.192(1)(c), F.S.

[21] When the legislation was passed, the Energy Office was in the Department of Environmental Protection. Subsequently, in 2008, the

The Department of Agriculture and Consumer Services and the Department of Revenue are to jointly administer the program, which expires July 1, 2016.

Renewable Energy Technologies Investment Tax Credit

Present Situation

In 2006, the Legislature created s. 220.192, F.S., which provided for a credit against either the corporate income tax or the franchise tax to be granted in an amount equal to the "eligible costs." "Eligible costs" were defined as seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs, incurred between July 1, 2006, and June 30, 2010, in connection with an investment in the following:

- Hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state, up to a limit of $3 million per state fiscal year for all taxpayers.
- Commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell.
- Production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state [gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualified], up to a limit of $6.5 million per state fiscal year for all taxpayers.[22]

Hydrogen-powered vehicles and hydrogen vehicle fueling station tax credits were not claimed during the first three fiscal years that the program was in existence, but 100 percent of the funds were expended during the last year of the program. Commercial stationary hydrogen fuel cell credits were not claimed during the first two years of the program; however, 100 percent of the funds were expended during the last two years of the program. Production, storage, and distribution of biodiesel and ethanol credits were issued for the first three fiscal years with varying balances, and 100 percent of the funds were expended the last year of the program.

The credit could be used for tax years beginning on or after January 1, 2007. The Energy Office[23] and the Department of Revenue jointly administered the program, which expired on June 30, 2010.

Effect of Proposed Changes

The bill reinstates the biofuel portion of the Renewable Energy Technologies Investment Tax Credit for another four years, and expands it to include materials used in the distribution of other renewable fuels, up to a limit of $10 million in taxes each state fiscal year for all taxpayers. The credit is capped at $1 million per taxpayer per fiscal year.

The bill defines "renewable fuel" as a fuel produced from biomass that is used to replace or reduce the quantity of fossil fuel present in motor fuel or diesel fuel. "Biomass" means biomass as defined in s.

[22] Section 220.192(1)(c), F.S.
[23] When the legislation was passed, the Energy Office was in the Department of Environmental Protection. Subsequently, in 2008, the office was moved to the Executive Office of the Governor, under the Florida Energy and Climate Commission.

366.91, F.S.,[24] "motor fuel" means motor fuel as defined in s. 206.01, F.S.,[25] and "diesel fuel" means diesel fuel as defined in s. 206.86, F.S.[26]

The credit can be used for tax years beginning on or after January 1, 2013, and will be granted in an amount equal to the eligible costs (seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs in connection with an investment in the production, storage, and distribution of biodiesel, ethanol, and other renewable fuel in the state, including the costs of constructing, installing, and equipping such technologies in the state) incurred between July 1, 2012, and June 30, 2016. In the event of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used until December 31, 2018. The Department of Agriculture and Consumer Services and the Department of Revenue are to jointly administer the program.

Florida Renewable Energy Production Credit

Present Situation

In 2006, the Legislature created s. 220.193, F.S., which was designed to encourage the development and expansion of facilities that produce renewable energy in Florida. The credit was available to new renewable energy facilities that were operationally placed in service after May 1, 2006, or expanded renewable energy facilities that increased electrical production and sale by more than 5 percent over what they had produced during 2005. The tax credit was based on the taxpayer's production and sale of electricity. The program applied to electricity production and sales made between January 1, 2007, and June 30, 2010.

The tax credit was equal to $0.01 for each kilowatt-hour of electricity produced and sold or used during a given tax year. The program was capped at $5 million per state fiscal year for all taxpayers. The production tax credits were utilized every fiscal year of the program's duration. The program was administered by the Department of Revenue and expired June 30, 2010.

Effect of Proposed Changes

The bill reinstates the Florida Renewable Energy Production Credit for electricity produced and sold[27] on or after January 1, 2013, through June 30, 2016. The tax credit is equal to $0.01 for each kilowatt-hour of electricity produced and sold or used during a given tax year up to a limit of $5 million in taxes each state fiscal year for all taxpayers, and capped at $500,000 per taxpayer per fiscal year. In the event of insufficient tax liability on the part of the corporation, the unused amount may be carried forward for a period not to exceed 5 years. The Department of Revenue is directed to administer the program. This section of the bill takes effect upon becoming law and applies to tax years beginning on and after January 1, 2013.

Energy Management in State Buildings

Present Situation

Section 255.257, F.S., requires each state agency to collect data on energy consumption and cost for those state-owned facilities and metered state-leased facilities[28] that are 5,000 net square feet or more.

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[24] Section 366.91(2)(a) , F.S., defines "biomass" as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."

[25] Section 206.01(9), F.S., defines "motor fuel" as "all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle."

[26] Section 206.86, F.S., defines "diesel fuel" as "all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle."

[27] The corporate renewable energy production tax credit may be earned both for electricity *sold* and electricity *used* by the producer when the producer would have otherwise been required to purchase the electricity.

[28] The term "metered state-leased facilities" does not include "full-service state-leased facilities" whereby the charge for utilities is factored into the rent.

The data is to be used to determine the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the state agencies. Collected data must be reported annually to the Department of Management Services (DMS or department) in a format prescribed by DMS. Each state agency, the Public Service Commission, the Department of Military Affairs, and the judicial branch are required to appoint a coordinator to implement the energy management program agreed upon by that entity.[29] According to the department, these coordinators are the energy liaison for their respective entities.

In accordance with s. 255.257(3), F.S., the department is required to develop a state energy management plan consisting of, but not limited to, the following elements:

- Data-gathering requirements;
- Building energy audit procedures;
- Uniform data analysis procedures;
- Employee energy education program measures;
- Energy consumption reduction techniques;
- Training program for state agency energy management coordinators; and
- Guidelines for building managers.

The plan is required to include a description of actions that state agencies must take to reduce consumption of electricity and nonrenewable energy sources used for space heating and cooling, ventilation, lighting, water heating, and transportation.

The department released the *State Energy Management Plan* (plan) in February 2010[30]. The first annual agency energy consumption and cost data reports are to be submitted in September 2012. Each element required under subsection (3) is a chapter within the plan. The following is a description of the components within each element of the plan:[31]

1. Data Gathering Requirements / Sub-Metering Requirements - This plan establishes the following two categories of energy data gathering requirements:

   - Utility bill data – consumption, peak demand, and cost data via monthly bill statements from the utility provider.
   - Sub-metered data – consumption and real-time demand data from metering devices ("smart meters" in most cases) deployed by the agency.

   In order to fulfill the sub-metered data reporting requirements, agencies will be required to install sub-meters for total building electrical consumption and demand at all state-owned and metered state-leased facilities larger than 5,000 net square feet. Where a building has particularly large energy consuming systems such as Heating, Ventilation & Air Conditioning (HVAC) or water heaters, additional sub-metering requirements may apply. This plan also outlines acceptable sub-metering schemes for all types of energy-consuming systems found in state buildings.

2. Reporting System -This plan introduces a utility reporting system that has been designed to accomplish the following goals simultaneously:

   - Provide accurate utility records for the agency.
   - Meet the reporting requirements of this plan.
   - Meet the previous two goals while only requiring energy consumption and cost data to be entered once.
   - Utilize a generic and common format (Microsoft Excel®).

[29] Section 255.257(2), F.S.
[30] State Energy Management Plan, *February 2010*
[31] *State Energy Management Plan*, Executive Summary, February 10, 2010, pp. 1-3.

Annual submission to DMS of the reporting forms presented in the plan is required. The reporting system consolidates energy consumption and cost data in a single format that automatically generates the reporting forms required in this plan. The reporting system has been developed to simultaneously meet the utility recordkeeping and energy management goals of state agencies. The reporting system will require some initial setup. Some basic/intermediate Microsoft Excel® training may be required. The result of such setup and training procedures will ultimately be a more thorough, yet necessary, understanding of the mechanics involved in effective energy management.

3. Uniform Data Analysis Procedures -This plan summarizes basic data analysis procedures for energy consumption data and, more importantly, energy demand data. The energy demand data required in the plan will be used to identify energy-related behaviors such as equipment schedules (start/stop times), occupancy schedules, and peak load occurrences so that energy usage can be managed optimally and very likely reduced.

4. Building Energy Audit Procedures - This plan provides recommended procedures for conducting a thorough energy audit in a state building. Energy audits are a vital part of an effective energy management strategy.

5. Employee Energy Education Program Measures - These measures will be developed in the future based on input from agency energy management coordinators.

6. Techniques to Reduce Energy Consumption - The energy reduction techniques presented in this plan go beyond day-to-day strategies to control energy consumption and costs. The techniques presented pertain to operations and renovations in existing buildings. Agencies in the position of replacing energy-consuming equipment through either fixed capital outlay or performance contracting methods should consult these techniques. Many of the techniques presented address the urgency of considering the true relationship between energy efficiency and long-term costs when energy-related decisions are at hand.

7. Training Requirements - The training requirements of this plan center around the long-term goal of developing "certified energy managers" (CEM) by the Association of Energy Engineers. Qualified energy managers are essential to the goal of effectively reducing energy consumption and costs.

8. Guidelines for Building Managers - The guidelines presented in this plan are general in nature and are intended to provide an account of the daily and weekly activities that can reduce building energy consumption. Building managers are encouraged to take an active role in energy conservation and the agencies should include them in all such efforts.

Effect of Proposed Changes

The bill directs DMS in coordination with the Department of Agriculture and Consumer Services to further develop the *State Energy Management Plan*. The bill also expands the element of "uniform data analysis procedures" to include uniform reporting procedures.

Tax Refund Program for Qualified Target Industry Businesses

Present Situation

Section 288.106, F.S., which creates the tax refund program for qualified target industry businesses, provides legislative findings that "retaining and expanding existing businesses in the state, encouraging the creation of new businesses in the state, attracting new businesses from outside the state, and generally providing conditions favorable for the growth of target industries creates high-quality, high-wage employment opportunities for residents of the state and strengthens the state's economic foundation." Further, the section provides that "it is the policy of the state to encourage the growth of

higher-wage jobs and a diverse economic base by providing state tax refunds to qualified target industry businesses that originate or expand in the state or that relocate to the state."

Section 288.106(3), F.S., provides for a tax refund to a qualified target industry business for the amount of eligible taxes[32] certified by the department that were paid by the business. The amount of the refund is $3,000 multiplied by the number of jobs created or $6,000 multiplied by the number of jobs if the project is located in a rural community or an enterprise zone.

A qualified target industry business gets additional tax refund payments of:

- $1,000 multiplied by the number of jobs if the jobs pay an annual average wage of at least 150 percent of the average private sector wage in the area, or equal to $2,000 multiplied by the number of jobs if the jobs pay an annual average wage of at least 200 percent of the average private sector wage in the area;
- $1,000 multiplied by the number of jobs if the local financial support is equal to that of the state's incentive award; and
- $2,000 multiplied by the number of jobs if the business falls within one of the designated high-impact sectors or increases exports of its goods through a seaport or airport in the state by at least 10 percent in value or tonnage in each of the years that the business receives a tax refund under this section.

"Target industry business"[33] is defined as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Department of Economic Opportunity in consultation with Enterprise Florida, Inc.:

- Future growth.[34]
- Stability.[35]
- High wage.[36]
- Market and resource independent.[37]
- Industrial base diversification and strengthening.[38]
- Positive economic impact.[39]

The term "target industry business" does not include the following:

- Any business engaged in retail industry activities;
- Any electrical utility company;

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[32] Eligible taxes are: Corporate income taxes under ch. 220, F.S., Insurance premium taxes under s. 624.509, F.S., sales and use tax under ch. 212, F.S., intangible personal property taxes under ch. 199, F.S., excise taxes on documents under ch. 201, F.S., ad valorem taxes paid, as defined in s. 220.03(1), F.S., and state communications services taxes administered under ch. 202, F.S.

[33] By January 1 of every 3rd year, beginning January 1, 2011, the Department of Economic Opportunity, in consultation with Enterprise Florida, Inc., economic development organizations, the State University System, local governments, employee and employer organizations, market analysts, and economists, shall review and, as appropriate, revise the list of such target industries and submit the list to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

[34] Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to businesses that export goods to, or provide services in, international markets and businesses that replace domestic and international imports of goods or services.

[35] The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand for products of this industry is not typically subject to decline during an economic downturn.

[36] The industry should pay relatively high wages compared to statewide or area averages.

[37] The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis, except for businesses in the renewable energy industry.

[38] The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis. Special consideration should also be given to the development of strong industrial clusters that include defense and homeland security businesses.

[39] The industry is expected to have strong positive economic impacts on or benefits to the state or regional economies. Special consideration should be given to industries that facilitate the development of the state as a hub for domestic and global trade and logistics.

- Any phosphate or other solid minerals severance, mining, or processing operation;
- Any oil or gas exploration or production operation; or
- Any business subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.[40]

The statute does not specify that the term "target industry business" includes renewable energy businesses; however, it does imply that they are included in that definition, whereby the "Market and Resource Independent" criterion includes a requirement that, "The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis, **except for businesses in the renewable energy industry**."[41]

The definition goes on, however, to specifically exclude "any electrical utility company." Reportedly, this exclusionary language has been interpreted to include any business that sells electricity, even to a utility at wholesale. This interpretation prevents a renewable energy producer from taking advantage of this tax refund in conjunction with either s. 366.051, F.S., (cogeneration; small power production) or s. 366.91(3) or (4), F.S., (standard offer purchase contract).

Effect of Proposed Changes

The bill amends the tax refund program for qualified target industry businesses, by clarifying that an electrical utility company that is excluded from the definition of "target industry business" is one that meets the definition of an "electrical utility" in s. 366.02(2), F.S. That subsection provides that an "electric utility" means "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state."

This will allow renewable energy producers who only sell electricity to a utility at wholesale to be eligible for the tax refund.

Evaluation of Economic Benefits of New Renewable Energy Projects

Present Situation

In 2011, the Legislature created the Department of Economic Opportunity (DEO) "to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians."[42] To accomplish this purpose, the DEO is provided the following duties:

- Facilitate the direct involvement of the Governor and the Lieutenant Governor in economic development and workforce development projects designed to create, expand, and retain businesses in this state, to recruit business from around the world, and to facilitate other job-creating efforts.
- Recruit new businesses to this state and promote the expansion of existing businesses by expediting permitting and location decisions, worker placement and training, and incentive awards.
- Promote viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities.
- Ensure that the state's goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies.

[40] Section 288.106(2)(q), F.S.
[41] Section 288.106(2)(q)4., F.S.
[42] Section 1, ch. 2011-142, Laws of Florida.

- Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; commercialization of products, services, or ideas developed in public universities or other public institutions; and the development and promotion of professional and amateur sporting events.[43]

Four divisions are created by statute within the DEO, including the Division of Strategic Business Development (the division).[44] Among other things, this division is responsible for analyzing and evaluating business prospects identified by the Governor, the executive director of the department, and Enterprise Florida, Inc.[45]

Effect of Proposed Changes

The bill requires the Department of Economic Opportunity, through its Division of Strategic Business Development, to "[i]ndependently analyze and evaluate the regional and statewide economic benefits associated with a renewable energy project submitted to the Public Service Commission" for review under the public interest determination process established by the bill, which is discussed in detail below. Under the public interest determination process, the Public Service Commission (PSC) must consider, among other things, the regional and statewide economic benefits associated with a proposed renewable energy project. The DEO's analysis is used to help guide the PSC's consideration of the potential economic impacts of a project.

Renewable Energy Policy / Public Interest Determination Process

Present Situation

Section 366.91(3), F.S., requires each investor-owned electric utility in the state to continuously offer a purchase contract to producers of renewable energy, though the utility is not permitted to pay more under the contract than the incremental costs to the utility if it had generated the power itself or purchased the power from another source (i.e., the utility's "full avoided costs"). To implement this provision, the PSC requires that each utility make available a separate standard offer contract based on the next planned fossil fuel generating plant of each technology type identified in the utility's Ten-Year Site Plan.[46] Currently, natural gas power plants are the only types of fossil-fuel power plants identified in the Ten-Year Site Plans filed by the state's investor-owned utilities. Thus, the utilities' full avoided costs are based on the costs of new natural gas power plants. Because the costs to produce renewable energy generally exceed the costs associated with new natural gas power plants, payments for renewable energy based on a utility's full avoided costs are often insufficient to support the development of many renewable energy projects.

