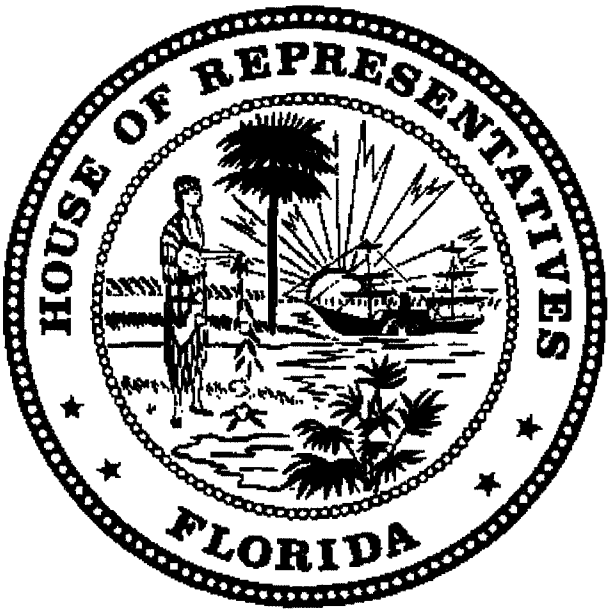

Community & Military Affairs Subcommittee

Meeting Packet

Tuesday, January 31, 2012
9:00 AM - 11:30 AM
Webster Hall (212 Knott)

Dean Cannon
Speaker

Ritch Workman
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Community & Military Affairs Subcommittee

Start Date and Time:	Tuesday, January 31, 2012 09:00 am
End Date and Time:	Tuesday, January 31, 2012 11:30 am
Location:	Webster Hall (212 Knott)
Duration:	2.50 hrs

Consideration of the following bill(s):

CS/HJR 55 Homestead Assessment Limitation/Senior Citizens by Finance & Tax Committee, Nuñez, Fresen
CS/HJR 93 Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder by Finance & Tax Committee, Harrison
CS/HB 95 Homestead Property Tax Exemptions by Finance & Tax Committee, Harrison
CS/HB 133 Assessment of Residential and Nonhomestead Real Property by Energy & Utilities Subcommittee, Frishe
CS/HB 521 State Preemption of the Regulation of Hoisting Equipment by Business & Consumer Affairs Subcommittee, Artiles
HB 547 Community Redevelopment Agencies by Fresen
CS/HB 625 Disposition of Human Remains by Health & Human Services Access Subcommittee, Roberson, K.
CS/HB 673 Preference in Award of Governmental Entity Contracts by Government Operations Subcommittee, Brodeur
HB 1319 County Boundary Lines by Harrell
CS/HB 1443 Local Administrative Action to Abate Public Nuisances and Criminal Gang Activity by Criminal Justice Subcommittee, Frishe

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Monday, January 30, 2012.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, January 30, 2012.

NOTICE FINALIZED on 01/27/2012 16:24 by Manning.Karen

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 55 Homestead Assessment Limitation/Senior Citizens
SPONSOR(S): Finance & Tax Committee, Nuñez and others
TIED BILLS: **IDEN./SIM. BILLS:** SJR 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	22 Y, 0 N, As CS	Aldridge	Langston
2) Community & Military Affairs Subcommittee		Nelson	Hoagland
3) Economic Affairs Committee			

SUMMARY ANALYSIS

CS/HJR 55 proposes an amendment to the State Constitution that would allow the Legislature by general law to permit counties and municipalities to limit ad valorem tax assessments applicable to their respective levies to the previous year's assessed value for homestead property that is subject to the current local option low-income senior exemption. The limitation could apply if the market value of a homestead property is no more than 150 percent of the average homestead market value in the county.

The general law implementing the constitutional provision must designate a state agency that will calculate the average just value of homestead property within each county and municipality, and provide this information to property appraisers. The implementing law also must require that counties and municipalities choosing to provide the assessment limitation do so by ordinance.

To the extent that county and city governments choose the option offered by this constitutional amendment, their property tax bases will be lower than would otherwise be the case. *See*, Section II.B. of this analysis for additional information regarding the potential revenue impact on local governments.

The joint resolution would have a nonrecurring fiscal impact on the state for the cost of advertising the proposed amendment.

To be placed on the ballot, the joint resolution must be approved by three-fifths of the membership of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxation in Florida

Local governments, including counties, school districts and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.[1] Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

Ad valorem taxes are capped by the State Constitution as follows:[2]

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by voters for special districts.

Taxes levied for the payment of bonds and taxes levied for periods not longer than two years, when authorized by a vote of the electors, are not subject to millage limitations. Millage rates vary among local governments, and are fixed by ordinance or resolution of the taxing authority's governing body.[3]

Regardless of the body imposing the taxes, two county constitutional officers have primary responsibility for the administration and collection of ad valorem taxes. The county property appraiser calculates the fair market value, assessed value and the value of applicable exemptions of the property. The tax collector collects all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county and distributes the taxes to each taxing authority.[4]

The Department of Revenue (DOR) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.[5] Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.[6]

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.[7] However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit—not variations in rates between taxing units.[8]

The State Constitution grants property tax relief in the form of certain valuation differentials,[9] assessment limitations,[10] and exemptions,[11] including the homestead exemptions.