As an alternative to the standard offer contracts required by s. 366.91(3), F.S., the PSC encourages utilities and renewable energy developers to negotiate contracts for the purchase of capacity and energy, where those contracts would allow the utility to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability, and energy security.[47] Still, PSC rules provide that these negotiated contracts may be deemed prudent only if the costs to the utility do not exceed its full avoided costs.[48]

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[43] Section 20.60(4), F.S.
[44] Section 20.60(3), F.S.
[45] Section 20.60(5)(a), F.S.
[46] Rule 25-17.250(1), F.A.C.
[47] Rule 25-17.240(1), F.A.C.
[48] See Rule 25-17.240, F.A.C., which states:
Negotiated contracts will be considered prudent for cost recovery purposes if it is demonstrated by the investor-owned utility that the purchase of firm capacity and energy from the renewable generating facility pursuant to the rates, terms, and other conditions of the contract can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs by the purchasing utility and provide fuel

Current law does not provide a dedicated, explicit process for determining the prudence of a utility's investment in a renewable energy power plant less than 75 megawatts in capacity or a utility's decision to enter into a contract to purchase renewable energy at a price above its full avoided costs, prior to the utility making a commitment to such an investment.[49] The PSC will permit the utility to recover its investment in such projects only if the PSC finds that the funds were prudently invested.[50] This determination is largely based on whether the project is the least-cost alternative to supply power needed by the utility to serve its ratepayers, though the PSC is not prohibited from considering other factors.

A utility will likely not invest in a new renewable energy project, such as a renewable energy facility or a renewable energy purchased power agreement, absent some certainty that it will be able to recover the costs of the project. In many cases, a renewable energy facility or purchase will not be the least-cost alternative available, and in some instances the facility may not make a significant contribution to electrical system reliability as compared to other resources. Still, the renewable energy facility or purchase may yield other benefits to the utility and/or the state. There is currently no clear statutory direction for the PSC to weigh these potential benefits in a prudence determination for renewable energy power plants less than 75 megawatts in capacity or utility purchases of renewable energy at a price above the utility's full avoided costs.

When determining the need for an electrical power plant with a capacity of 75 megawatts or higher, the PSC must consider, among other things, whether the proposed plant is the most cost-effective alternative available.[51] To assist it in evaluating this factor, the PSC requires each investor-owned electric utility, prior to filing a petition for determination of need, to evaluate supply-side alternatives to the proposed power plant by issuing a Request for Proposals (RFP).[52] The PSC's rule requires notice of the RFP by publication and specifies the minimum information required in the notice as well as the minimum information required in the RFP document. The rule establishes other procedural guidelines for the RFP process and for the evaluation of proposals received.[53]

In 2008, the Legislature directed the PSC to adopt rules for a renewable portfolio standard (RPS) to require each investor-owned electric utility to supply renewable energy to its customers by producing or purchasing the energy or by purchasing renewable energy credits.[54] The law, codified within section 366.92, F.S., provided that the PSC's rule could not be implemented until ratified by the Legislature. The commission presented a draft RPS rule for legislative consideration in early 2009. The Legislature has not ratified the draft rule.

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diversity, fuel price stability, and energy security at a cost to the utility's ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by the renewable generating facility under the contract.

(Emphasis added.)

[49] Nothing in current law explicitly prohibits a utility from requesting that the PSC make a determination as to the prudence of a proposed new plant or negotiated power purchase prior to the utility's commitment. Utilities have included provisions in some purchased power contracts to make the contracts contingent upon PSC approval and have sought a prudence determination from the PSC prior to the contract becoming effective. Further, a utility could seek approval through a limited proceeding pursuant to s. 366.076, F.S., though the PSC could expand the scope of the proceeding to include other matters.

[50] See s. 366.06(1), F.S., which states, in pertinent part:

> The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public . . ..

(Emphasis added.)

[51] Section 403.519(3), F.S.

[52] Rule 25-22.082, F.A.C.

[53] *Id.*

[54] Chapter 2008-227, s. 42, L.O.F.

Effect of Proposed Changes

The bill establishes a dedicated framework for the PSC to determine that a proposed renewable energy project is prudent and in the public interest. The bill defines "renewable energy project" to include the construction of a new renewable energy generating facility, the conversion of an existing fossil fuel generating facility to a renewable facility, or a contract to purchase renewable energy. Renewable energy facilities that require a determination of need pursuant to existing law[55] are not eligible under the process established in the bill. Thus, renewable energy generating facilities of 75 megawatts in capacity or higher would not be eligible and would continue to be reviewed by the PSC through the existing need determination process.

The bill provides that, in order to determine that a project is in the public interest, the PSC must find that the project provides an overall net benefit to the state. In making this determination, the PSC is required to consider the following seven factors:

- The estimated cost and estimated rate impacts of the project.
- The impact of the project on the reliability and integrity of the utility's system and the statewide electric grid.
- The extent to which the project strengthens fuel supply reliability to the utility and the state.
- The extent to which the project promotes rate stability by reducing the risk of fuel cost volatility.
- The extent to which the project retains energy expenditures in the state or regional economy.
- The extent to which the project reduces the utility's regulatory costs associated with adverse environmental impacts.
- The regional and statewide economic benefits associated with the project, including independent analysis of these benefits by the Department of Economic Opportunity.

Under current practice, the PSC typically would determine the prudence of a new electric generation facility or purchase based primarily on whether the project is the least-cost alternative to supply power needed by the utility to serve its ratepayers. The criteria set forth in the bill require the PSC to continue to look at the estimated cost and rate impacts of a project and the impacts of a project on system reliability and integrity. The bill expands the PSC's review to include other factors that the PSC must explicitly consider in making a public interest determination, including regional and statewide economic benefits. The PSC historically has not been given the statutory responsibility or duty to conduct this type of economic analysis. Thus, the bill calls upon the DEO to provide an independent analysis of these economic benefits for the PSC to consider in its review.

The bill allows the utility to select the type and technology of the renewable energy resource that it elects to use. The bill requires that a proposed renewable energy project be selected through a competitive bidding process, based on the utility's choice of technology. This process is intended to allow market forces to help shape projects submitted for review. As a result, this process should provide the PSC with some assurance that it is presented with the best alternative based on the type and technology of the renewable energy resource selected by the utility.

If the PSC determines through its review that a renewable energy project is in the public interest, the bill provides that all reasonable and prudent costs incurred for the project are recoverable through the utility's environmental cost recovery charges.[56] The bill specifies the types of costs recoverable for each type of project defined by the bill as a "renewable energy project," i.e., new construction, conversion of an existing fossil-fuel plant, and a purchase contract.

The bill requires the PSC to adopt rules to implement the public interest determination process as follows:

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[55] A determination of need is required for any steam or solar electrical generating facility, except for such facilities with a capacity of less than 75 megawatts. Sections 403.503(14) and 403.519, F.S.

[56] Section 366.8255, F.S., establishes a mechanism for a utility to recover specified environmental compliance costs through a charge separate from the utility's base rates. This charge is referred to as the environmental cost recovery charge.

- Provide a process for competitive bidding of a renewable energy project based on the type and technology of the renewable energy resource that the utility elects to use.
- Provide minimum requirements and information that a utility must include in a request for proposals for a new renewable energy project and other information related to the request for proposal and competitive bidding processes.
- Establish minimum requirements and information that a utility must include in a petition for a public interest determination for a renewable energy project.
- Provide for recovery through the environmental cost recovery clause of all reasonable and prudent costs incurred by a utility for a renewable energy project that the commission determines to be in the public interest.
- Establish a mechanism for the sharing of revenues derived from any renewable energy credit, carbon credit, or other mechanism that attributes value to the production of renewable energy, either existing or hereafter devised, and received by a utility by virtue of the production or purchase of renewable energy found to be in the public interest.[57]
- Require a utility to report to the commission, on an annual basis, the status of the project, the economic impacts of the project on the region and the state, the amount and type of fuel displaced by the project, operational statistics, and any other information deemed relevant by the commission.
- Require a seller of renewable energy, under a purchased power agreement approved pursuant to the public interest determination process, to surrender to the utility all renewable attributes of the renewable energy purchased.

The bill provides that rules promulgated by the PSC to implement the public interest determination process shall not take effect prior to July 1, 2013.

The bill also establishes procedural guidelines for the public interest determination process. The bill requires the PSC, through its staff, to determine within 7 days whether a petition for a public interest determination is complete. If the PSC finds that the petition is not complete, it must notify the petitioner and provide an opportunity to correct any deficiency. When the petition is deemed complete, the PSC must forward a copy of the petition to the DEO within 3 days. The DEO may request additional information it deems necessary to complete its review. Within 45 days of receipt of the petition, the DEO must complete its analysis and evaluation and submit a report reflecting its findings to the PSC. The bill recognizes the rights of parties to the PSC's public interest determination proceeding to present their own evidence relating to the regional and statewide economic impacts of a proposed project. The bill requires the PSC to issue a final order within 180 days of receipt of the petition.

The bill specifies that the creation of the public interest determination process may not be construed to serve as a basis for renegotiating or repricing an existing contract. Further, the bill specifies that it may not be construed to apply to purchases required pursuant to s. 366.051 or 366.91, F.S. Thus, contracts entered into pursuant to these sections, which require pricing at or below the utility's full avoided cost, may not be made subject to the public interest determination process set forth in the bill.

The bill repeals the provisions of s. 366.92, F.S., that require the PSC to prepare a draft RPS rule and present it for legislative consideration.

Electric Vehicle Charging Stations

Present Situation

The Florida Supreme Court has found that a non-utility entity that develops an electrical generation project and sells power at retail to the public is considered under Florida law to be a "public utility"

[57] The bill provides that a utility may retain from these revenues no more than the amount deemed reasonable by the commission to cover the utility's transaction costs associated with the credit or other mechanism, plus 5 percent of the remaining revenues. The bill provides that the remainder of the revenues shall be credited to the utility's ratepayers.

subject to regulation by the PSC.[58] A "public utility" is defined in s. 366.02(1), F.S., as "Every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state... ."

Public electric vehicle charging is an emerging service which is for the most part unregulated, with the exception of building codes for installation of the stations. Article 625 of the National Electric Code (NEC), 2011 edition, provides requirements for the construction and installation of electric vehicle charging systems. The state's 2008 Florida Building Code contains basic electric vehicle charging systems requirements, adopted from the NEC prior to 2011. The Florida Building Commission plans to adopt the 2011 NEC as part of the 2013 Florida Building Code, with an expected effective date of March 2014.

There are many vehicle charging business models being implemented across the state, with varying levels of consistency. Some charging stations utilize a subscription mode whereby the user pays monthly for the service, similar to a cable service, and has access to a network of stations across the state. Some utilize a "pay as you go" model whereby the user pays an amount per kWh (kilowatt-hour) for usage. Other stations provide the service for free. Labeling and signage also varies across the state, as do policies for parking a non-electric vehicle in a parking space designed and specifically designated for charging an electric vehicle.

Estimates vary as to the number of electric vehicle charging stations that have been built or are being built in the state. Reportedly, there are anywhere from 100 to 300 in existence and up to approximately 500 targeted over the next six months. The explanation for this influx of charging stations partially stems from federal funding for electric vehicles. In March 2009, as part of the American Recovery and Reinvestment Act, the U.S. Department of Energy announced the following solicitations:

- Up to $2 billion in federal funding for competitively awarded cost-shared agreements for manufacturing of advanced batteries and related drive components (Recovery Act – Electric Drive Vehicle Battery and Component Manufacturing Initiative); and
- Up to $400 million for transportation electrification demonstration and deployment projects (Recovery Act – Transportation Electrification).[59]

In August 2009, the U.S. Department of Energy awarded 48 grants to 25 states for projects in the following areas:

- $1.5 billion in grants to U.S.-based manufacturers to produce batteries and their components and to expand battery recycling capacity;
- $500 million in grants to U.S.-based manufacturers to produce electric drive components for vehicles, including electric motors, power electronics, and other drive train components; and
- $400 million in grants to purchase thousands of plug-in hybrid and all-electric vehicles for test demonstrations in several dozen locations; to deploy them and evaluate their performance, to install electric charging infrastructure; and to provide education and workforce training to support the transition to advanced electric transportation systems.[60]

Some of the awards affecting Florida include the following;

- Saft America, Inc. - Awarded $95.5 million for the production of lithium-ion cells, modules, and battery packs for industrial and agricultural vehicles and defense application markets in Jacksonville.

- Coulomb's ChargePoint America program - Awarded $37 million to provide nearly 5,000 charging stations to program participants in Austin, Texas; Detroit, Michigan; Los Angeles,

[58] PW Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988).
[59] U.S. Department of Energy website: http://apps1.eere.energy.gov/news/daily.cfm/hp_news_id=159.
[60] 1st-in-hybrid.com website: http://1st-in-hybrid.com/obama-and-the-next-generation-of-batteries-and-electric-vehicles/.

California; New York City, New York; Orlando, Florida; Sacramento, California; the San Jose/San Francisco Bay Area; Bellevue/Redmond, Washington; and Washington, D.C. The company has a partnership with Ford, Chevrolet, and Smart USA.

Effect of Proposed Changes

The bill provides a legislative finding that the provision of electric vehicle charging to the public by a non-utility is a service and not the retail sale of electricity. Specifically, that rates, terms and conditions of electric vehicle charging services by a non-utility are not subject to regulation by the Public Service Commission.

It directs the Department of Agriculture and Consumer Services to adopt rules to provide definitions, methods of sale, labeling requirements, and price posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry.

The bill also prohibits the stopping, standing, or parking of a vehicle that is not capable of using an electrical recharging station within any parking space specifically designated for charging an electric vehicle and provides that doing so may result in a charge of a noncriminal traffic infraction, the penalty and corresponding amount of which may be determined by local government ordinance.

Determination of Need for New Power Plants (over 75 MW)

Present Situation

The Florida Electrical Power Plant Siting Act (Siting Act), establishes a centrally coordinated process for the review of permit applications for electrical power plants.[61] The Department of Environmental Protection administers the process, and several affected agencies provide input in the certification proceeding concerning matters within their respective jurisdictions. Current law requires certification under the Siting Act for any steam or solar electrical generating facility, except for such facilities with a capacity of less than 75 megawatts.[62]

Section 403.519, F.S., requires that an applicant seeking approval of an electrical power plant that is subject to the Siting Act must obtain a determination of need for the plant from the PSC. In making its determination, the PSC must take into account the following factors:

- The need for electric system reliability and integrity.
- The need for adequate electricity at a reasonable cost.
- The need for fuel diversity and supply reliability.
- Whether the proposed plant is the most cost-effective alternative available.
- Whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

The PSC must also expressly consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the proposed plant. The PSC may consider any other matters within its jurisdiction that it deems relevant.

In its *Review of the 2011 Ten-Year Site Plans for Florida's Electric Utilities*, the PSC addressed the issue of fuel diversity in the state, noting:

> Because a balanced fuel supply can enhance system reliability and significantly mitigate the effects of volatile fuel price fluctuations, it is important that utilities have the greatest possible level of flexibility in their generation fuel source mix. Although the Commission has cited the growing lack of fuel diversity within the State of Florida as a major strategic

[61] Section 403.502, F.S.
[62] Section 403.503(14), F.S.

concern for the past several years, the continuing trend of an increasing reliance on natural gas-fired generation is likely to persist into the foreseeable future. In previous Ten-Year Site Plans, Florida's utilities responded to fuel diversity concerns through the inclusion of multiple coal-fired power plants. Due to a combination of fuel cost uncertainties, high capital costs, and uncertainties regarding potential environmental costs related to possible carbon emission regulations, more than 4,000 MW of coal-fired generation has been canceled. In 2007 and 2008, the Commission approved the need for approximately 5,000 MW of new nuclear generation. However, over the course of the past two planning cycles, all of the new nuclear units have been delayed beyond the current ten-year planning horizon.