---

[1] Section 9, Art. VII of the State Constitution.
[2] A mill is defined as 1/1000 of a dollar, or $1 per $1000 of taxable value.
[3] Section 200.001(7), F.S.
[4] Section 197.383, F.S.
[5] Section 195.002, F.S.
[6] Chapter 195, F.S.
[7] Section 2, Art. VII of the State Constitution.
[8] *See*, for example, *Moore v. Palm Beach County,* 731 So. 2d 754 (Fla. Dist. Ct. App. 4th Dist. 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).
[9] Section 4, Art. VII of the State Constitution, authorizes valuation differentials, which are based on character or use of property.

Homestead Exemption

The Homestead Exemption provides an exemption from all ad valorem taxes on the first $25,000 of assessed value for owners of homestead property, provided that the tax roll in their county has been approved.[12] An additional $25,000 exemption is provided for assessed values between $50,000 and $75,000; however, this exemption does not apply to school taxes.[13]

Save Our Homes

The "Save Our Homes" provision in s. 4, Art. VII of the State Constitution, limits the amount a homestead's assessed value can increase annually to the lesser of three percent or the inflation rate as measured by the Consumer Price Index (CPI).[14] Homestead property owners who establish a new homestead may transfer up to $500,000 of their accrued "Save Our Homes" benefit to that homestead.[15]

Section 193.155, Florida Statutes

In 1994, the Legislature implemented the "Save Our Homes" amendment in s. 193.155, F.S. The legislation required all homestead property to be assessed at just value by January 1, 1994. Starting on January 1, 1995, or the year after the property receives a homestead exemption (whichever is later), property receiving a homestead exemption must be reassessed annually on January 1 of each year. As provided in the Constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lesser of three percent or the growth in the CPI. Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds its just value, the assessed value must be lowered to the just value of the property.

Low-Income Seniors

Counties and cities may allow an additional homestead exemption of up to $50,000 for anyone 65 years or older whose household income does not exceed $20,000, adjusted annually by the percentage change in the average cost-of-living index.[16] The exemption only applies to taxes levied by the county or city enacting the exemption.[17]

Under the Homestead Property Tax Deferral Act, any homesteader 65 years or older who would qualify for the exemption would also qualify to defer all ad valorem taxes.[18] All senior homesteaders may defer the portion of their tax levy exceeding three percent of household income, so long as tax deferrals and other liens do not exceed 85 percent of assessed value and the primary mortgage does not exceed 70

---

[10] Section 4(c), Art. VII of the State Constitution, authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of three percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the "Granny Flats" assessment limitation.

[11] Section 3, Art. VII of the State Constitution, provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

[12] Section 6, Art. VII of the State Constitution.

[13] *Id. See also,* Am. C.S. for S.J.R. 2-D, 2007.

[14] Section 4(d), Art. VII of the State Constitution.

[15] *Id.*

[16] Section 6, Art. VII of the State Constitution. *See also,* s. 196.075, F.S.

[17] Section 196.075(4), F.S.

[18] Section 197.243, F.S.

percent. Deferred tax and interest up to seven percent are due when the property is sold, property insurance is not maintained, or the property ceases to qualify for homestead exemption.

Proposed Changes

The CS for HJR 55 proposes an amendment to the State Constitution that would allow the Legislature by general law to permit counties and municipalities to limit, for homestead property qualifying for the low-income senior exemption, ad valorem tax assessments for their respective levies to the previous year's assessed value.

To be eligible for the limitation on assessment, the following conditions must be met:

- The property qualifies for the low-income senior exemption, which requires that:
  - the county or municipality has granted the exemption by ordinance;
  - the person has title to the property and maintains his or her permanent residence thereon;
  - the owner is 65 or older; and
  - the owner's annual household income is less than $26,203.[19]
- The just value of the property is no more than 150 percent of the average just value of homestead property within the county.

The general law implementing the constitutional provision must designate a state agency that will calculate the average just value of homestead property within each county and municipality based upon the prior year final tax roll of each county, and provide this information to property appraisers. The implementing law also must require that counties and municipalities choosing to provide the assessment limitation must do so by ordinance.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Division of Elections is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county.[20] The Division estimates the cost of advertising the proposed constitutional amendment would be $211,855.44.[21]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[19] Pursuant to s. 196.075(3), F.S., the household income limitation is set at $20,000 as of January 1, 2001, and adjusted annually by the percentage change in the average cost-of-living index issued by the United States Department of Labor. For 2011, that indexed household income amount is $26,203. *See,* http://dor.myflorida.com/dor/property/resources/limitations.html (last visited December 1, 2011).

[20] Section 5 (d), Art. XI of the State Constitution.

[21] Department of State, *House Joint Resolution 55 (2012) Fiscal Analysis* (September 12, 2011).

The Revenue Estimating Conference (REC) adopted an indeterminate negative revenue impact of this resolution on local governments. However, the amendment, if passed, would only affect a county or municipality that chose to impose the cap on assessed value for its assessment.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The resolution could reduce property taxes on certain qualifying seniors. Such a reduction in the property tax base could result in a corresponding shift in property tax burden to other property tax owners.

D. FISCAL COMMENTS:

If the amendment is approved by the voters and the Legislature passes implementing/authorizing legislation, and those counties and municipalities that currently grant the additional homestead exemption for low-income seniors pass the necessary ordinances to adopt the assessment limitation cap provided by the joint resolution, the REC estimates a negative revenue impact on local governments of at least $2.3 million in FY 2014-15 and $4.2 million in FY 2015-16.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable to joint resolutions.

2. Other:

Legislative Proposed Amendments

Section 1, Art. XI of the State Constitution provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Finance & Tax Committee adopted an amendment that removed provisions from the joint resolution that addressed increases in the assessed value of qualifying properties in any year in which the market value of the property decreases. The amendment also amends the ballot summary to improve clarity and accuracy by:

- removing a reference to a $20,000 income limitation—instead refers to income limitation as provided by general law; and

- clarifying that qualifying individuals will not see an increase in property taxes *solely* due to an increase in the market value of their property.

The analysis has been updated to reflect the Committee Substitute.

House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII of the State Constitution to authorize counties and municipalities to limit the assessed value of the homesteads of certain low-income senior citizens.

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

That the following amendment to Section 4 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Except as provided in paragraph (2), assessments subject to this subsection shall be changed annually on January 1 ~~1st~~ of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent ~~(3%)~~ of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to limit assessments on homestead property subject to the additional homestead tax exemption under Section 6(d) to the assessed value of the property in the prior year if the just value of the property is equal to or less than one hundred fifty percent of

the average just value of homestead property within the respective county or municipality. The general law must allow counties and municipalities to provide this limitation by ordinance adopted in the manner prescribed by general law, specify the state agency designated to calculate the average just value of homestead property within each county and municipality, and provide that such agency annually supply that information to each property appraiser. The calculation shall be based on the prior year's tax roll of each county.

(3) ~~(2)~~ No assessment shall exceed just value.

(4) ~~(3)~~ After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (9) ~~(8)~~ apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(5) ~~(4)~~ New homestead property shall be assessed at just value as of January 1 ~~1st~~ of the year following the establishment of the homestead, unless the provisions of paragraph (9) ~~(8)~~ apply. That assessment shall only change as provided in this subsection.

(6) ~~(5)~~ Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(7) ~~(6)~~ In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(8) ~~(7)~~ The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(9) ~~(8)~~ a. A person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to have the new homestead assessed at less than just value. If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the

just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the Legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or

reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent ~~(10%)~~ of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law;

however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent ~~(10%)~~ of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as

provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may 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.

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

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

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 4

ASSESSMENT OF HOMESTEAD PROPERTY OWNED BY LOW-INCOME SENIOR CITIZENS.—Currently, counties and municipalities may grant an

additional homestead exemption to a person who is 65 years of age or older and who has a low household income as defined by general law. This proposed amendment to the State Constitution authorizes counties and municipalities to limit the assessments of the homesteads of persons receiving such additional exemption to the assessed value of the property in the prior year if the just value of the property is equal to or less than 150 percent of the average just value of homestead property in the respective county or municipality. As such, if authorized by a county or municipality, these individuals will not be required to pay more county or municipal ad valorem taxes than they paid in the prior year solely due to an increase in value of their homestead property that does not result in the value of the property exceeding the average just value of homestead property in the county or municipality by more than 150 percent.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 93 Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder
SPONSOR(S): Harrison and others
TIED BILLS: HB 95 **IDEN./SIM. BILLS:** SJR 1056

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	23 Y, 0 N, As CS	Aldridge	Langston
2) Community & Military Affairs Subcommittee		Tait	Hoagland
3) Economic Affairs Committee			

SUMMARY ANALYSIS

CS/HJR 93 proposes an amendment to the Florida Constitution that would allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty. The amount of tax relief, to be defined by general law, can equal the total amount or a portion of the ad valorem tax otherwise owed on homestead property.

The proposed amendment defines "first responder" to mean a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic. "In the line of duty" is defined to mean arising out of and in the actual performance of duty required by employment as a first responder. The Legislature is authorized to further define these terms by general law.

The proposed amendment is effective January 1, 2013, if approved by the voters.

The Revenue Estimating Conference has estimated that, if the voters approve this constitutional amendment, and if it is implemented by the Legislature effective beginning with the January 2013 tax rolls and **assuming current millage rates,** the estimated statewide impact would be annual reductions in school tax revenues of $0.3 million, beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be $0.3 million beginning in fiscal year 2013-14.

The Department of State estimates that the cost of publishing the proposed constitutional amendment, as required by law, is $100,302.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Just Value

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

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[3] Land used for conservation purposes must be assessed solely on the basis of character or use.[4] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or be totally exempted from taxation.[5] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.[6] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[8] Certain working waterfront property is assessed based upon the property's current use.[9]

Assessment Limitations

Save Our Homes

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

Additional Assessment Limitations

Article VII, s. 4(g) and (h), of the Florida Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more

---

[1] *See Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).
[2] The constitutional provisions in art. VII, s. 4, of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[3] Art. VII, s. 4(a) of the Florida Constitution.
[4] Art. VII, s. 4(b) of the Florida Constitution.
[5] Art. VII, s. 4(c) of the Florida Constitution.
[6] Art. VII, s. 4(e) of the Florida Constitution.
[7] Art. VII, s. 4(f) of the Florida Constitution.
[8] Art. VII, s. 4(i) of the Florida Constitution.
[9] Art. VII, s. 4(j) of the Florida Constitution.
[10] Art. VII, s. 4(d) of the Florida Constitution.
[11] Art. VII, s. 4(d) of the Florida Constitution.

than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units must be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature may provide that such property shall be assessed at just value after a change of ownership or control and must provide for reassessment following a qualifying improvement, as defined by general law.