Currently, more than 50 percent of the electric power in Florida is generated by natural gas. The fact that the price of natural gas is expected to remain relatively low throughout the planning horizon is a major contributor to the forecast that natural gas will generate more than 55 percent of the electric energy in Florida by the year 2020.[63]

Effect of Proposed Changes

The bill revises the current requirement that the PSC consider the need for fuel diversity and supply reliability when making a determination of need to require it to consider "the need to improve the balance of power plant fuel diversity and supply reliability" both within the state and within the applicant's portfolio of generating resources. Because each electric utility in the state relies on a different mix of generation resources, the bill's impact on the PSC's review of a proposed plant will vary to some extent based on the utility proposing the plant.

Renewable Fuel Standard

Present Situation

In FY 2010-2011, Florida consumed approximately 8.2 billion gallons of gasoline[64] and is the third largest consumer of gasoline in the nation.[65] From January through August of 2011, approximately 2.65 billion gallons of unblended gasoline and approximately 7 billion gallons of blended gasoline (9 to 10 percent ethanol) were sold in the state.[66, 67] According to the Florida Biofuels Association, there are several commercial advanced biofuel ethanol projects in development that encompass a total investment in excess of $1 billion in capital.[68] The state has invested approximately $39 million in grant awards for the development of ethanol since 2006.[69]

Federal Renewable Fuel Standard

The federal government requires the U.S. Environmental Protection Agency (EPA) to develop and implement regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel, through a Renewable Fuel Standard (RFS). The RFS program was created under the Energy Policy Act of 2005, which established the first renewable fuel volume mandate in the United States. Originally, the program required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012.[70] However, the federal Energy Independence and Security Act of 2007, signed into

[63] *Review of the 2011 Ten-Year Site Plans for Florida's Electric Utilities*, Florida Public Service Commission, November 2011, p. 4.
[64] Fuel Tax Distributions spreadsheet found on Department of Revenue website: http://dor.myflorida.com/dor/taxes/fuel.
[65] Texas and California lead Florida in amount of gasoline consumed.
[66] By terminal suppliers, importers, blenders, and wholesalers.
[67] Department of Revenue correspondence, December 2, 2011.
[68] These include, but are not limited to: INEOS – New Planet BioEnergy; Highlands EnviroFuels, LLC; Vercipia Biofuels/BP Biofuels; Algenol; Petro Algae; LS9; and Southeast Renewable Fuels, LLC.
[69] Correspondence with the Department of Agriculture and Consumer Services, December 5, 2011.
[70] See the EPA website: http://www.epa.gov/otaq/fuels/renewablefuels.

law on December 19, 2007, set the renewable fuel standard minimum annual goal for renewable fuel use at 9 billion gallons in 2008 and 36 billion gallons by 2022.[71]

Florida Renewable Fuel Standard Act (Act)

In 2008, the Legislature passed the Florida Renewable Fuel Standard Act (ss. 526.201-526.207, F.S.), which provided findings that "it is vital to the public interest and to the state's economy to establish a market and the necessary infrastructure for renewable fuels in this state by requiring that all gasoline offered for sale in this state include a percentage of agriculturally derived, denatured ethanol." Further, "that the use of renewable fuel reduces greenhouse gas emissions and dependence on imports of foreign oil, improves the health and quality of life for Floridians, and stimulates economic development and the creation of a sustainable industry that combines agricultural production with state-of-the-art technology."[72]

Based on these findings, the Legislature established the standard that, beginning December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline.[73] The Act does not address the sale of gasoline at the retail level.

"Blended gasoline" is defined as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume, that meets the specifications as adopted by the Department of Agriculture and Consumer Services (DACS or Department). The fuel ethanol portion may be derived from any agricultural source. "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates that meets the specifications as adopted by the Department.[74] The Act does not include other types of renewable fuel in the standard.

The Act provides specific exemptions from the standard.[75] They include the following:

- Fuel used in aircraft.
- Fuel sold for use in boats and similar watercraft.
- Fuel sold to a blender.
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, off-road vehicles, motorcycles, or small engines.
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency.
- Fuel transferred between terminals.
- Fuel exported from the state in accordance with s. 206.052.
- Fuel qualifying for any exemption in accordance with chapter 206.
- Fuel for a railroad locomotive.
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if the equipment were to be operated using fuel meeting the requirements of the Act.

Effect of Proposed Changes

The bill revises the renewable fuel standard to include "other alternative fuel," which is defined in the bill as "a fuel produced from biomass, as defined in s. 366.91, F.S., that is used to replace or reduce the quantity of fossil fuel present in a petroleum fuel that meets the specifications as adopted by the Department." "Biomass" is defined in Florida law as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or

[71] *EPA Proposes 2012 Renewable Fuel Standards and 2013 Biomass-Based Diesel Volume,* EPA-420-F-11-018, Office of Transportation and Air Quality, June 2011, p. 1.
[72] Section 526.202, F.S.
[73] Section 526.203(2), F.S.
[74] Section 526.203(1), F.S.
[75] Section 526.203(3), F.S.

products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."[76]

The bill, in effect, may capture future renewable products, such as biobutanol,[77] that can be compatibly blended with gasoline and requires that the "other alternative fuel" meet the specifications as adopted by the Department of Agriculture and Consumer Services. This section of law applies to gasoline only. Therefore, the expansion does not include biodiesel or biomass-based diesel, which cannot be blended with gasoline.

Permitting Process for Cultivation of Nonnative Plants

Present Situation

Section 581.083, F.S., prohibits the introduction into or release within this state of any plant pest, noxious weed, genetically engineered plant or plant pest, or any other organism which may directly or indirectly affect the plant life of this state as an injurious pest, parasite, or predator of other organisms, or any arthropod, except under special permit issued by the Department of Agriculture and Consumer Services (DACS or the department).

A person may not cultivate a nonnative plant, including a genetically engineered plant or a plant that has been introduced, for purposes of fuel production or purposes other than agriculture in plantings greater in size than 2 contiguous acres, except under a special permit issued by the department. This permit may not be required if the department determines, in conjunction with the Institute of Food and Agricultural Sciences at the University of Florida, that the plant is not invasive and subsequently exempts the plant by rule.[78]

Each application for a special permit must be accompanied by a fee and proof that the applicant has obtained a bond in the form approved by the department and issued by a surety company admitted to do business in this state or a certificate of deposit.[79] The application must include, on a form provided by the department, the name of the applicant and the applicant's address or the address of the applicant's principal place of business; a statement completely identifying the nonnative plant to be cultivated; and a statement of the estimated cost of removing and destroying the plant that is the subject of the special permit and the basis for calculating or determining that estimate.[80] Upon obtaining a permit, the permitholder may annually cultivate and maintain the nonnative plants as authorized by the special permit.

If the permitholder ceases to maintain or cultivate the plants authorized by the special permit, if the permit expires, or if the permitholder ceases to abide by the conditions of the special permit, the permitholder shall immediately remove and destroy the plants that are subject to the permit, if any remain. The permitholder must notify DACS of the removal and destruction of the plants within 10 days after such event.[81]

Each permitholder must maintain for each separate growing location a bond or a certificate of deposit in an amount determined by the department, but not less than 150 percent of the estimated cost of removing and destroying the cultivated plants. The amount of the bond or certificate of deposit may be increased or decreased, upon order of the department, at any time if the department finds such change to be warranted by the cultivating operations of the permitholder.[82]

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[76] Section 366.91(2)(a), F.S.
[77] Biobutanol is a four-carbon alcohol derived mainly from the fermentation of the sugars in organic feedstocks. (http://alternativefuels.about.com/od/thedifferenttypes/a/biobutanol.htm)
[78] Section 581.083(4), F.S.
[79] Section 581.083(4)(a)1. and 2., F.S
[80] *Id.*
[81] Section 581.083(4)(b), F.S.
[82] Section 581.083(4)(e), F.S.

Effect of Proposed Changes

The bill amends the permitting process for cultivation of nonnative plants. The bill adds algae and blue-green algae to the list of plants a person may not cultivate in plantings greater in size than 2 contiguous acres without a special permit issued by DACS, and removes language referring to cultivating such plants "for purposes of fuel production or purposes other than agriculture."

Blue-green algae is a plant-like organism which, using genetic manipulation, can be used to produce ethanol. The algae are produced by the millions in large plastic bladders, called generators. As this is a genetically engineered organism, there is some concern over larger scale production and environmental consequences should a spill or other breach of containment occur. Therefore, the biomass permitting process is being expanded to include algae and blue-green algae to evaluate and address the potential invasiveness of large scale production.[83]

The bill allows the department to exempt a plant from the permit requirement by rule if, based on experience or research data, the department, after consultation with – not "in conjunction with" as in current law – the Institute of Food and Agricultural Sciences at the University of Florida, determines that the nonnative plant, algae, or blue-green algae, does not pose a known threat of becoming an invasive species or a pest of plants or native fauna under Florida conditions. The bill explicitly exempts from the permit requirement any plant or group of plants that, based on experience or research data, does not pose a known threat of becoming an invasive species and is commonly grown in Florida for purposes of human food consumption or for commercial feed, feedstuff, forage for livestock, nursery stock, or silviculture.

The bill allows, in addition to a bond or a certificate of deposit, any other type of security adopted by rule that would provide financial assurance of cost recovery for the removal of a planting. The bill decreases the bond requirement from "not less than 150 percent of the estimated cost" to "not more than 150 percent of the estimated cost."

The bill authorizes the decreasing or removal of a bond or certificate of deposit when a decrease in the cultivating operations of the permitholder occurs or research or practical field knowledge and observation indicates low risk of invasiveness by the nonnative species. The bill includes factors that may be considered when applying a decrease or removal of a bond or certificate of deposit.

Transfer of Public Counsel

Present Situation

The Office of Public Counsel was created by the Legislature in 1974[84], as an office of the Legislature. The Public Counsel represents the general public of Florida in proceedings before the PSC and in proceedings before counties that have elected to regulate private water and wastewater companies.[85] The Public Counsel must be an attorney admitted to practice before the Florida Supreme Court.[86] The Public Counsel must perform his or her duties independently.[87]

To perform its duties, the Public Counsel is granted the following specific powers in s. 350.0611, F.S.:

- To appear in, or petition to initiate, proceedings before the PSC or counties and advocate any position which he or she deems to be in the public interest, and to conduct discovery in such proceedings.

[83] Email correspondence with the Director of the Division of Plant Industry, Department of Agriculture and Consumer Services, February 6, 2012.
[84] Chapter 74-195, F.S.
[85] Section 350.0611, F.S.
[86] Section 350.061(1), F.S.
[87] *Id.*

- To have access to and use of all files, records, and data of the commission or the counties available to any other attorney representing parties in such proceedings.
- To seek review of any determination, finding, or order of the commission or the counties in any proceeding in which he or she has participated as a party.
- To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions.
- To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission.

In a September 20, 2011, presentation to the Energy & Utilities Subcommittee, the Public Counsel provided examples of the types of cases that his office handles. These cases include proceedings involving utility base rates, charges for the recovery of nuclear power plant development costs, and other types of cost-recovery and pass-through charges for electric, natural gas, water, and wastewater utilities. The Office of Public Counsel also administers a portion of the Lifeline program that provides credits from the federal Universal Service Fund to certain low-income customers for local phone service.[88]

In 2005, the Legislature created the Committee on Public Service Commission Oversight in s. 350.012, F.S. The committee, comprised of 12 members (6 Senate members appointed by the President of the Senate and 6 House members appointed by the Speaker of the House of Representatives), was created to appoint a public counsel and to screen persons nominated by the PSC Nominating Council for the Governor's consideration for appointment.[89]

In 2008, the Legislature removed the committee's role in the public service commissioner selection process. The committee was renamed the Committee on Public Counsel Oversight.[90] The committee's primary duty is to appoint a Public Counsel, though it also may file a complaint with the Commission on Ethics alleging a violation of Chapter 350, F.S., by a commissioner, former commissioner, former commission employee, or member of the Public Service Commission Nominating Council.[91] The Public Counsel serves at the pleasure of the Committee on Public Counsel Oversight, subject to biennial reconfirmation by the committee.[92] The current Public Counsel was appointed in 2007 but has not yet been reconfirmed by the committee.

The Financial Services Commission (FSC) is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. These members serve as the agency head of the FSC. The FSC is a separate budget entity. Though it is created within the Department of Financial Services, the FSC is not subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.[93]

The FSC is structured into two offices: the Office of Insurance Regulation and the Office of Financial Regulation. The FSC may establish by rule any additional organizational structure of the offices. The FSC members serve as the agency head for purposes of rulemaking by the FSC and the offices, and each office director is the agency head for purposes of final agency action within his or her office's respective regulatory jurisdiction.[94]

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[88] Section 364.10(3), F.S.
[89] Chapter 2005-132, L.O.F.
[90] Chapter 2008-227, L.O.F.
[91] Section 350.012, F.S.
[92] Section 350.061(1), F.S.
[93] Section 20.121(3), F.S.
[94] *Id.*

The FSC appoints and removes directors of each office by a majority vote consisting of at least three affirmative votes, provide that both the Governor and the Chief Financial Officer are on the prevailing side. Current law sets minimum qualifications for each director.[95]

Effect of Proposed Changes

The bill transfers the Office of Public Counsel from the Legislature to the Financial Services Commission.

To effect this transfer, the bill creates a third office within the FSC entitled "The Office of Public Counsel." The bill maintains the current responsibilities of the Public Counsel and continues to provide for the Public Counsel's independent performance of his or her duties. To help maintain this independence, the bill exempts the Office of Public Counsel from the FSC's authority to restructure the organization of offices operating within the FSC. Because the Public Counsel does not promulgate rules, the FSC's role as agency head for rulemaking purposes should not affect the Office of Public Counsel's operations.

The bill provides that the Public Counsel shall be appointed by, and serve at the pleasure of, the Financial Services Commission. The FSC shall appoint and may remove the Public Counsel by a majority vote consisting of at least three affirmative votes. Appointment is subject to confirmation by the Senate. The bill provides that the appointee shall perform the functions of the office until the Senate has confirmed the appointment. The bill provides for the appointment of an interim Public Counsel in the event of a vacancy.

The bill authorizes the Public Counsel to employ clerical, technical, and professional personnel that the Public Counsel deems to be reasonably necessary for the performance of the duties of the office and to supervise, direct, and set the compensation for all personnel of the office. The bill also authorizes the Public Counsel to retain the services of additional attorneys or experts, including expert witnesses and other technical personnel. The bill provides that the Public Counsel is responsible for preparing the budget for the office and submitting the budget to the FSC. The bill requires the FSC to set the salary of the Public Counsel and to allocate the salaries and expenses of the office from moneys appropriated by the Legislature.

The bill transfers the Office of Public Counsel from the legislative branch to the Financial Services Commission as a type two transfer pursuant to s. 20.06(2), F.S., and provides for the transfer of positions and funds based on approval by the Legislative Budget Commission. The base budget for the Office of Public Counsel was $2.5 million and 16.5 full time positions from the General Revenue Fund for the 2010-2011 fiscal year.

Forestry Inventory Analysis

Present Situation

Woody biomass from forest materials is a renewable, low-carbon feedstock and has become a popular contributor to renewable energy supplies in the state. Florida is made up of approximately 16.9 million acres of timberland, ninety-four percent of which is considered available for timber production.[96]

In 2008, the Legislature directed the Department of Agriculture and Consumer Services (DACS or department), in conjunction with the Department of Environmental Protection, to conduct an economic impact analysis on the effects of granting financial incentives to energy producers who use woody biomass as fuel, including an analysis of the effects on wood supply and prices and impacts on current markets and forest sustainability.

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[95] *Id.*

[96] *Woody Biomass Economic Study*, Department of Agriculture and Consumer Services, Department of Environmental Protection, and the University of Florida, March 1, 2010, p. 3.

The Division of Forestry within DACS contracted with the University of Florida to conduct the necessary analyses. The analyses indicated that a "significant amount of renewable energy can be developed through the utilization of woody biomass, while still keeping the forest resources of Florida sustainable and current forest industries strong. The key to this success is...to better utilize urban wood waste, logging debris and understory vegetation, and support the development of short rotation energy crops as renewable energy demands increase."[97] Although this report provided valuable analysis on the utilization and economic impacts of forest feedstocks, it did not address the identification of available forestry biomass in Florida.