Exemptions

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

Homestead Exemption

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

Other Exemptions

Article VII, s. 3 of the Florida Constitution, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.[13] Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.[14] A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.[15] A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.[16] Tangible personal property is exempt up to $25,000 of its assessed value.[17] There is an exemption for real property dedicated in perpetuity for conservation purposes.[18] There is an exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.[19]

Taxable Value

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

Effect of Proposed Changes

Additional Homestead Exemption for the Surviving Spouse of a Military Veteran or First Responder

The joint resolution proposes an amendment to the Florida Constitution that would allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected

[12] *See Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). *See also, Archer v. Marshall,* 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney,* 360 So. 2d 415 (Fla. 1978); *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).
[13] Art. VII, s. 3(a) of the Florida Constitution.
[14] Art. VII, s. 3(b) of the Florida Constitution.
[15] Art. VII, s. 3(c) of the Florida Constitution.
[16] Art. VII, s. 3(d) of the Florida Constitution.
[17] Art. VII, s. 3(e) of the Florida Constitution.
[18] Art. VII, s. 3(f) of the Florida Constitution.
[19] Art. VII, s. 3(g) of the Florida Constitution.

causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty. The amount of tax relief, to be defined by general law, can equal the total amount or a portion of the ad valorem tax otherwise owed on homestead property.

The proposed amendment defines "first responder" to mean a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic. "In the line of duty" is defined to mean arising out of and in the actual performance of duty required by employment as a first responder. The Legislature is authorized to further define these terms by general law.

The proposed amendment is effective January 1, 2013, if approved by the voters.

B. S. DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the full publication costs for advertising the proposed amendment to be $100,302.[20]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has estimated that, if the voters approve this constitutional amendment, and if it is implemented by the Legislature effective beginning with the January 2013 tax rolls and **assuming current millage rates,** the estimated statewide impact would be annual reductions in school tax revenues of $0.3 million, beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be $0.3 million beginning in fiscal year 2013-14.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposed amendment is approved by the electorate and implemented by the Legislature, surviving spouses of certain veterans and first responders could receive property tax relief.

D. FISCAL COMMENTS:

None.

[20] Department of State, *House Joint Resolution 93 (2012) Fiscal Analysis* (October 3, 2011).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.[21] The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by the a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.[22]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Finance and Tax Committee adopted an amendment that clarifies that the constitutional amendment proposed by the joint resolution takes effect January 1, 2013, if approved by the voters.

This analysis has been updated to reflect these changes.

[21] Art. XI, s. 1 of the Florida Constitution.
[22] Art. XI, s. 5 of the Florida Constitution.

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution to allow the Legislature by general law to provide ad valorem homestead property tax relief to the surviving spouse of a military veteran who died from service-connected causes while on active duty or a surviving spouse of a first responder who died in the line of duty, provide definitions with respect thereto, and provide an effective date.

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

That the following amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five

thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or

municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding fifty thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related, the veteran was a resident of this state at the time of entering the military service of the United States, and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs stating the percentage of

the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related, and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection shall take effect December 7, 2006, is self-executing, and does not require implementing legislation.

(f) By general law and subject to conditions and limitations specified therein, the Legislature may provide ad valorem tax relief equal to the total amount or a portion of the ad valorem tax otherwise owed on homestead property to the:

(1) Surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces.

(2) Surviving spouse of a first responder who died in the line of duty.

(3) As used in this subsection and as further defined by general law, the term:

a. "First responder" means a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic.

b. "In the line of duty" means arising out of and in the actual performance of duty required by employment as a first responder.

ARTICLE XII

SCHEDULE

SECTION 32. Ad valorem tax relief for surviving spouses of veterans who died from service-connected causes and first responders who died in the line of duty.—This section and the amendment to Section 6 of Article VII permitting the legislature to provide ad valorem tax relief to surviving spouses of veterans who died from service-connected causes and first responders who died in the line of duty shall take effect January 1, 2013.

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

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

ARTICLE XII, SECTION 32

HOMESTEAD PROPERTY TAX EXEMPTION FOR SURVIVING SPOUSE OF MILITARY VETERAN OR FIRST RESPONDER.—Proposing an amendment to the State Constitution to authorize the Legislature to provide by general law ad valorem homestead property tax relief to the surviving spouse of a military veteran who died from service-connected causes while on active duty or to the surviving spouse of a first responder who died in the line of duty. The amendment authorizes the Legislature to totally exempt or partially exempt such surviving spouse's homestead property from ad valorem taxation. The amendment defines a first responder as a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic. This amendment shall take effect January 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 95 Homestead Property Tax Exemptions
SPONSOR(S): Harrison and others
TIED BILLS: HJR 93 **IDEN./SIM. BILLS:** SB 1058

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	24 Y, 0 N, As CS	Aldridge	Langston
2) Community & Military Affairs Subcommittee		Tait	Hoagland
3) Economic Affairs Committee			

SUMMARY ANALYSIS

CS/HB 95 implements the proposed constitutional amendment contained in CS/HJR 93.

The bill creates a new statutory provision that creates and sets forth the requirements for a full exemption from ad valorem taxes authorized by the proposed constitutional amendment in CS/HJR 93. The exemption is available under specified conditions to the surviving spouse of a "first responder" who died in the line of duty when the real estate is owned and used by the surviving spouse as a homestead. The bill defines the terms "first responder" and "in the line of duty."

The bill provides a General Revenue appropriation of $100,302 to the Department of State to publish the proposed constitutional amendment contained in CS/HJR 93 in newspapers in each county as required by Art. XI, s. 5(d) of the Florida Constitution.

The Revenue Estimating Conference has estimated that, if the amendment proposed by CS/HJR 93 is approved by the voters, **assuming current millage rates,** the estimated statewide impact of the bill would be annual reductions in school tax revenues of $0.3 million beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be $0.3 million beginning in fiscal year 2013-14.

The bill takes effect upon the approval of the amendment proposed by CS/HJR 93 by the voters. The bill will operate prospectively to tax rolls submitted to the Department of Revenue by each county tax collector beginning January 2013 and each January thereafter and do not provide a basis for relief from or assessment of taxes not paid or for determining any denial of or a right to a refund of taxes paid before the effective date of this bill. The provisions of the bill that relate to the surviving spouses of first responders apply for surviving spouses of first responders whose deaths occur before, on, or after the effective date of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Just Value

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

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[3] Land used for conservation purposes must be assessed solely on the basis of character or use.[4] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or be totally exempted from taxation.[5] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.[6] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[8] Certain working waterfront property is assessed based upon the property's current use.[9]

Assessment Limitations

Save Our Homes

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

Additional Assessment Limitations

Article VII, s. 4(g) and (h), of the Florida Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more

---

[1] *See Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).
[2] The constitutional provisions in art. VII, s.4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[3] Art. VII, s. 4(a) of the Florida Constitution.
[4] Art. VII, s. 4(b) of the Florida Constitution.
[5] Art. VII, s. 4(c) of the Florida Constitution.
[6] Art. VII, s. 4(e) of the Florida Constitution.
[7] Art. VII, s. 4(f) of the Florida Constitution.
[8] Art. VII, s. 4(i) of the Florida Constitution.
[9] Art. VII, s. 4(j) of the Florida Constitution.
[10] Art. VII, s. 4(d) of the Florida Constitution.
[11] Art. VII, s. 4(d) of the Florida Constitution.

than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units must be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature may provide that such property shall be assessed at just value after a change of ownership or control and must provide for reassessment following a qualifying improvement, as defined by general law.

Exemptions

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

Homestead Exemption

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

Other Exemptions

Article VII, s. 3 of the Florida Constitution, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.[13] Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.[14] A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.[15] A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.[16] Tangible personal property is exempt up to $25,000 of its assessed value.[17] There is an exemption for real property dedicated in perpetuity for conservation purposes.[18] There is an exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.[19]

Exemption for Surviving Spouses of Certain Veterans

Section 196.081(4), F.S., currently provides, under specified conditions, a full exemption from ad valorem taxes on property that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran died from service-connected causes while on active duty. Additionally, the veteran must have been a permanent resident of this state on January 1 of the year in which he or she died. The current exemption does not require the surviving spouse to have been a Florida resident on January 1 of the year in which the veteran died.

---

[12] *See Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). *See also, Archer v. Marshall,* 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney,* 360 So. 2d 415 (Fla. 1978); *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).
[13] Art. VII, s. 3(a) of the Florida Constitution.
[14] Art. VII, s. 3(b) of the Florida Constitution.
[15] Art. VII, s. 3(c) of the Florida Constitution.
[16] Art. VII, s. 3(d) of the Florida Constitution.
[17] Art. VII, s. 3(e) of the Florida Constitution.
[18] Art. VII, s. 3(f) of the Florida Constitution.
[19] Art. VII, s. 3(g) of the Florida Constitution.

Taxable Value

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

Effect of Proposed Changes

The bill implements the proposed constitutional amendment contained in CS/HJR 93.

Exemption for Surviving Spouses of First Responders

The bill creates a new statutory provision that creates and sets forth the requirements for a full exemption from ad valorem taxes authorized by the proposed constitutional amendment in CS/HJR 93. The exemption is available under specified conditions to the surviving spouse of a "first responder" who died in the line of duty when the real estate is owned and used by the surviving spouse as a homestead.

The bill defines the terms "first responder" to mean a law enforcement officer or correctional officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.30, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

The bill defines "in the line of duty" to mean:

- While engaging in law enforcement;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities enumerated in this subparagraph if the training has been authorized by the employing entity.

The bill specifies that these terms are defined for the purposes of this exemption only and do not apply to the payment of benefits under ss. 112.19 or 112.191, F.S.

The bill provides that a heart attack or stroke that causes death or causes an injury resulting in death must occur within 24 hours after an event or activity enumerated above and must be directly and proximately caused by the event or activity in order to be considered as having occurred in the line of duty.

The bill specifies the documentation required to qualify for the exemption to be a letter from the state or appropriate political subdivision of the state or other authority or special district that has been issued legally recognizing and certifying that the individual died in the line of duty while employed as a first responder. The bill provides that presentation by the surviving spouse of this letter that attests the individual's death was in the line of duty is prima facie evidence that the surviving spouse is entitled to this exemption.

The bill provides that the exemption may apply as long as the spouse holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may

be transferred to his or her new residence as long as it is used as his or her primary residence and he or she does not remarry.

Applicability of Changes

The bill takes effect upon the approval of the amendment proposed by CS/HJR 93 by the voters. The bill will operate prospectively to tax rolls submitted to the Department of Revenue by each county tax collector beginning January 2013 and each January thereafter and do not provide a basis for relief from or assessment of taxes not paid or for determining any denial of or a right to a refund of taxes paid before the effective date of this bill. The revisions in the bill to the exemption for surviving spouses of veterans only apply to when the veteran's death occurs after the effective date of the bill and do not affect the homestead exemptions of surviving spouses of veterans whose deaths occurred before the effective date of the bill. The provisions of the bill that relate to the surviving spouses of first responders apply for surviving spouses of first responders whose deaths occur before, on, or after the effective date of the bill.

Appropriation

The bill provides a General Revenue appropriation of $100,302 to the Department of State to publish the proposed constitutional amendment contained in CS/HJR 93 in newspapers in each county as required by art. XI, s. 5(d) of the Florida Constitution.