According to DACS, the current state of forest inventory data is not comprehensive enough to be able to determine whether new wood-using facilities can be sustainably supplied in certain locations. More reliable information is necessary to determine the viability of biomass facilities, based on their proposed location, while also ensuring forest sustainability.[98]

Effect of Proposed Changes

The bill directs DACS to conduct a comprehensive statewide forest inventory analysis and study, utilizing a Geographic Information System,[99] to do the following:

- Identify where available biomass is located,
- Determine the available biomass resources, and
- Ensure forest sustainability within the state.

The department must submit the results of the study to the Governor, the Senate President, and the Speaker of the House of Representatives no later than July 1, 2013.

Clearinghouse for Consumer Information

Present Situation

Presently, a variety of information is available on the PSC website to help consumers save energy. According to the PSC, during the 2011 calendar year, more than 309,472 people accessed the PSC Web site consumer pages and the PSC's web Energy Conservation House had more than 58,401 visitors last year.[100] The interactive graphic house provides hyperlinks to access conservation information and tips geared for homes, with the goal of helping consumers discover ways to reduce their monthly utility bills.

The PSC also produces a quarterly *Consumer Connection E-Newsletter which* features current energy and water conservation topics and consumer tips, using text and video. This year, the *Consumer Connection E-Newsletter* was "tweeted" for the first time by the PSC and is also available on the PSC website.[101]

Energy Star has a website whereby consumers can research appliances to determine how best to invest in energy-efficiency and conservation. ENERGY STAR is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that rates energy efficient products and practices.

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[97] Correspondence from Commissioner of Agriculture Charles Bronson to Speaker of the House of Representatives Larry Cretul, March 1, 2010, (cover letter for *Woody Biomass Economic Study*).
[98] Email correspondence from DACS staff, January 31, 2012.
[99] A Geographic Information System (GIS) integrates hardware, software, and data for capturing, managing, analyzing, and displaying all forms of geographically referenced information.
[100] *Annual Report on Activities Pursuant to the Florida Energy Efficiency and Conservation Act* (Draft), Public Service Commission, February 2012, p. 24.
[101] *Id.*

There is, however, no singular "one-stop-shop" on-line source of information for Florida consumers who want to achieve energy-efficiency and conservation.

Effect of Proposed Changes

The bill directs DACS, in consultation with the PSC, the Florida Building Commission, and the Florida Energy Systems Consortium,[102] to develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures. DACS is required to post the information on its website by July 1, 2013.

Electric Vehicle Charging Station Study

Present Situation

Electric vehicle charging stations are expanding across the state. As discussed in the *Electric Vehicle Charging Stations* section of this analysis, there are many business models being implemented with varying levels of consistency. Some charging stations utilize a subscription mode whereby the user pays monthly for the service, similar to a cable service, and has access to a network of stations across the state. Some utilize a "pay as you go" model whereby the user pays an amount per kWh (kilowatt-hour) for usage. Other stations provide the service for free.

Estimates vary as to the number of electric vehicle charging stations that have been built or are being built in the state. Reportedly, there are anywhere from 100 to 300 in existence and up to approximately 500 targeted over the next six months. Figures are not readily available on the number of privately-owned home charging stations nor does there appear to be a clear picture of whether the interest in public charging is widespread.

A quantifiable projection of the effect these charging stations (public and privately-owned) might have on energy consumption, and as a result on Florida's electric grid, has not been established due to the undetermined number of charging stations being built in Florida. With the escalated implementation of projects resulting from the transportation electrification demonstration and deployment awards (discussed in the *Electric Vehicle Charging Stations* section of this analysis), a clearer picture is emerging of the number of stations that may be installed in the next six months to a year.

Effect of Proposed Changes

The bill directs the PSC to conduct a study of the potential effects of public charging stations and privately-owned electric vehicle charging on both energy consumption and the impact on the electric grid in the state. The bill also directs the PSC to investigate the feasibility of using off-grid solar photovoltaic power as a source of electricity for the electric vehicle charging stations. The results of the study are to be presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012.

Study of the Florida Energy Efficiency and Conservation Act (FEECA)

Present Situation

In 1980, the Legislature adopted the Florida Energy Efficiency and Conservation Act (FEECA).[103] In section 366.81, F.S., the Legislature summarizes its intent by expressing the following findings with respect to FEECA:

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[102] The Legislature created the Florida Energy Systems Consortium in 2008 to "promote collaboration among experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state." It is composed of the 11 state universities and is housed at the University of Florida. See s. 1004.648, F.S.

[103] Chapter 80-65, s. 5, L.O.F.

> The Legislature . . . finds and declares that [the provisions of FEECA] are to be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use; encouraging further development of demand-side renewable energy systems; and conserving expensive resources, particularly petroleum fuels.

The provisions of FEECA address two major topics:

(1) Energy efficiency and conservation; and
(2) The addition of new electrical power plants.

Energy Efficiency and Conservation

With respect to energy efficiency and conservation, s. 366.82(2), F.S., requires PSC to set appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems. The PSC expresses these as annual electric peak demand and energy savings over a ten-year period. The PSC may also allow efficiency investments across generation, transmission, and distribution systems. The PSC must adopt goals for each of seven electric utilities - Florida Power & Light Company, Progress Energy Florida, Inc., Tampa Electric Company, Gulf Power Company, Florida Public Utilities Company, Orlando Utilities Commission, and JEA. Based on legislative changes to FEECA in 2008, the PSC, in developing goals, must evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems and must consider:

- The costs and benefits to customers participating in each identified measure.
- The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.
- The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems.
- The costs imposed by state and federal regulations on the emission of greenhouse gases.[104]

Following the adoption of goals, the commission must require each utility to develop plans and programs to meet the overall goals within its service area. Utility programs may include variations in rate design, load control, cogeneration, residential energy conservation subsidies, or any other measures within the PSC's jurisdiction which it finds likely to be effective.[105]

The 2008 amendments to FEECA authorized the PSC to establish financial rewards and penalties for exceeding or failing to meet these goals. For those utilities subject to the PSC's ratesetting authority (Florida Power & Light Company, Progress Energy Florida, Inc., Tampa Electric Company, Gulf Power Company, Florida Public Utilities Company), the PSC may authorize a financial reward to a utility that exceeds its goals and may authorize a financial penalty upon a utility that fails to meet its goals.[106] The PSC is also authorized to allow a utility an additional return on equity of up to 50 basis points if it exceeds 20 percent of its annual load-growth through energy efficiency and conservation measures.[107]

Also under FEECA, the commission must require each utility to offer, or to contract to offer, energy audits to its residential customers.[108]

The PSC last set energy efficiency and conservation goals for the seven "FEECA utilities" in 2009.[109] In its order, the PSC determined that each utility had performed an adequate analysis of available

[104] Section 366.82(3), F.S.
[105] Section 366.82(7), F.S.
[106] Section 366.82(8), F.S.
[107] Section 366.82(9), F.S.
[108] Section 366.82(11), F.S.
[109] Order No. PSC-09-0855-FOF-EG, issued December 30, 2009.

demand-side conservation and efficiency measures, including demand-side renewable energy systems. Without evaluating the full technical potential of supply-side conservation and efficiency measures, as required by the 2008 amendments to FEECA, the PSC determined that supply-side conservation and efficiency measures would be best addressed in a separate proceeding because they required different analytical methods. It is not clear that such measures have been addressed since the PSC reached this conclusion.

To arrive at goals for each investor-owned electric utility, the PSC, in considering the factors set forth in FEECA, as amended in 2008, utilized a test that made more demand-side conservation and efficiency measures appear cost-effective than would otherwise have been deemed cost-effective using tests historically applied by the PSC. This resulted in significantly higher goals for the investor-owned utilities. Each of the utilities submitted plans and programs to meet these new goals. After revisions, the PSC approved plans and programs for Gulf Power Company and Tampa Electric Company to meet the new goals. Based on concerns about customer rate impacts, the PSC retained the new goals for Florida Power & Light Company and Progress Energy Florida, but allowed these two utilities to continue utilizing their existing plans and programs.

In its 2009 order, the PSC determined that it was unnecessary to establish incentives at that time. The PSC determined that it would be in a better position to determine whether incentives are needed based on the utilities' experience in reaching the new goals.

To address FEECA's direction to establish demand-side renewable energy systems, the PSC directed each of the investor-owned utilities to establish pilot programs focused on encouraging solar water heating and solar photovoltaic technologies.

As noted above, the PSC did not evaluate supply-side conservation and efficiency measures, and it concluded that it was not appropriate to set goals for efficiency improvements in generation, transmission, and distribution, because those matters are continually reviewed through the utilities' planning processes.

Power Plant Determination of Need

Section 403.519, F.S., requires that an applicant seeking approval of an electrical power plant that is subject to the Siting Act must obtain a determination of need for the plant from the PSC. In making its determination, the PSC must take into account the following factors:

- The need for electric system reliability and integrity.
- The need for adequate electricity at a reasonable cost.
- The need for fuel diversity and supply reliability.
- Whether the proposed plant is the most cost-effective alternative available.
- Whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

The PSC must also expressly consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the proposed plant. The PSC may consider any other matters within its jurisdiction that it deems relevant.

Effect of Proposed Changes

The bill requires the PSC, in consultation with the Department of Agriculture and Consumer Services, and subject to a specific appropriation, to contract for an independent evaluation of the effectiveness of FEECA in achieving the statutory objectives set forth in s. 366.81, F.S., which include the following: reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use; encouraging further development of demand-side renewable energy systems; and conserving expensive resources, particularly petroleum fuels.

The bill requires that the evaluation include an assessment of:

- The effectiveness of the act in accomplishing statutory objectives in a cost-effective manner, taking into account short-term and long-term costs and benefits.
- The models and methods used to establish conservation goals and programs to meet those goals.
- The strengths and weaknesses of the act relative to alternative methods available to achieve the statutory objectives.
- The coordination between the goal-setting process in section 366.82, F.S., and the determination of need process in s. 403.519, F.S., including the manner in which supply-side conservation and efficiency measures are addressed.
- The potential for time-based rates and advanced metering technology, or other mechanisms, to allow customers to manage their energy consumption and allow for peak load shaving.

The findings and recommendations of the evaluation must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 31, 2013.

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

B. SECTION DIRECTORY:

Section 1. Amends 186.801, F.S., requires utilities' 10-year site plans to address existing and proposed renewable energy production and purchases.

Section 2. Amends s. 212.055, F.S., revising uses for local government infrastructure surtaxes.

Section 3. Amends s. 212.08, F.S.; provides definitions for the terms "biodiesel," "ethanol," and "renewable fuel"; provides for tax exemptions in the form of a rebate for the sale or use of certain equipment, machinery, and other materials for renewable energy technologies; provides eligibility requirements and tax credit limits; authorizes the Department of Revenue and the Department of Agriculture and Consumer Services to adopt rules; directs the Department of Agriculture and Consumer Services to determine and publish certain information relating to exemptions; provides for expiration of the exemption.

Section 4. Amends s. 220.192, F.S.; provides definitions; reestablishes a corporate tax credit for certain costs related to renewable energy technologies; provides eligibility requirements and credit limits; provides rule-making authority to the Department of Revenue and the Department of Agriculture and Consumer Services; directs the Department of Agriculture and Consumer Services to determine and publish certain information; provides for expiration of the tax credit.

Section 5. Amends s. 220.193, F.S.; reestablishes a corporate tax credit for renewable energy production; provides definitions; provides a tax credit for the production and sale of renewable energy; provides for the use and transfer of the tax credit; provides rule-making authority to the Department of Revenue; provides for expiration of the tax credit.

Section 6. Amends s. 255.257, F.S.; directs the Department of Management Services in coordination with the Department of Agriculture and Consumer Services to further develop the state energy management plan.

Section 7. Amends s. 288.106, F.S.; further clarifies the definition of "target industry business" for purposes of the tax refund program for qualified target industry businesses.

Section 8. Amends s. 20.60, F.S.; requires the Department of Economic Opportunity to analyze and evaluate economic benefits for certain renewable energy projects.

Section 9. Amends s. 366.92, F.S.; provides definitions; authorizes a utility to petition the commission to determine that a proposed renewable energy facility is in the public interest; provides a standard of

review; providing for cost recovery for reasonable and prudent cost incurred by a utility for a financing project; requires the Public Service Commission to adopt rules to establish a public interest determination process for renewable energy projects; establishes procedural guidelines for public interest determination.

Section 10. Creates s. 366.94, F.S., provides legislative intent relating to electric vehicle charging stations; provides that the rates, terms and conditions of electric vehicle charging services by a non-utility are not subject to regulation by the Public Service Commission; provides rule-making authority to the Department of Agriculture and Consumer Services; prohibits parking in spaces specifically designated for charging an electric vehicle under specific circumstances; provides penalties.

Section 11. Amends s. 403.519, F.S.; requires the Public Service Commission to make a need determination for electrical power to place greater emphasis on fuel diversity.

Section 12. Amends s. 526.203, F.S., revises the definitions of the terms "blended gasoline" and "unblended gasoline;" and defines the term "alternative fuel."

Section 13. Amends s. 581.083, F.S.; prohibits the cultivation of certain algae in plantings greater in size than 2 contiguous acres; provides exceptions; provides for exemption from special permitting requirements by rule; revises certain bonding requirements.

Section 14. Amends s. 20.121, F.S.; establishes the Office of Public Counsel within the Financial Services Commission.

Section 15. Amends s. 350.061, F.S.; provides for appointment and removal of the Public Counsel by the Financial Services Commission.

Section 16. Amends s. 350.0613, F.S.; establishes the authority of the Public Counsel to employ personnel, set compensation, retain experts, and prepare a budget.

Section 17. Amends s. 350.0614, F.S.; authorizes the Financial Services Commission to set the salary of the Public Counsel and allocate salaries and expenses for the office.

Section 18. Provides for a type two transfer of the Office of Public Counsel from the legislature to the Financial Services Commission.

Section 19. Requires the Department of Agriculture and Consumer Services to conduct a statewide forest inventory analysis.

Section 20. Requires the Department of Agriculture and Consumer Services, in consultation with other state agencies, to develop a clearinghouse of information regarding cost savings associated with energy efficiency and conservation measures; requires such information to be posted on its website.

Section 21. Directs the Public Service Commission to conduct a study on the potential effects of electric vehicle charging stations on both energy consumption and the electric grid.

Section 22. Requires the Public Service Commission, in consultation with the Department of Agriculture and Consumer Services, to contract for an independent evaluation of the effectiveness of the Florida Energy Efficiency and Conservation Act.

Section 23. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Sales and Use Tax Exemption for Renewable Energy Technologies

The Revenue Estimating Conference estimated the following negative impacts for the Sales and Use Tax Exemption for Renewable Energy Technologies on state revenues:

Impact	FY 2012-2013 Cash	FY 2012-2013 Annualized	FY 2013-2014 Cash	FY 2014-2015 Cash	FY 2015-2016 Cash
Total State Impact	($.8 m)	($.8 m)	($.8 m)	($.8 m)	($.8 m)

Renewable Energy Technologies Investment Tax Credit and the Florida Renewable Energy Production Credit

The Revenue Estimating Conference has estimated the following negative impacts for the Renewable Energy Technologies Investment Tax Credit and the Florida Renewable Energy Production Credit on state revenues:

Impact	FY 2012-2013 Cash	FY 2012-2013 Annualized	FY 2013-2014 Cash	FY 2014-2015 Cash	FY 2015-2016 Cash
Total State Impact	($1.0 m)	($15 m)	($5.5 m)	($11.3 m)	($13.4 m)

2. Expenditures:

Evaluation of Economic Benefits of New Renewable Energy Projects

The bill requires the Department of Economic Opportunity to analyze and evaluate the regional and statewide economic benefits of renewable energy projects submitted to the Public Service Commission for a public interest determination. The resources required to satisfy this duty is indeterminate as it will depend upon the number and frequency of petitions for public interest determination filed with the PSC. Presumably, application fees associated with the public interest determination process would be set to cover these costs.