B. S. DIRECTORY:

Section 1: Provides that the act may be cited as the "Fallen Heroes Family Tax Relief Act."

Section 2: Amends s. 196.081(4)(a), F.S., modifying the qualifications for an ad valorem exemption for surviving spouses of veterans and creates s. 196.081(5), F.S., implementing an ad valorem exemption for surviving spouses of first responders.

Section 3: Provides rules of construction.

Section 4: Provides an appropriation.

Section 5: Provides 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:

   The Revenue Estimating Conference has estimated that, if the amendment proposed by CS/HJR 93 is approved by the voters, **assuming current millage rates,** the estimated statewide impact of the bill would be annual reductions in school tax revenues of $0.3 million beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be $0.3 million beginning in fiscal year 2013-14.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the amendment proposed by CS/HJR 93 is approved by the voters, the bill would provide property tax relief to surviving spouses of certain first responders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill implements a constitutional amendment to which the mandates provision of s. 18, Art. VII of the Florida Constitution, does not apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Finance and Tax Committee adopted an amendment that:

- Removes changes dealing with the current exemption for surviving spouses of military veterans who died from service-connected causes while on active duty.
- Clarifies that the terms "first responder" and "in the line of duty" are defined only for purposes of this exemption.
- Clarifies that the exemption begins with the 2013 tax roll.
- Provides an appropriation to publish the proposed constitutional amendment in newspapers in each county as required by the constitution [$100,302].

This analysis is updated to reflect the above changes.

A bill to be entitled

An act relating to homestead property tax exemptions; providing a short title; amending s. 196.081, F.S.; providing definitions; providing application; exempting from taxation the homestead property of a surviving spouse of a first responder who dies in the line of duty under certain circumstances; providing construction, including application with respect to certain deaths preceding the effective date of the act; providing an appropriation; providing effective dates, including a contingent effective date.

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

Section 1. This act may be cited as the "Fallen Heroes Family Tax Relief Act."

Section 2. Section 196.081, Florida Statutes, is amended to read:

196.081 Exemption for certain permanently and totally disabled veterans and for surviving spouses of veterans; exemption for surviving spouses of first responders who die in the line of duty.—

(1) Any real estate that is owned and used as a homestead by a veteran who was honorably discharged with a service-connected total and permanent disability and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran is totally and permanently disabled is exempt

from taxation, if the veteran is a permanent resident of this state on January 1 of the tax year for which exemption is being claimed or was a permanent resident of this state on January 1 of the year the veteran died.

(2) The production by a veteran or the spouse or surviving spouse of a letter of total and permanent disability from the United States Government or United States Department of Veterans Affairs or its predecessor before the property appraiser of the county in which property of the veteran lies is prima facie evidence of the fact that the veteran or the surviving spouse is entitled to the exemption.

(3) If the totally and permanently disabled veteran predeceases his or her spouse and if, upon the death of the veteran, the spouse holds the legal or beneficial title to the homestead and permanently resides thereon as specified in s. 196.031, the exemption from taxation carries over to the benefit of the veteran's spouse until such time as he or she remarries or sells or otherwise disposes of the property. If the spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as it is used as his or her primary residence and he or she does not remarry.

(4)(a) Any real estate that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the

veteran who died from service-connected causes while on active duty is exempt from taxation if the veteran was a permanent resident of this state on January 1 of the year in which the veteran died.

(b) The production by the surviving spouse of a letter that was issued as required under paragraph (a) and that attests the veteran's death while on active duty is prima facie evidence of the fact that the surviving spouse is entitled to an exemption under paragraph (a).

(c) The tax exemption that applies under paragraph (a) to the surviving spouse carries over to the benefit of the veteran's surviving spouse as long as the spouse holds the legal or beneficial title to the homestead, permanently resides thereon as specified in s. 196.031, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence as long as it is used as his or her primary residence and he or she does not remarry.

(5)(a) The following terms are defined for purposes of this subsection only and do not apply to the payment of benefits under s. 112.19 or s. 112.191:

1. "First responder" means a law enforcement officer or correctional officer as defined in s. 943.10, a firefighter as defined in s. 633.30, or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

2. "In the line of duty" means:

a. While engaging in law enforcement;

b. While performing an activity relating to fire suppression and prevention;

c. While responding to a hazardous material emergency;

d. While performing rescue activity;

e. While providing emergency medical services;

f. While performing disaster relief activity;

g. While otherwise engaging in emergency response activity; or

h. While engaging in a training exercise related to any of the events or activities enumerated in this subparagraph if the training has been authorized by the employing entity.

A heart attack or stroke that causes death or causes an injury resulting in death must occur within 24 hours after an event or activity enumerated in this subparagraph and must be directly and proximately caused by the event or activity in order to be considered as having occurred in the line of duty.

(b) Any real estate that is owned and used as a homestead by the surviving spouse of a first responder who died in the line of duty while employed by the state or any political subdivision of the state, including authorities and special districts, and for whom a letter from the state or appropriate political subdivision of the state or other authority or special district has been issued legally recognizing and certifying that the individual died in the line of duty while employed as a first responder is exempt from taxation if the individual and his or her surviving spouse were permanent residents of this state on January 1 of the year in which the individual died.

(c) The production by the surviving spouse of a letter that was issued as required under paragraph (b) and that attests the individual's death in the line of duty is prima facie evidence of the fact that the surviving spouse is entitled to an exemption under paragraph (b).

(d) The tax exemption that applies under paragraph (b) to the surviving spouse carries over to the benefit of the individual's surviving spouse as long as the spouse holds the legal or beneficial title to the homestead, permanently resides thereon as specified in s. 196.031, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence as long as it is used as his or her primary residence and he or she does not remarry.

Section 3. Construction.—

(1) The revisions to section 196.081, Florida Statutes, under this act operate prospectively to the 2013 tax roll and do not provide a basis for relief from an assessment of taxes not paid or create a right to a refund of taxes paid before January 1, 2013.

(2) The provisions of subsection (5) of section 196.081, Florida Statutes, created under this act apply to the homestead exemptions of surviving spouses of first responders whose deaths occur before, on, or after the effective date of this act.

Section 4. Effective July 1, 2012, the sum of $100,302 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of State for purposes of publishing, as required under s. 5(d), Art. XI of the State Constitution, the

proposed constitutional amendment contained in House Joint Resolution 93, or a similar joint resolution having substantially the same specific intent and purpose.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect upon the approval by a vote of the electors of House Joint Resolution 93, or a similar joint resolution having substantially the same specific intent and purpose, at the general election to be held in November 2012 or at an earlier special election specifically authorized by law for that purpose and shall apply to the 2013 tax roll.

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		Gibson	Hoagland
3) Finance & Tax Committee			
4) State Affairs Committee			

SUMMARY ANALYSIS

In the November 2008 General Election, Florida voters approved a constitutional amendment 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 bill appears to have no fiscal impact on state government. The Revenue Estimating Conference has reviewed the language of this bill but a revenue impact estimate for local governments has not yet been adopted.

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:

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

(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.

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

---

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

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;

(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.

[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.

- 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.
  - 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 Revenue Estimating Conference has not yet determined an estimate of the revenue impact of the bill on local governments.

2. Expenditures:

   Local Property Appraisers may incur additional costs of implementing the provisions of the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in the bill may:

- Incentivize homebuilders and homebuyers to construct or strengthen homes with improved wind resistance measures or to equip homes with renewable energy source devices;
- Lead to a recurring tax benefit for homeowners; and
- Result in lower insurance rates and energy costs for homeowners.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The Revenue Estimating Conference has not yet determined an estimate of the revenue impact of the bill on local governments; therefore, the applicability of the mandates provision is indeterminate until that estimate is established.

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 521 State Preemption of the Regulation of Hoisting Equipment
SPONSOR(S): Business & Consumer Affairs Subcommittee and Artiles
TIED BILLS: **IDEN./SIM. BILLS:** SB 992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	15 Y, 0 N, As CS	Collins	Creamer
2) Community & Military Affairs Subcommittee		Gibson	Hoagland
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill amends s. 489.113, F.S., to preempt to the state and prohibit all local regulation of hoisting equipment, unless the regulation is otherwise federally preempted by the Occupational Safety and Health Administration under 29 C.F.R. parts 1910 and 1926. Local regulation that is prohibited and preempted to the state includes, but is not limited to, local worksite regulation regarding hurricane preparedness or public safety. The bill does not apply to the regulation of elevators under ch. 399, F.S.

The bill has no fiscal impact on state or local government.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

Occupational Safety and Health Act and the Regulation of Hoisting Equipment

The Occupational Safety and Health Act of 1970 (hereinafter the OSH Act) created the Occupational Safety and Health Administration (hereinafter OSHA), a federal agency that promulgates standards related to workplace health and safety.[1] The Supreme Court has held that Congress intended to establish "uniform, federal occupational and health standards" in the OSH Act to avoid "duplicative, and possibly counterproductive regulation."[2] The Court has further held that "the OSH Act precludes any state regulation of an occupational or health issue, with respect to which a federal standard has been established, unless a state plan has been submitted."[3] This applies regardless of whether the state law requirement serves a dual purpose and has another nonoccupational purpose.[4]

The OSH Act allows a state that desires to assume responsibility for development and enforcement of occupational safety and health standards relating to any occupational safety or health issue, where a federal standard has been promulgated, may do so by submitting a state plan for the development of such standards and their enforcement.[5]

However, unless a state plan has been submitted and approved, the OSH Act prohibits state and local governments from promulgating regulation related to workplace health or safety if an applicable OSHA standard is already in place.[6] Conversely, if a relevant OSHA standard is not in place, the OSH Act does not federally preempt state or local regulation regarding workplace health or safety.[7] As a result, regulation of workplace health and safety that is not addressed by existing OSHA standards generally may be promulgated by state and local governments.

Currently, the state does not regulate the operations of mobile or tower cranes on construction sites or license crane operators, nor does it provide for hurricane or high-wind event standards or plans relating to on-site crane use. However, OSHA's occupational health and safety standards apply to both construction worksites and employees engaged in construction work.[8]

OSHA standards include general requirements for construction work involving cranes, derricks, material hoists, personnel hoists, and elevators.[9] OSHA regulations require compliance with the manufacturer's specifications and limitations applicable to the operation of all cranes, derricks, hoists, and elevators, and where the manufacturer's specifications are not available- the limitations assigned to the equipment are to be based on the determinations of a qualified engineer competent in the field.[10]

OSHA regulations also contain requirements for the inspection and certification of crane and hoisting equipment and standards for hand signals to crane and derrick operators.[11] Further, by incorporating the mandatory rules of the applicable American Society of Mechanical Engineers ("ASME") standards,

---

[1] 29 U.S.C. § 651.
[2] *Gade v. National Solid Waste Management Association*, 505 U.S. 88, 102 (1992).
[3] *Id.*
[4] 505 U.S. 88 (1992).
[5] 29 U.S.C. s. 667(b).
[6] *See Gade v. National Solid Waste Management Association*, 505 U.S. 88, 98-99 (1992).
[7] 29 U.S.C. s. 667(a).
[8] 29 C.F.R. s. 1910.12(a).
[9] 29 C.F.R. s. 1926.550 & 1926.552.
[10] *Id.*
[11] *See Associated Builders v. Miami-Dade Co.*, No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd*, 594 F. 3d 1321 (11th Cir. 2010).