Public Interest Determination for New Renewable Energy Projects

The bill requires the Public Service Commission to adopt rules to implement a public interest determination process for new renewable energy projects and to process petitions for public interest determinations. The PSC will be required to dedicate resources to this rulemaking process. The resources required to satisfy the responsibility to process petitions is indeterminate as it will depend upon the number and frequency of petitions for public interest determination filed with the PSC. Presumably, application fees associated with the public interest determination process would be set to cover these costs.

Study of the Florida Energy Efficiency and Conservation Act

Subject to a specific appropriation, the bill requires the PSC, in consultation with the Department of Agriculture and Consumer Service, to contract for an independent evaluation of the effectiveness of the Florida Energy Efficiency and Conservation Act in achieving its statutory objectives.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Sales and Use Tax Exemption for Renewable Energy Technologies

The Revenue Estimating Conference estimated the following negative impacts for the Sales and Use Tax Exemption for Renewable Energy Technologies on local government revenues:

Impact	FY 2012-2013 Cash	FY 2012-2013 Annualized	FY 2013-2014 Cash	FY 2014-2015 Cash	FY 2015-2016 Cash
Total Local Impact	($.2 m)	($.2 m)	($.2 m)	($.2 m)	($.2 m)

The Revenue Estimating Conference has determined that there is no fiscal impact on local governments for the Renewable Energy Technologies Investment Tax Credits and the Florida Renewable Energy Production Credits.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Public Interest Determination for New Renewable Energy Projects

As noted in the Effect of Proposed Changes section of this analysis, the PSC currently encourages utilities and renewable energy developers to negotiate contracts for the purchase of capacity and energy, where those contracts would allow the utility to avoid or defer construction of planned utility generating units and provide fuel diversity, fuel price stability, and energy security. However, the PSC's rules provide that these negotiated contracts may be deemed prudent only if the costs to the utility, which are passed on to its ratepayers, do not exceed its full avoided costs.

As also noted in the Effect of Proposed Changes section of this analysis, the Florida Electrical Power Plant Siting Act requires the PSC to consider, among other things, the need for fuel diversity and supply reliability in making a determination of need for a new power plant. However, this directive has had limited impact on the development of new renewable energy power plants under the determination of need process.

The bill establishes a dedicated framework for the PSC to determine if a proposed renewable energy project is prudent and in the public interest. The bill defines "renewable energy project" to include the construction of a new renewable energy generating facility, the conversion of an existing fossil fuel generating facility to a renewable facility, or a contract to purchase renewable energy. To the extent that this framework results in the addition of new renewable energy facilities in Florida that otherwise would not have been developed, the bill may spur new investment in the state and jobs in the development, operation, and maintenance of the new facilities.

Before any new renewable energy facility is approved, the PSC must determine that the project provides an overall net benefit to the state, taking into account a number of factors, including the costs and benefits of the project. If the PSC determines through its review that a renewable energy project is in the public interest, the bill provides that all reasonable and prudent costs incurred for the project are recoverable through the utility's environmental cost recovery charges, which are applied to all customers.

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 (mandates provision) may apply because the bill may reduce the authority that counties and municipalities have to raise revenues; however an exemption may apply because the Revenue Estimating Conference estimated that the sales tax exemption contained in the bill that would apply to local option sales surtaxes would have a fiscal impact on local governments that is insignificant for purposes of the mandates provision.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives the **Department of Agriculture and Consumer Services** rulemaking authority for the following provisions:

- Sales and Use Tax Exemption for Renewable Energy Technologies (s. 212.08(7)(hhh), F.S.)
- Renewable Energy Technologies Investment Tax Credit (s. 220.192, F.S.)
- Florida Renewable Energy Production Credit (s. 220.193, F.S.)
- Electric Vehicle Charging Stations (s. 366.94, F.S.)
- Permitting and Security of Nonnative Plants (s. 581.083, F.S.)

The bill gives the **Department of Revenue** rulemaking authority for the following provisions:

- Renewable Energy Technologies Investment Tax Credit (s. 220.192, F.S.)
- Florida Renewable Energy Production Credit (s. 220.193, F.S.)

The bill requires the **Public Service Commission** to adopt rules to implement a public interest determination process for new renewable energy projects (s. 366.92, F.S.).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to energy; amending s. 186.801, F.S.; requiring utilities' 10-year site plans to address existing and proposed renewable energy production and purchases; amending s. 212.055, F.S.; providing for a portion of the proceeds of the local government infrastructure surtax to be used to provide loans, grants, and rebates to residential property owners who make energy efficiency improvements to their residential property, subject to referendum; defining the term "energy efficiency improvement"; amending s. 212.08, F.S.; providing definitions for the terms "biodiesel," "ethanol," and "renewable fuel"; providing for tax exemptions in the form of a rebate for the sale or use of certain equipment, machinery, and other materials for renewable energy technologies; providing eligibility requirements and tax credit limits; authorizing the Department of Revenue and the Department of Agriculture and Consumer Services to adopt rules; directing the Department of Agriculture and Consumer Services to determine and publish certain information relating to exemptions; providing for expiration of the exemption; amending s. 220.192, F.S.; providing definitions; reestablishing a corporate tax credit for certain costs related to renewable energy technologies; providing eligibility requirements and credit limits; providing rulemaking authority to the Department of Revenue and the

Department of Agriculture and Consumer Services; directing the Department of Agriculture and Consumer Services to determine and publish certain information; providing for expiration of the tax credit; amending s. 220.193, F.S.; reestablishing a corporate tax credit for renewable energy production; providing definitions; providing a tax credit for the production and sale of renewable energy; providing for the use and transfer of the tax credit; limiting the amount of tax credits that may be granted to a taxpayer during a specified period; providing rulemaking authority to the Department of Revenue; providing for expiration of the tax credit; amending s. 255.257, F.S.; directing the Department of Management Services in coordination with the Department of Agriculture and Consumer Services to further develop the state energy management plan; amending s. 288.106, F.S.; clarifying the definition of "target industry business" for purposes of the tax refund program for qualified target industry businesses; amending s. 20.60, F.S.; requiring the Department of Economic Opportunity to analyze and evaluate economic benefits for certain renewable energy projects; amending s. 366.92, F.S.; providing and revising definitions; authorizing a utility to petition the Public Service Commission to determine that a proposed renewable energy project is in the public interest; providing standards and criteria for review; providing for cost recovery for

reasonable and prudent costs incurred by a utility for an approved renewable energy project; requiring the Public Service Commission to adopt rules to establish a public interest determination process for renewable energy projects; establishing procedural guidelines for public interest determination; creating s. 366.94, F.S., relating to electric vehicle charging stations; providing legislative findings; providing that the rates, terms, and conditions of electric vehicle charging services by a nonutility are not subject to regulation by the Public Service Commission; providing construction; providing rulemaking authority to the Department of Agriculture and Consumer Services; prohibiting parking in spaces specifically designated for charging an electric vehicle under specified circumstances; providing penalties; amending s. 403.519, F.S.; requiring the Public Service Commission, in an electrical power plant need determination, to consider the need to improve the balance of power plant fuel diversity within the state and within the generation portfolio of the applicant; amending s. 526.203, F.S.; revising the definitions of the terms "blended gasoline" and "unblended gasoline"; defining the term "alternative fuel"; amending s. 581.083, F.S.; prohibiting the cultivation of certain algae in plantings greater in size than 2 contiguous acres; providing exceptions; providing for exemption from special permitting requirements by rule; revising

certain bonding requirements; amending s. 20.121, F.S.; establishing the Office of Public Counsel within the Financial Services Commission; amending s. 350.061, F.S.; providing for appointment and removal of the Public Counsel by the Financial Services Commission; amending s. 350.0613, F.S.; establishing the authority of the Public Counsel to employ personnel, set compensation, retain experts, and prepare a budget; amending s. 350.0614, F.S.; authorizing the Financial Services Commission to set the salary of the Public Counsel and allocate salaries and expenses for the office; providing for a type two transfer of the Office of Public Counsel from the Legislature to the Financial Services Commission; requiring the Department of Agriculture and Consumer Services to conduct a statewide forest inventory analysis; requiring the Department of Agriculture and Consumer Services, in consultation with other state agencies, to develop a clearinghouse of information regarding cost savings associated with energy efficiency and conservation measures; requiring such information to be posted on its website; directing the Public Service Commission to conduct a study on the potential effects of electric vehicle charging stations on both energy consumption and the electric grid; requiring the Public Service Commission, in consultation with the Department of Agriculture and Consumer Services, to contract for an independent

evaluation of the effectiveness of the Florida Energy Efficiency and Conservation Act; providing an effective date.

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

Section 1. Subsection (2) of section 186.801, Florida Statutes, is amended to read:

186.801 Ten-year site plans.—

(2) Within 9 months after the receipt of the proposed plan, the commission shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The commission may suggest alternatives to the plan. All findings of the commission shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

(c) The anticipated environmental impact of each proposed electrical power plant site.

(d) Possible alternatives to the proposed plan.

(e) The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.

(f) The extent to which the plan is consistent with the state comprehensive plan.

(g) The plan with respect to the information of the state on energy availability and consumption.

(h) The amount of renewable energy resources the utility produces or purchases.

(i) The amount of renewable energy resources the utility plans to produce or purchase over the 10-year planning horizon and the means by which the production or purchases will be achieved.

(j) The utility's indication of how the production and purchase of renewable energy resources affect the utility's present and future capacity and energy needs.

Section 2. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a

subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire land for public recreation, conservation, or protection of natural resources; to provide loans, grants, or rebates to residential property owners, with preference given to low-income elders, Florida veterans of the Armed Forces of the United States, and disabled adults, who make energy efficiency improvements to their residential property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the

operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have

a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and

efficiency measure that reduces energy consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

3.~~2.~~ Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit in a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 3. Paragraph (hhh) is added to subsection (7) of section 212.08, Florida Statutes, to read:

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

chapter.

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

(hhh) Equipment, machinery, and other materials for renewable energy technologies.—

1. As used in this paragraph, the term:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by rule of the Department of Agriculture and Consumer Services. "Biodiesel" may refer to biodiesel blends designated BXX, where

XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by rule of the Department of Agriculture and Consumer Services. "Ethanol" may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Renewable fuel" means a fuel produced from biomass that is used to replace or reduce the quantity of fossil fuel present in motor fuel or diesel fuel. "Biomass" means biomass as defined in s. 366.91, "motor fuel" means motor fuel as defined in s. 206.01, and "diesel fuel" means diesel fuel as defined in s. 206.86.

2. The sale or use in the state of the following is exempt from the tax imposed by this chapter. Materials used in the distribution of biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuels, including fueling infrastructure, transportation, and storage, up to a limit of $1 million in tax each state fiscal year for all taxpayers. Gasoline fueling station pump retrofits for biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel distribution qualify for the exemption provided in this paragraph.

3. The Department of Agriculture and Consumer Services shall provide to the department a list of items eligible for the exemption provided in this paragraph.

4.a. The exemption provided in this paragraph shall be

available to a purchaser only through a refund of previously paid taxes. An eligible item is subject to refund one time. A person who has received a refund on an eligible item shall notify the next purchaser of the item that the item is no longer eligible for a refund of paid taxes. The notification shall be provided to each subsequent purchaser on the sales invoice or other proof of purchase.

b. To be eligible to receive the exemption provided in this paragraph, a purchaser shall file an application with the Department of Agriculture and Consumer Services. The application shall be developed by the Department of Agriculture and Consumer Services, in consultation with the department, and shall require:

(I) The name and address of the person claiming the refund.

(II) A specific description of the purchase for which a refund is sought, including, when applicable, a serial number or other permanent identification number.

(III) The sales invoice or other proof of purchase showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the property was purchased.

(IV) A sworn statement that the information provided is accurate and that the requirements of this paragraph have been met.

c. Within 30 days after receipt of an application, the Department of Agriculture and Consumer Services shall review the application and notify the applicant of any deficiencies. Upon

receipt of a completed application, the Department of Agriculture and Consumer Services shall evaluate the application for the exemption and issue a written certification that the applicant is eligible for a refund or issue a written denial of such certification. The Department of Agriculture and Consumer Services shall provide the department a copy of each certification issued upon approval of an application.

d. Each certified applicant is responsible for applying for the refund and forwarding the certification that the applicant is eligible to the department within 6 months after certification by the Department of Agriculture and Consumer Services.

e. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval by the department.

f. The Department of Agriculture and Consumer Services may adopt by rule the form for the application for a certificate, requirements for the content and format of information submitted to the Department of Agriculture and Consumer Services in support of the application, other procedural requirements, and criteria by which the application will be determined. The Department of Agriculture and Consumer Services may adopt other rules pursuant to ss. 120.536(1) and 120.54 to administer this paragraph, including rules establishing additional forms and procedures for claiming the exemption.

g. The Department of Agriculture and Consumer Services shall be responsible for ensuring that the total amount of the exemptions authorized do not exceed the limits specified in subparagraph 2.

5. Approval of the exemptions under this paragraph is on a first-come, first-served basis, based upon the date complete applications are received by the Department of Agriculture and Consumer Services. Incomplete placeholder applications shall not be accepted and shall not secure a place in the first-come, first-served application line. The Department of Agriculture and Consumer Services shall determine and publish on its website on a regular basis the amount of sales tax funds remaining in each fiscal year.

6. This paragraph expires July 1, 2016.

Section 4. Subsections (1), (2), (4), (6), (7), and (8) of section 220.192, Florida Statutes, are amended to read:

220.192 Renewable energy technologies investment tax credit.—

(1) DEFINITIONS.—For purposes of this section, the term:

(a) "Biodiesel" means biodiesel as defined in s. 212.08(7)(hhh) ~~former s. 212.08(7)(ccc)~~.

(b) "Corporation" includes a general partnership, limited partnership, limited liability company, unincorporated business, or other business entity, including entities taxed as partnerships for federal income tax purposes.

(c) "Eligible costs" means~~:~~

~~1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but~~

~~not limited to, the costs of constructing, installing, and equipping such technologies in the state.~~

~~2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.~~

~~3.~~ seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2012 ~~2006~~, and June 30, 2016 ~~2010~~, not to exceed $1 million per state fiscal year for each taxpayer and up to a limit of $10 ~~$6.5~~ million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100), ~~and~~ ethanol (E10-E100), and other renewable fuel in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel distribution qualify as an eligible cost under this section ~~subparagraph~~.

(d) "Ethanol" means ethanol as defined in s. 212.08(7)(hhh) ~~former s. 212.08(7)(ccc)~~.

(e) "Renewable fuel" means a fuel produced from biomass that is used to replace or reduce the quantity of fossil fuel

present in motor fuel or diesel fuel. "Biomass" means biomass as defined in s. 366.91, "motor fuel" means motor fuel as defined in s. 206.01, and "diesel fuel" means diesel fuel as defined in s. 206.86.

~~(e) "Hydrogen fuel cell" means hydrogen fuel cell as defined in former s. 212.08(7)(ccc).~~

(f) "Taxpayer" includes a corporation as defined in paragraph (b) or s. 220.03.

(2) TAX CREDIT.—For tax years beginning on or after January 1, 2013 ~~2007~~, a credit against the tax imposed by this chapter shall be granted in an amount equal to the eligible costs. Credits may be used in tax years beginning January 1, 2013 ~~2007~~, and ending December 31, 2016 ~~2010~~, after which the credit shall expire. If the credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used in tax years beginning January 1, 2013 ~~2007~~, and ending December 31, 2018 ~~2012~~, after which the credit carryover expires and may not be used. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. 220.13.

(4) TAXPAYER APPLICATION PROCESS.—To claim a credit under this section, each taxpayer must apply to the Department of Agriculture and Consumer Services for an allocation of each type

of annual credit by the date established by the Department of Agriculture and Consumer Services. The application form adopted by rule of the Department of Agriculture and Consumer Services must include an affidavit from each taxpayer certifying that all information contained in the application, including all records of eligible costs claimed as the basis for the tax credit, are true and correct. Approval of the credits under this section is on a first-come, first-served basis, based upon the date complete applications are received by the Department of Agriculture and Consumer Services. A taxpayer must submit only one complete application based upon eligible costs incurred within a particular state fiscal year. Incomplete placeholder applications will not be accepted and will not secure a place in the first-come, first-served application line. If a taxpayer does not receive a tax credit allocation due to the exhaustion of the annual tax credit authorizations, then such taxpayer may reapply in the following year for those eligible costs and will have priority over other applicants for the allocation of credits.

(6) TRANSFERABILITY OF CREDIT.—

(a) For tax years beginning on or after January 1, 2014 ~~2009~~, any corporation or subsequent transferee allowed a tax credit under this section may transfer the credit, in whole or in part, to any taxpayer by written agreement without transferring any ownership interest in the property generating the credit or any interest in the entity owning such property. The transferee is entitled to apply the credits against the tax with the same effect as if the transferee had incurred the

eligible costs.

(b) To perfect the transfer, the transferor shall provide the Department of Revenue with a written transfer statement notifying the Department of Revenue of the transferor's intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The Department of Revenue shall, upon receipt of a transfer statement conforming to the requirements of this section, provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credits.

(c) A tax credit authorized under this section that is held by a corporation and not transferred under this subsection shall be passed through to the taxpayers designated as partners, members, or owners, respectively, in the manner agreed to by such persons regardless of whether such partners, members, or owners are allocated or allowed any portion of the federal energy tax credit for the eligible costs. A corporation that passes the credit through to a partner, member, or owner must comply with the notification requirements described in paragraph (b). The partner, member, or owner must attach a copy of the certificate to each tax return on which the partner, member, or owner claims any portion of the credit.

(7) RULES.—The Department of Revenue and the Department of Agriculture and Consumer Services shall have the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to administer

this section, including rules relating to:

(a) The forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(b) The implementation and administration of the provisions allowing a transfer of a tax credit, including rules prescribing forms, reporting requirements, and specific procedures, guidelines, and requirements necessary to transfer a tax credit.

(8) PUBLICATION.—The Department of Agriculture and Consumer Services shall determine and publish on its website on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 5. Section 220.193, Florida Statutes, is amended to read:

220.193 Florida renewable energy production credit.—

(1) The purpose of this section is to encourage the development and expansion of facilities that produce renewable energy in Florida.

(2) As used in this section, the term:

(a) "Commission" shall mean the Public Service Commission.

(b) "Department" shall mean the Department of Revenue.

(c) "Expanded facility" shall mean a Florida renewable energy facility that increases its electrical production and sale by more than 5 percent above the facility's electrical production and sale during the 2011 ~~2005~~ calendar year.

(d) "Florida renewable energy facility" shall mean a

facility in the state that produces electricity for sale from renewable energy, as defined in s. 377.803.

(e) "New facility" shall mean a Florida renewable energy facility that is operationally placed in service after May 1, 2012 ~~2006~~.

(f) "Sale" or "sold" includes the use of electricity by the producer of such electricity which decreases the amount of electricity that the producer would otherwise have to purchase.

(g) "Taxpayer" includes a general partnership, limited partnership, limited liability company, trust, or other artificial entity in which a corporation, as defined in s. 220.03(1)(e), owns an interest and is taxed as a partnership or is disregarded as a separate entity from the corporation under this chapter.

(3) An annual credit against the tax imposed by this section shall be allowed to a taxpayer, based on the taxpayer's production and sale of electricity from a new or expanded Florida renewable energy facility. For a new facility, the credit shall be based on the taxpayer's sale of the facility's entire electrical production. For an expanded facility, the credit shall be based on the increases in the facility's electrical production that are achieved after May 1, 2012 ~~2006~~.

(a) The credit shall be $0.01 for each kilowatt-hour of electricity produced and sold by the taxpayer to an unrelated party during a given tax year.

(b) The credit may be claimed for electricity produced and sold on or after January 1, 2013 ~~2007~~. Beginning in 2014 ~~2008~~ and continuing until 2017 ~~2011~~, each taxpayer claiming a credit

under this section must first apply to the department by February 1 of each year for an allocation of available credit. The department, in consultation with the commission, shall develop an application form. The application form shall, at a minimum, require a sworn affidavit from each taxpayer certifying the increase in production and sales that form the basis of the application and certifying that all information contained in the application is true and correct.

(c) If the amount of credits applied for each year exceeds $5 million, the department shall award to each applicant a prorated amount based on each applicant's increased production and sales and the increased production and sales of all applicants.

(d) If the credit granted pursuant to this section is not fully used in one year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers in the order provided in s. 220.02(8).

(e) A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group.

(f)1. Tax credits that may be available under this section to an entity eligible under this section may be transferred after a merger or acquisition to the surviving or acquiring

entity and used in the same manner with the same limitations.

2. The entity or its surviving or acquiring entity as described in subparagraph 1. may transfer any unused credit in whole or in units of no less than 25 percent of the remaining credit. The entity acquiring such credit may use it in the same manner and with the same limitations under this section. Such transferred credits may not be transferred again although they may succeed to a surviving or acquiring entity subject to the same conditions and limitations as described in this section.

3. In the event the credit provided for under this section is reduced as a result of an examination or audit by the department, such tax deficiency shall be recovered from the first entity or the surviving or acquiring entity to have claimed such credit up to the amount of credit taken. Any subsequent deficiencies shall be assessed against any entity acquiring and claiming such credit, or in the case of multiple succeeding entities in the order of credit succession.

(g) Notwithstanding any other provision of this section, credits for the production and sale of electricity from a new or expanded Florida renewable energy facility may be earned between January 1, 2013 ~~2007~~, and June 30, 2016 ~~2010~~. The amount of tax credits that may be granted to each taxpayer under this section is limited to $500,000 per state fiscal year. The combined total amount of tax credits which may be granted for all taxpayers under this section is limited to $5 million per state fiscal year.

(h) A taxpayer claiming a credit under this section shall be required to add back to net income that portion of its

business deductions claimed on its federal return paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under this section.

(i) A taxpayer claiming credit under this section may not claim a credit under s. 220.192. A taxpayer claiming credit under s. 220.192 may not claim a credit under this section.

(j) When an entity treated as a partnership or a disregarded entity under this chapter produces and sells electricity from a new or expanded renewable energy facility, the credit earned by such entity shall pass through in the same manner as items of income and expense pass through for federal income tax purposes. When an entity applies for the credit and the entity has received the credit by a pass-through, the application must identify the taxpayer that passed the credit through, all taxpayers that received the credit, and the percentage of the credit that passes through to each recipient and must provide other information that the department requires.

(k) A taxpayer's use of the credit granted pursuant to this section does not reduce the amount of any credit available to such taxpayer under s. 220.186.

(4) The department may adopt rules to implement and administer this section, including rules prescribing forms, the documentation needed to substantiate a claim for the tax credit, and the specific procedures and guidelines for claiming the credit.

(5) This section shall take effect upon becoming law and shall apply to tax years beginning on and after January 1, 2013 ~~2007~~.

Section 6. Subsection (3) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(3) CONTENTS OF THE STATE ENERGY MANAGEMENT PLAN.—The Department of Management Services, in coordination with the Department of Agriculture and Consumer Services, shall further develop the ~~a~~ state energy management plan consisting of, but not limited to, the following elements:

(a) Data-gathering requirements;

(b) Building energy audit procedures;

(c) Uniform data analysis and reporting procedures;

(d) Employee energy education program measures;

(e) Energy consumption reduction techniques;

(f) Training program for state agency energy management coordinators; and

(g) Guidelines for building managers.

The plan shall include a description of actions that state agencies shall take to reduce consumption of electricity and nonrenewable energy sources used for space heating and cooling, ventilation, lighting, water heating, and transportation.

Section 7. Paragraph (q) of subsection (2) of section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(2) DEFINITIONS.—As used in this section:

(q) "Target industry business" means a corporate

headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the department in consultation with Enterprise Florida, Inc.:

1. Future growth.—Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to businesses that export goods to, or provide services in, international markets and businesses that replace domestic and international imports of goods or services.

2. Stability.—The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand for products of this industry is not typically subject to decline during an economic downturn.

3. High wage.—The industry should pay relatively high wages compared to statewide or area averages.

4. Market and resource independent.—The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis, except for businesses in the renewable energy industry.

5. Industrial base diversification and strengthening.—The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that

strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis. Special consideration should also be given to the development of strong industrial clusters that include defense and homeland security businesses.

6. Positive economic impact.—The industry is expected to have strong positive economic impacts on or benefits to the state or regional economies. Special consideration should be given to industries that facilitate the development of the state as a hub for domestic and global trade and logistics.

The term does not include any business engaged in retail industry activities; any electrical utility company as defined in s. 366.02(2); any phosphate or other solid minerals severance, mining, or processing operation; any oil or gas exploration or production operation; or any business subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. Any business within NAICS code 5611 or 5614, office administrative services and business support services, respectively, may be considered a target industry business only after the local governing body and Enterprise Florida, Inc., make a determination that the community where the business may locate has conditions affecting the fiscal and economic viability of the local community or area, including but not limited to, factors such as low per capita income, high unemployment, high underemployment, and a lack of year-round stable employment opportunities, and such conditions may be improved by the location of such a business to

the community. By January 1 of every 3rd year, beginning January 1, 2011, the department, in consultation with Enterprise Florida, Inc., economic development organizations, the State University System, local governments, employee and employer organizations, market analysts, and economists, shall review and, as appropriate, revise the list of such target industries and submit the list to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 8. Paragraph (a) of subsection (5) of section 20.60, Florida Statutes, is amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(5) The divisions within the department have specific responsibilities to achieve the duties, responsibilities, and goals of the department. Specifically:

(a) The Division of Strategic Business Development shall:

1. Analyze and evaluate business prospects identified by the Governor, the executive director of the department, and Enterprise Florida, Inc.

2. Independently analyze and evaluate the regional and statewide economic benefits associated with a renewable energy project submitted to the Public Service Commission for a public interest determination and provided to the department for review pursuant to s. 366.92.

3.~~2.~~ Administer certain tax refund, tax credit, and grant programs created in law. Notwithstanding any other provision of law, the department may expend interest earned from the investment of program funds deposited in the Grants and

Donations Trust Fund to contract for the administration of those programs, or portions of the programs, assigned to the department by law, by the appropriations process, or by the Governor. Such expenditures shall be subject to review under chapter 216.

4.~~3.~~ Develop measurement protocols for the state incentive programs and for the contracted entities which will be used to determine their performance and competitive value to the state. Performance measures, benchmarks, and sanctions must be developed in consultation with the legislative appropriations committees and the appropriate substantive committees, and are subject to the review and approval process provided in s. 216.177. The approved performance measures, standards, and sanctions shall be included and made a part of the strategic plan for contracts entered into for delivery of programs authorized by this section.

5.~~4.~~ Develop a 5-year statewide strategic plan. The strategic plan must include, but need not be limited to:

a. Strategies for the promotion of business formation, expansion, recruitment, and retention through aggressive marketing, international development, and export assistance, which lead to more and better jobs and higher wages for all geographic regions, disadvantaged communities, and populations of the state, including rural areas, minority businesses, and urban core areas.

b. The development of realistic policies and programs to further the economic diversity of the state, its regions, and their associated industrial clusters.

c. Specific provisions for the stimulation of economic development and job creation in rural areas and midsize cities and counties of the state, including strategies for rural marketing and the development of infrastructure in rural areas.

d. Provisions for the promotion of the successful long-term economic development of the state with increased emphasis in market research and information.

e. Plans for the generation of foreign investment in the state which create jobs paying above-average wages and which result in reverse investment in the state, including programs that establish viable overseas markets, assist in meeting the financing requirements of export-ready firms, broaden opportunities for international joint venture relationships, use the resources of academic and other institutions, coordinate trade assistance and facilitation services, and facilitate availability of and access to education and training programs that assure requisite skills and competencies necessary to compete successfully in the global marketplace.

f. The identification of business sectors that are of current or future importance to the state's economy and to the state's global business image, and development of specific strategies to promote the development of such sectors.

g. Strategies for talent development necessary in the state to encourage economic development growth, taking into account factors such as the state's talent supply chain, education and training opportunities, and available workforce.

6.~~5.~~ Update the strategic plan every 5 years.

7.~~6.~~ Involve Enterprise Florida, Inc.; Workforce Florida,

Inc.; local governments; the general public; local and regional economic development organizations; other local, state, and federal economic, international, and workforce development entities; the business community; and educational institutions to assist with the strategic plan.

Section 9. Section 366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

(1) It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.

(2) As used in this section, the term:

(a) "Department" means the Department of Economic Opportunity ~~"Florida renewable energy resources" means renewable energy, as defined in s. 377.803, that is produced in Florida~~.

~~(b) "Provider" means a "utility" as defined in s. 366.8255(1)(a).~~

(b) ~~(c)~~ "Renewable energy" means renewable energy as defined in s. 366.91 ~~(2)(d)~~ that is produced in this state.

(c) "Renewable energy project" means the construction of a new renewable energy generating facility, the conversion of an existing fossil fuel generating facility to a renewable energy

generating facility, or a contract for the purchase of renewable energy from a nonutility generating facility.

(d) "Utility" means an electric utility as defined in s. 366.8255 ~~"Renewable energy credit" or "REC" means a product that represents the unbundled, separable, renewable attribute of renewable energy produced in Florida and is equivalent to 1 megawatt-hour of electricity generated by a source of renewable energy located in Florida~~.

~~(e) "Renewable portfolio standard" or "RPS" means the minimum percentage of total annual retail electricity sales by a provider to consumers in Florida that shall be supplied by renewable energy produced in Florida.~~

(3)(a) A utility may petition the commission to determine that a proposed renewable energy project, selected as a result of competitive bidding, is in the public interest. Notwithstanding s. 366.91(3) and (4), the commission shall determine that a proposed project is in the public interest if the commission finds that the project provides an overall net benefit to the state. A public interest determination is available only for those renewable energy projects that are exempt from the requirement to obtain a determination of need pursuant to s. 403.519.

(b) In evaluating whether a renewable energy project, selected as a result of competitive bidding and proposed by a utility for consideration, is prudent and in the public interest, the commission shall consider:

1. The estimated cost and estimated rate impacts of the project;

2. The impact of the project on the reliability and integrity of the utility's system and the statewide electric grid;

3. The extent to which the project strengthens fuel supply reliability to the utility and the state;

4. The extent to which the project promotes rate stability by reducing the risk of fuel cost volatility;

5. The extent to which the project retains energy expenditures in the state or regional economy;

6. The extent to which the project reduces the utility's regulatory costs associated with adverse environmental impacts; and

7. The regional and statewide economic benefits associated with the project, including independent analysis of these benefits by the department.

(c) The commission shall approve for recovery through the environmental cost recovery clause all reasonable and prudent costs incurred by a utility for a renewable energy project that the commission determines to be in the public interest. For a new renewable energy generating facility, recoverable costs include, but are not limited to, the siting, licensing, engineering, design, permitting, construction, operation, and maintenance of such facilities, including any applicable taxes and a return based on the utility's last authorized rate of return. For conversion of an existing fossil fuel generating facility to a renewable energy generating facility, recoverable costs include reasonable and prudent conversion costs, including the costs of retirement of the fossil fuel plant that exceed any

amounts accrued by the provider for such purposes through rates previously set by the commission. For purchase of renewable energy from a nonutility generating facility, recoverable costs include the reasonable and prudent costs associated with the purchase.

~~(3) The commission shall adopt rules for a renewable portfolio standard requiring each provider to supply renewable energy to its customers directly, by procuring, or through renewable energy credits. In developing the RPS rule, the commission shall consult the Department of Environmental Protection and the Department of Agriculture and Consumer Services. The rule shall not be implemented until ratified by the Legislature. The commission shall present a draft rule for legislative consideration by February 1, 2009.~~

~~(a) In developing the rule, the commission shall evaluate the current and forecasted levelized cost in cents per kilowatt hour through 2020 and current and forecasted installed capacity in kilowatts for each renewable energy generation method through 2020.~~

~~(b) The commission's rule:~~

~~1. Shall include methods of managing the cost of compliance with the renewable portfolio standard, whether through direct supply or procurement of renewable power or through the purchase of renewable energy credits. The commission shall have rulemaking authority for providing annual cost recovery and incentive-based adjustments to authorized rates of return on common equity to providers to incentivize renewable energy. Notwithstanding s. 366.91(3) and (4), upon the~~

~~ratification of the rules developed pursuant to this subsection, the commission may approve projects and power sales agreements with renewable power producers and the sale of renewable energy credits needed to comply with the renewable portfolio standard. In the event of any conflict, this subparagraph shall supersede s. 366.91(3) and (4). However, nothing in this section shall alter the obligation of each public utility to continuously offer a purchase contract to producers of renewable energy.~~

~~2. Shall provide for appropriate compliance measures and the conditions under which noncompliance shall be excused due to a determination by the commission that the supply of renewable energy or renewable energy credits was not adequate to satisfy the demand for such energy or that the cost of securing renewable energy or renewable energy credits was cost prohibitive.~~

~~3. May provide added weight to energy provided by wind and solar photovoltaic over other forms of renewable energy, whether directly supplied or procured or indirectly obtained through the purchase of renewable energy credits.~~

~~4. Shall determine an appropriate period of time for which renewable energy credits may be used for purposes of compliance with the renewable portfolio standard.~~

~~5. Shall provide for monitoring of compliance with and enforcement of the requirements of this section.~~

~~6. Shall ensure that energy credited toward compliance with the requirements of this section is not credited toward any other purpose.~~

~~7. Shall include procedures to track and account for~~

~~renewable energy credits, including ownership of renewable energy credits that are derived from a customer-owned renewable energy facility as a result of any action by a customer of an electric power supplier that is independent of a program sponsored by the electric power supplier.~~

~~8. Shall provide for the conditions and options for the repeal or alteration of the rule in the event that new provisions of federal law supplant or conflict with the rule.~~

~~(c) Beginning on April 1 of the year following final adoption of the commission's renewable portfolio standard rule, each provider shall submit a report to the commission describing the steps that have been taken in the previous year and the steps that will be taken in the future to add renewable energy to the provider's energy supply portfolio. The report shall state whether the provider was in compliance with the renewable portfolio standard during the previous year and how it will comply with the renewable portfolio standard in the upcoming year.~~

(4) The commission shall adopt rules to implement a public interest determination process by which it shall determine whether a renewable energy project, proposed by a utility for purposes of supplying electrical energy to its retail customers, provides an overall net benefit to the state pursuant to the criteria in subsection (3). The commission's rules shall:

(a) Provide a process for competitive bidding of a renewable energy project based on the type and technology of the renewable energy resource that the utility elects to use.

(b) Provide minimum requirements and information that a

utility must include in a request for proposals for a new renewable energy project and other information related to the request for proposal and competitive bidding processes.

(c) Establish minimum requirements and information that a utility must include in a petition for a public interest determination for a renewable energy project.

(d) Provide for recovery through the environmental cost recovery clause of all reasonable and prudent costs incurred by a utility for a renewable energy project that the commission determines to be in the public interest pursuant to subsection (3).

(e) Establish a mechanism for the sharing of revenues derived from any renewable energy credit, carbon credit, or other mechanism that attributes value to the production of renewable energy, either existing or hereafter devised, and received by a utility by virtue of the production or purchase of renewable energy found to be in the public interest pursuant to subsection (3). The utility shall be entitled to retain from these revenues no more than the amount deemed reasonable by the commission to cover the utility's transaction costs associated with the credit or other mechanism, plus 5 percent of the remaining revenues. The remainder of the revenues shall be credited to the utility's ratepayers.

(f) Require a utility to report to the commission on an annual basis, with respect to any renewable energy project that the commission determines to be in the public interest, the status of the project, the economic impacts of the project on the region and the state, the amount and type of fuel displaced

by the project, operational statistics, and any other information deemed relevant by the commission.

(g) Require a seller of renewable energy, under a purchased power agreement approved pursuant to the commission's rules and this subsection, to surrender to the utility all renewable attributes of the renewable energy purchased.

Agency rules promulgated under the authority of this subsection shall not take effect before July 1, 2013.

~~(4) In order to demonstrate the feasibility and viability of clean energy systems, the commission shall provide for full cost recovery under the environmental cost-recovery clause of all reasonable and prudent costs incurred by a provider for renewable energy projects that are zero greenhouse gas emitting at the point of generation, up to a total of 110 megawatts statewide, and for which the provider has secured necessary land, zoning permits, and transmission rights within the state. Such costs shall be deemed reasonable and prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility. The provider shall report to the commission as part of the cost-recovery proceedings the construction costs, in-service costs, operating and maintenance costs, hourly energy production of the renewable energy project, and any other information deemed relevant by the commission. Any provider constructing a clean energy facility pursuant to this section shall file for cost recovery no later~~

~~than July 1, 2009.~~

(5)(a) Within 7 days after receipt of a petition for a public interest determination pursuant to subsection (3), the commission, through administrative review by its staff, shall determine whether the petition is complete. If the commission finds that the petition is not complete, it shall notify the petitioner of all deficiencies and provide the petitioner an opportunity to correct the deficiencies through an amended or supplemental filing.

(b) When the commission determines that a petition is complete, the commission shall notify the department and forward a copy of the petition to the department within 3 days. After receipt and review of the petition, the department may request any additional information it deems necessary to complete the review of the petition pursuant to s. 20.60(5)(a).

(c) Within 45 days after receipt of the complete petition, the department shall complete its analysis and evaluation and submit a report reflecting its findings to the commission for consideration in the commission's public interest determination proceeding. The department's report is not subject to the provisions of ss. 120.569 and 120.57. Any party to the commission's public interest determination proceeding may present evidence to the commission concerning the regional and statewide economic benefits associated with the project.

(d) The commission shall issue a final order within 180 days after receipt of a complete petition for a public interest determination filed pursuant to subsection (3).

(6) ~~(5)~~ Each municipal electric utility and rural electric

cooperative shall develop standards for the promotion, encouragement, and expansion of the use of renewable energy resources and energy conservation and efficiency measures. On or before April 1, 2009, and annually thereafter, each municipal electric utility and electric cooperative shall submit to the commission a report that identifies such standards.

(7) ~~(6)~~ ~~Nothing in~~ This section and any action taken under this section may not ~~shall~~ be construed to impede or impair the terms and conditions of, or serve as a basis for renegotiating or repricing an existing contract ~~contracts~~. This section may not be construed to apply to purchases required pursuant to s. 366.051 or s. 366.91.

(8) ~~(7)~~ The commission may adopt rules to administer and implement the provisions of this section.

Section 10. Section 366.94, Florida Statutes, is created to read:

366.94 Electric vehicle charging stations.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the provision of electric vehicle charging to the public by a nonutility is a service and not the retail sale of electricity. The rates, terms, and conditions of electric vehicle charging services by a nonutility are not subject to regulation under this chapter. Nothing in this section affects the ability of individuals, businesses, or governmental entities to acquire, install, or use an electric vehicle charger for their own vehicles.

(2) RULES.—The Department of Agriculture and Consumer Services shall adopt rules to provide definitions, methods of

sale, labeling requirements, and price-posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry.

(3) PARKING SPACES FOR ELECTRIC VEHICLE CHARGING STATIONS.—

(a) It is unlawful for a person to stop, stand, or park a vehicle that is not capable of using an electrical recharging station within any parking space specifically designated for charging an electric vehicle.

(b) If a law enforcement officer finds a motor vehicle in violation of this subsection, the officer or specialist shall charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic infraction, punishable as provided in s. 316.008(4) or s. 318.18.

Section 11. Subsection (3) of section 403.519, Florida Statutes, is amended to read:

403.519 Exclusive forum for determination of need.—

(3) The commission is ~~shall be~~ the sole forum for the determination of this matter, which accordingly may ~~shall~~ not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need to improve the balance of power plant ~~for~~ fuel diversity and supply reliability within the state and within the generation portfolio of the applicant, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as

conservation measures, are used ~~utilized~~ to the extent reasonably available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant creates ~~shall create~~ a presumption of public need and necessity and serves ~~shall serve~~ as the commission's report required by s. 403.507(4). An order entered pursuant to this section constitutes final agency action.

Section 12. Subsection (1) of section 526.203, Florida Statutes, is amended to read:

526.203 Renewable fuel standard.—

(1) DEFINITIONS.—As used in this act:

(a) "Alternative fuel" means a fuel produced from biomass, as defined in s. 366.91, that is used to replace or reduce the quantity of fossil fuel present in a petroleum fuel that meets the specifications as adopted by the department.

(b) ~~(a)~~ "Blender," "importer," "terminal supplier," and "wholesaler" are defined as provided in s. 206.01.

(c) ~~(b)~~ "Blended gasoline" means a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol or other alternative fuel, by volume, that meets the specifications as adopted by the department. The fuel ethanol or other alternative fuel portion may be derived from any agricultural source.

(d) ~~(c)~~ "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates that meets the

specifications as adopted by the department.

(e) ~~(d)~~ "Unblended gasoline" means gasoline that has not been blended with fuel ethanol or other alternative fuel and that meets the specifications as adopted by the department.

Section 13. Subsection (4) of section 581.083, Florida Statutes, is amended to read:

581.083 Introduction or release of plant pests, noxious weeds, or organisms affecting plant life; cultivation of nonnative plants; special permit and security required.—

(4) A person may not cultivate a nonnative plant, algae, or blue-green algae, including a genetically engineered plant, algae, or blue-green algae ~~or a plant that has been introduced, for purposes of fuel production or purposes other than agriculture~~ in plantings greater in size than 2 contiguous acres, except under a special permit issued by the department through the division, which is the sole agency responsible for issuing such special permits. Such a permit shall not be required if the department determines, after consulting ~~in conjunction~~ with the Institute of Food and Agricultural Sciences at the University of Florida, that, based on experience or research data, the nonnative plant, algae, or blue-green algae does not pose a known threat of becoming an ~~is not~~ invasive species or a pest of plants or native fauna under conditions in this state and subsequently exempts the plant by rule. A permit shall not be required for any plant or group of plants that, based on experience or research data, does not pose a known threat of becoming an invasive species and is commonly grown in this state for the purposes of human food consumption or for

commercial feed, feedstuff, forage for livestock, nursery stock, or silviculture.

(a)1. Each application for a special permit must be accompanied by a fee as described in subsection (2) and proof that the applicant has obtained, on a form approved by the department, a bond ~~in the form approved by the department and~~ issued by a surety company admitted to do business in this state or a certificate of deposit, or other type of security adopted by rule of the department which provides a financial assurance of cost recovery for the removal of a planting. The application must include, on a form provided by the department, the name of the applicant and the applicant's address or the address of the applicant's principal place of business; a statement completely identifying the nonnative plant to be cultivated; and a statement of the estimated cost of removing and destroying the plant that is the subject of the special permit and the basis for calculating or determining that estimate. If the applicant is a corporation, partnership, or other business entity, the applicant must also provide in the application the name and address of each officer, partner, or managing agent. The applicant shall notify the department within 10 business days of any change of address or change in the principal place of business. The department shall mail all notices to the applicant's last known address.

2. As used in this subsection, the term "certificate of deposit" means a certificate of deposit at any recognized financial institution doing business in the United States. The department may not accept a certificate of deposit in connection

with the issuance of a special permit unless the issuing institution is properly insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) Upon obtaining a permit, the permitholder may annually cultivate and maintain the nonnative plants as authorized by the special permit. If the permitholder ceases to maintain or cultivate the plants authorized by the special permit, if the permit expires, or if the permitholder ceases to abide by the conditions of the special permit, the permitholder shall immediately remove and destroy the plants that are subject to the permit, if any remain. The permitholder shall notify the department of the removal and destruction of the plants within 10 days after such event.

(c) If the department:

1. Determines that the permitholder is no longer maintaining or cultivating the plants subject to the special permit and has not removed and destroyed the plants authorized by the special permit;

2. Determines that the continued maintenance or cultivation of the plants presents an imminent danger to public health, safety, or welfare;

3. Determines that the permitholder has exceeded the conditions of the authorized special permit; or

4. Receives a notice of cancellation of the surety bond,

the department may issue an immediate final order, which shall be immediately appealable or enjoinable as provided by chapter

120, directing the permitholder to immediately remove and destroy the plants authorized to be cultivated under the special permit. A copy of the immediate final order must ~~shall~~ be mailed to the permitholder and to the surety company or financial institution that has provided security for the special permit, if applicable.

(d) If, upon issuance by the department of an immediate final order to the permitholder, the permitholder fails to remove and destroy the plants subject to the special permit within 60 days after issuance of the order, or such shorter period as is designated in the order as public health, safety, or welfare requires, the department may enter the cultivated acreage and remove and destroy the plants that are the subject of the special permit. If the permitholder makes a written request to the department for an extension of time to remove and destroy the plants that demonstrates specific facts showing why the plants could not reasonably be removed and destroyed in the applicable timeframe, the department may extend the time for removing and destroying plants subject to a special permit. The reasonable costs and expenses incurred by the department for removing and destroying plants subject to a special permit shall be reimbursed to the department by the permitholder within 21 days after the date the permitholder and the surety company or financial institution are served a copy of the department's invoice for the costs and expenses incurred by the department to remove and destroy the cultivated plants, along with a notice of administrative rights, unless the permitholder or the surety company or financial institution object to the reasonableness of

the invoice. In the event of an objection, the permitholder or surety company or financial institution is entitled to an administrative proceeding as provided by chapter 120. Upon entry of a final order determining the reasonableness of the incurred costs and expenses, the permitholder has ~~shall have~~ 15 days after ~~following~~ service of the final order to reimburse the department. Failure of the permitholder to timely reimburse the department for the incurred costs and expenses entitles the department to reimbursement from the applicable bond or certificate of deposit.

(e) Each permitholder shall maintain for each separate growing location a bond or a certificate of deposit in an amount determined by the department, but not more ~~less~~ than 150 percent of the estimated cost of removing and destroying the cultivated plants. The bond or certificate of deposit may not exceed $5,000 per acre, unless a higher amount is determined by the department to be necessary to protect the public health, safety, and welfare or unless an exemption is granted by the department based on conditions specified in the application which would preclude the department from incurring the cost of removing and destroying the cultivated plants and would prevent injury to the public health, safety, and welfare. The aggregate liability of the surety company or financial institution to all persons for all breaches of the conditions of the bond or certificate of deposit may not exceed the amount of the bond or certificate of deposit. The original bond or certificate of deposit required by this subsection shall be filed with the department. A surety company shall give the department 30 days' written notice of

cancellation, by certified mail, in order to cancel a bond. Cancellation of a bond does not relieve a surety company of liability for paying to the department all costs and expenses incurred or to be incurred for removing and destroying the permitted plants covered by an immediate final order authorized under paragraph (c). A bond or certificate of deposit must be provided or assigned in the exact name in which an applicant applies for a special permit. The penal sum of the bond or certificate of deposit to be furnished to the department by a permitholder in the amount specified in this paragraph must guarantee payment of the costs and expenses incurred or to be incurred by the department for removing and destroying the plants cultivated under the issued special permit. The bond or certificate of deposit assignment or agreement must be upon a form prescribed or approved by the department and must be conditioned to secure the faithful accounting for and payment of all costs and expenses incurred by the department for removing and destroying all plants cultivated under the special permit. The bond or certificate of deposit assignment or agreement must include terms binding the instrument to the Commissioner of Agriculture. Such certificate of deposit shall be presented with an assignment of the permitholder's rights in the certificate in favor of the Commissioner of Agriculture on a form prescribed by the department and with a letter from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. Such assignment is irrevocable while a special permit is in effect and for an additional period of 6

months after termination of the special permit if operations to remove and destroy the permitted plants are not continuing and if the department's invoice remains unpaid by the permitholder under the issued immediate final order. If operations to remove and destroy the plants are pending, the assignment remains in effect until all plants are removed and destroyed and the department's invoice has been paid. The bond or certificate of deposit may be released by the assignee of the surety company or financial institution to the permitholder, or to the permitholder's successors, assignee, or heirs, if operations to remove and destroy the permitted plants are not pending and no invoice remains unpaid at the conclusion of 6 months after the last effective date of the special permit. The department may not accept a certificate of deposit that contains any provision that would give to any person any prior rights or claim on the proceeds or principal of such certificate of deposit. The department shall determine by rule whether an annual bond or certificate of deposit will be required. The amount of such bond or certificate of deposit shall be increased, upon order of the department, at any time if the department finds such increase to be warranted by the cultivating operations of the permitholder. In the same manner, the amount of such bond or certificate of deposit may be adjusted downward or removed ~~decreased~~ when a decrease in the cultivating operations of the permitholder occurs or when research or practical field knowledge and observations indicate a low risk of invasiveness by the nonnative species ~~warrants such decrease~~. Factors that may be considered for change include multiple years or cycles of

successful large-scale contained cultivation; no observation of plant, algae, or blue-green algae escape from managed areas; or science-based evidence that established or approved adjusted cultivation practices provide a similar level of containment of the nonnative plant, algae, or blue-green algae. This paragraph applies to any bond or certificate of deposit, regardless of the anniversary date of its issuance, expiration, or renewal.

(f) In order to carry out the purposes of this subsection, the department or its agents may require from any permitholder verified statements of the cultivated acreage subject to the special permit and may review the permitholder's business or cultivation records at her or his place of business during normal business hours in order to determine the acreage cultivated. The failure of a permitholder to furnish such statement, to make such records available, or to make and deliver a new or additional bond or certificate of deposit is cause for suspension of the special permit. If the department finds such failure to be willful, the special permit may be revoked.

Section 14. Subsection (3) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(3) FINANCIAL SERVICES COMMISSION.—Effective January 7, 2003, there is created within the Department of Financial Services the Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which shall for purposes of

this section be referred to as the commission. Commission members shall serve as agency head of the Financial Services Commission. The commission shall be a separate budget entity and shall be exempt from the provisions of s. 20.052. Commission action shall be by majority vote consisting of at least three affirmative votes. The commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.

(a) Structure.—The major structural unit of the commission is the office. Each office shall be headed by a director. The following offices are established:

1. The Office of Insurance Regulation, which shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the insurance code or chapter 636. The head of the Office of Insurance Regulation is the Director of the Office of Insurance Regulation, who may also be known as the Commissioner of Insurance Regulation.

2. The Office of Financial Regulation, which shall be responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry. The head of the office is the Director of the Office of Financial Regulation, who may also be known as the

Commissioner of Financial Regulation. The Office of Financial Regulation shall include a Bureau of Financial Investigations, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The bureau may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If, during an investigation, the office has reason to believe that any criminal law of this state has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

3. The Office of Public Counsel, the responsibilities of which are set forth in chapter 350. The Public Counsel shall perform his or her duties independently.

(b) Organization.—The commission shall establish by rule any additional organizational structure of the offices other than the Office of Public Counsel. It is the intent of the Legislature to provide the commission with the flexibility to organize the offices, other than the Office of Public Counsel which shall remain independent, in any manner they determine appropriate to promote both efficiency and accountability.

(c) Powers.—Commission members shall serve as the agency head for purposes of rulemaking under ss. 120.536-120.565 by the commission and all subunits of the commission. Each director is agency head for purposes of final agency action under chapter 120 for all areas within the regulatory authority delegated to the director's office.

(d) Appointment and qualifications of directors.—The Public Counsel shall be appointed pursuant to s. 350.061 and is subject to the qualifications provided therein. The commission shall appoint or remove the ~~each~~ director of the Office of Insurance Regulation and the director of the Office of Financial Regulation by a majority vote consisting of at least three affirmative votes, with both the Governor and the Chief Financial Officer on the prevailing side. The minimum qualifications of the directors are as follows:

1. Prior to appointment as director, the Director of the Office of Insurance Regulation must have had, within the previous 10 years, at least 5 years of responsible private sector experience working full time in areas within the scope of the subject matter jurisdiction of the Office of Insurance Regulation or at least 5 years of experience as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over insurers or insurance agencies.

2. Prior to appointment as director, the Director of the Office of Financial Regulation must have had, within the previous 10 years, at least 5 years of responsible private sector experience working full time in areas within the subject matter jurisdiction of the Office of Financial Regulation or at least 5 years of experience as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over financial institutions, finance companies, or securities companies.

(e) Administrative support.—The offices shall have a

sufficient number of attorneys, examiners, investigators, other professional personnel to carry out their responsibilities and administrative personnel as determined annually in the appropriations process. The Department of Financial Services shall provide administrative and information systems support to the offices.

(f) Records retention schedules.—The commission and the offices may destroy general correspondence files and also any other records that they deem no longer necessary to preserve in accordance with retention schedules and destruction notices established under rules of the Division of Library and Information Services, records and information management program, of the Department of State. Such schedules and notices relating to financial records of the commission and offices shall be subject to the approval of the Auditor General.

(g) Records storage.—The commission and offices may photograph, microphotograph, or reproduce on film such documents and records as they may select, in such manner that each page will be exposed in exact conformity with the original. After reproduction and filing, original documents and records may be destroyed in accordance with the provisions of paragraph (f).

Section 15. Subsection (1) of section 350.061, Florida Statutes, is amended to read:

350.061 Public Counsel; appointment; oath; restrictions on Public Counsel and his or her employees.—

(1)(a) The Financial Services Commission ~~committee designated by joint rule of the Legislature or by agreement between the President of the Senate and the Speaker of the House~~

~~of Representatives as the Committee on Public Counsel Oversight~~ shall appoint a Public Counsel by majority vote, consisting of at least three affirmative votes, to represent the general public of Florida before the Florida Public Service Commission. Appointment of the Public Counsel shall be subject to confirmation by the Senate. Until such time as the Senate confirms the appointment, the appointee shall perform the functions of the office as provided by law.

(b) The Public Counsel shall be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Financial Services Commission ~~Committee on Public Counsel Oversight, subject to biennial reconfirmation by the committee~~. The Public Counsel shall perform his or her duties independently.

(c) Vacancies in the office shall be filled in the same manner as the original appointment. The Financial Services Commission may remove the Public Counsel by majority vote, consisting of at least three affirmative votes. In the event of a vacancy, the Financial Services Commission may appoint an interim Public Counsel to serve until a new Public Counsel is appointed.

Section 16. Section 350.0613, Florida Statutes, is amended to read:

350.0613 Public Counsel; employees; budget; receipt of pleadings.—

(1) The Public Counsel is authorized to employ clerical, technical, and professional personnel that the Public Counsel deems to be reasonably necessary for the performance of the

duties of the office. The Public Counsel shall set the compensation for all personnel of the office and shall be responsible for the supervision and direction of all such personnel. The Public Counsel may retain ~~The committee may authorize the Public Counsel to employ clerical and technical assistants whose qualifications, duties, and responsibilities the committee shall from time to time prescribe. The committee may from time to time authorize retention of~~ the services of additional attorneys or experts to the extent that the best interests of the people of the state will be better served thereby, including the retention of expert witnesses and other technical personnel for participation in contested proceedings before the commission.

(2) The Public Counsel is responsible for preparing the budget for the office and shall submit the budget to the Financial Services Commission.

(3) The Public Service Commission shall furnish the Public Counsel with copies of the initial pleadings in all proceedings before the commission, and if the Public Counsel intervenes as a party in any proceeding he or she shall be served with copies of all subsequent pleadings, exhibits, and prepared testimony, if used. Upon filing notice of intervention, the Public Counsel shall serve all interested parties with copies of such notice and all of his or her subsequent pleadings and exhibits.

Section 17. Section 350.0614, Florida Statutes, is amended to read:

350.0614 Public Counsel; compensation and expenses.—

~~(1)~~ The salary of the Public Counsel shall be set by the

Financial Services Commission. The salaries and expenses of the Public Counsel and his or her employees shall be allocated by the Financial Services Commission ~~committee~~ only from moneys appropriated to the Public Counsel by the Legislature.

~~(2) The Legislature declares and determines that the Public Counsel is under the legislative branch of government within the intention of the legislation as expressed in chapter 216, and no power shall be in the Executive Office of the Governor or its successor to release or withhold funds appropriated to it, but the same shall be available for expenditure as provided by law.~~

~~(3) Neither the Executive Office of the Governor nor the Department of Management Services or its successor shall have power to determine the number, or fix the compensation, of the employees of the Public Counsel or to exercise any manner of control over them.~~

Section 18. (1) All powers, duties, functions, records, offices, personnel, property, and pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to the Office of Public Counsel pursuant to s. 350.061, Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Legislature to the Financial Services Commission. The Office of Public Counsel shall be funded from the General Revenue Fund.

(2) Notwithstanding ss. 216.292 and 216.351, Florida Statutes, upon approval by the Legislative Budget Commission, the Executive Office of the Governor shall transfer funds and

positions between the Legislature and the Financial Services Commission to implement this act.

Section 19. The Department of Agriculture and Consumer Services shall conduct a comprehensive statewide forest inventory analysis and study, using a geographic information system, to identify where available biomass is located, determine the available biomass resources, and ensure forest sustainability within the state. The department shall submit the results of the study to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor by July 1, 2013.

Section 20. The Department of Agriculture and Consumer Services, in consultation with the Public Service Commission, the Florida Building Commission, and the Florida Energy Systems Consortium, shall develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures. The department shall post the information on its website by July 1, 2013.

Section 21. The Public Service Commission is directed to conduct a study of the potential effects of public charging stations and privately owned electric vehicle charging on both energy consumption and the impact on the electric grid in the state. The Public Service Commission shall also investigate the feasibility of using off-grid solar photovoltaic power as a source of electricity for the electric vehicle charging stations. The commission shall submit the results of the study to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor by

December 31, 2012.

Section 22. Subject to a specific appropriation, the Public Service Commission, in consultation with the Department of Agriculture and Consumer Services, shall contract for an independent evaluation of the effectiveness of the Florida Energy Efficiency and Conservation Act in achieving the statutory objectives of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand, increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use, encouraging further development of demand-side renewable energy systems; and conserving expensive resources, particularly petroleum fuels.

(1) The evaluation shall include an assessment of:

(a) The effectiveness of the act in accomplishing statutory objectives in a cost-effective manner, taking into account short-term and long-term costs and benefits;

(b) The models and methods used to establish conservation goals and programs to meet those goals;

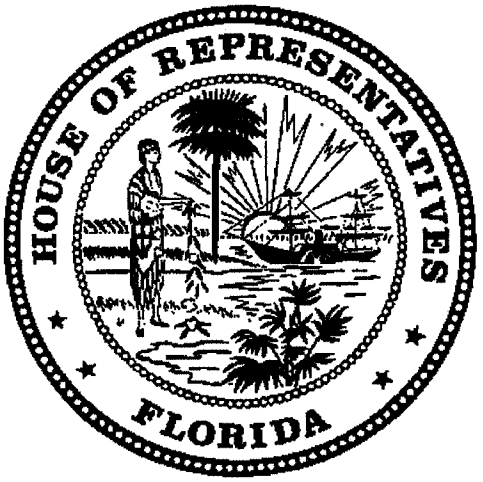
(c) The strengths and weaknesses of the act relative to alternative methods available to achieve statutory objectives;

(d) The coordination between the goal-setting process in s. 366.82 and the determination of need process in s. 403.519, including the manner in which supply-side conservation and efficiency measures are addressed; and

(e) The potential for time-based rates and advanced metering technology, or other mechanisms, to allow customers to manage their energy consumption and allow for peak load shaving.

(2) The findings and recommendations of the evaluation shall be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor by January 31, 2013.

Section 23. This act shall take effect July 1, 2012.



Finance and Tax Committee

Wednesday, February 15, 2012

8:00 a.m.

404 House Office Building

AMENDMENT PACKET

Dean Cannon
Speaker

Stephen Precourt
Chair

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 Horner offered the following:

Amendment

Remove line 58 and insert:

Section 4. This act shall take effect July 1, 2013.

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

Committee/Subcommittee hearing bill: Finance & Tax Committee

Representative Horner offered the following:

Amendment (with title amendment)

Remove lines 17-27

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

Remove lines 3-6

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 933 (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 Rouson offered the following:

Amendment

Remove lines 151-152

placement, and laundry facilities, that are collocated with dwelling accommodations of a housing authority, that are necessary for daily living, and that may be difficult for persons of low income to

40781

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		

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

Amendment (with title amendment)

Remove lines 575-578 and insert:
connection therewith or appurtenant thereto, of housing authorities, and real property made available by housing authorities to provide access to essential commercial goods and services, shall be exempt from all taxes and special

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

Remove lines 40-42 and insert:
real property made available by housing authorities to provide access to essential commercial goods and services from certain taxes and

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1299 (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 Metz offered the following:

Amendment

Remove line 143 and insert:

Code, rule 59H-1.0035(30), except that the poverty rate standard shall be 200 percent of the federal poverty level.

40761

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		

Committee/Subcommittee hearing bill: Finance & Tax Committee

Representative Metz offered the following:

Amendment

Remove lines 341-345 and insert:

3. For capital expenditures incurred by or for a provider.

4. For indigent care based on assumptions, models, studies, or expert analyses or opinions.

5. For indigent care in excess of the actual cost of

Amendment No. 3

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 Metz offered the following:

Amendment

Remove lines 411-420 and insert:

clinic shall maintain such funds in a separate accounting of funds and document each eligible indigent care patient account so that a complete audit record is established. All direct documentation that is part of the audit record is subject to disclosure as provided in chapter 119, Florida Statutes.

I. Annual financial statements.—All hospitals receiving any payments from the district in a given fiscal year shall file with the district the audited financial statements required by and filed with the Agency for Health Care Administration for the same fiscal year.

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 Harrell offered the following:

Amendment

Remove lines 149-177 and insert:

Section 4. The governing bodies of St. Lucie County and Martin County shall enter into an interlocal agreement no later than September 30, 2013, which shall provide a financially feasible plan for transfer of services, personnel, and public infrastructure from St. Lucie County to Martin County. The agreement shall include compensation for the value of infrastructure investments by St. Lucie County in the transferred property minus depreciation, if any. Upon the effective date of this act, the total tax and assessment revenue that would have been generated in fiscal year 2013-2014 by all St. Lucie County taxing authorities levying taxes or assessments within the area transferred to Martin County less 10 percent shall be transmitted to St. Lucie County for distribution to the county and all other affected taxing authorities. Thereafter,

through fiscal year 2022-2023, the tax and assessment revenue amount that would have been generated by all St. Lucie County taxing authorities levying taxes or assessments in the transferred area for fiscal year 2013-2014 shall serve as the base amount of tax and assessment revenue for further annual reductions of 10 percent of the base amount before annual distributions to the St. Lucie County through fiscal year 2022-2023. However, for any fiscal year through fiscal year 2022-2023 when the total taxes and assessments collected within the transferred area exceed the base amount by more than 3 percent, St. Lucie County shall receive the same percentage distribution from the tax and assessment revenue that exceeds the base amount by more than 3 percent as they will receive from the base amount. All distributions to St. Lucie County shall occur within 30 days after the beginning of each calendar year.

Section 5. Upon approval by a majority vote of those qualified electors residing in the area being transferred from St. Lucie County to Martin County as described in section 1 voting in a referendum to be held by the Board of County Commissioners of St. Lucie County and conducted by the Supervisor of Elections of St. Lucie County in conjunction with the next general, special, or other election to be held in St. Lucie County, in accordance with the provisions of law relating to elections currently in force, this act shall take effect September 30, 2013, except that this section 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

Committee/Subcommittee hearing bill: Finance & Tax Committee

Representative Brodeur offered the following:

Amendment (with title amendment)

Remove lines 22-25 and insert:

same meaning and mean the amount received by a person operating transient accommodations or the owner of such accommodations for the use of such accommodations in connection with any hotel, apartment house, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium. The term "person operating transient accommodations" means a person who is responsible for providing any of the services commonly associated with operating the transient accommodations facilities, including providing physical access to such facilities, regardless of whether such commonly associated services are provided by unrelated persons. The terms "consideration," "rental," and "rents" do not include payments received by unrelated persons from the lessee, tenant, or customer for facilitating the booking of reservations for or

Amendment No. 1

on behalf of the lessees, tenants, or customers at hotels, apartment houses, roominghouses, timeshare resorts, tourist or trailer camps, mobile home parks, recreational vehicle parks, or condominiums in this state. The term "unrelated persons" means persons who are not related to the person operating transient accommodations or to the owner of such accommodations within the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of 1986, as amended.

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

Remove lines 3-5 and insert:

amending s. 212.03, F.S.; providing definitions for purposes relating to