OSHA standards include inspection of cranes and standards for crane operator qualifications and certifications.

Miami-Dade County Ordinance Relating to the Safety of Hoisting Equipment

In March of 2008, Miami-Dade County passed and adopted an ordinance that set binding regulations for the construction, installation, operation, and use of tower cranes, personnel, and material hoists.[12] The ordinance was subsequently challenged as being preempted by the OSH Act and OSHA standards because plaintiffs argued that it regulated occupational safety and health standards governed by federal standards.[13] Miami-Dade County argued that the provisions were valid because they were targeted at public safety rather than occupational safety.[14]

The United States District Court permanently enjoined the County from implementing certain provisions of the ordinance relating to wind load standards finding that the standards directly affected occupational safety and therefore were preempted by the federal standards, even if the ordinance served a dual purpose and addressed public safety issues as well.[15] The District Court also found that other parts of the Miami-Dade ordinance relating to public safety and hurricane preparedness were not preempted because the scope of OSHA's standards as they relate to cranes and hoists did not include regulation regarding hurricane preparedness or public safety.[16] The decision of the District Court was later affirmed by the 11th Circuit Court of Appeals finding that the Miami-Dade ordinance was preempted by OSHA with regard to wind load standards for tower cranes and hoists.[17]

Effect of Proposed Changes:

The bill amends s. 489.113(11), F.S., to prohibit and preempt to the state any local acts, laws, ordinances, or regulations, including but not limited to, a local building code or building permit requirement, of a county, municipality, or other political subdivision that pertains to hoisting equipment including power-operated cranes, derricks, hoists, elevators, and conveyors used in construction, demolition, or excavation work that is not already preempted by OSHA under 29 C.F.R. parts 1910 and 1926.

The bill specifically states that the prohibition and preemption includes, but is not limited to, local worksite regulation regarding hurricane preparedness or public safety. However, the prohibition and state preemption does not apply to the regulation of elevators under ch. 399, F.S., also known as the "Elevator Safety Act."

SECTION DIRECTORY:

Section 1: the bill creates subsection (11) of s. 489.113, F.S., to preempt all local regulation of hoisting equipment to the state, unless otherwise federally preempted by the OSH Act.

Section 2: provides that the bill is effective upon becoming a law.

---

[12] Miami-Dade County, FL, Ordinance No. 08-34.
[13] *See Associated Builders v. Miami-Dade Co.,* No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd*, 594 F. 3d 1321 (11th Cir. 2010).
[14] *Id.*
[15] *Id.*
[16] *Associated Builders v. Miami-Dade Co.*, No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd*, 594 F. 3d 1321, 1325 (11th Cir. 2010).
[17] *Associated Builders v. Miami-Dade Co.*, 594 F. 3d 1321 (11th Cir. 2010).

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:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Business & Consumer Affairs Subcommittee adopted a proposed committee substitute to the bill. The analysis has been updated to reflect this amendment.

A bill to be entitled

An act relating to state preemption of the regulation of hoisting equipment; amending s. 489.113, F.S.; preempting to the state the regulation of certain hoisting equipment; providing that the act does not apply to the regulation of elevators; providing an effective date.

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

Section 1. Subsection (11) is added to section 489.113, Florida Statutes, to read:

489.113 Qualifications for practice; restrictions.—

(11) Any local act, law, ordinance, or regulation, including, but not limited to, a local building code or building permit requirement, of a county, municipality, or other political subdivision that pertains to hoisting equipment including power-operated cranes, derricks, hoists, elevators, and conveyors used in construction, demolition, or excavation work, that is not already preempted by the Occupational Safety and Health Administration under 29 C.F.R. parts 1910 and 1926, including, but not limited to, local worksite regulation regarding hurricane preparedness or public safety, is prohibited and is preempted to the state. This section does not apply to the regulation of elevators under chapter 399.

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

Amendment No. 1

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

Committee/Subcommittee hearing bill: Community & Military Affairs Subcommittee

Representative Artiles offered the following:

Amendment (with title amendment)

Remove line 25 and insert:

the regulation of elevators under chapter 399 or to airspace height restrictions in chapter 333.

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

Remove line 6 and insert:

apply to the regulation of elevators or to airspace height restrictions; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 547 Community Redevelopment Agencies
SPONSOR(S): Fresen
TIED BILLS: **IDEN./SIM. BILLS:** SB 840

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Duncan pda	Hoagland
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Community Redevelopment Act of 1969, Ch. 163, Part II, F.S. (Act), was enacted to provide a mechanism to revitalize slum and blighted areas "which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state." The Act authorizes each local government to establish a Community Redevelopment Agency (CRA) to revitalize designated slum and blighted areas upon a "finding of necessity" and a further finding of a "need for a CRA to carry out community redevelopment."

The provisions in this bill apply to counties defined in s. 125.011(1), F.S., and require CRAs operating within such counties to submit annual performance reviews conducted by and at the discretion of the board of county commissioners (Board). The bill grants these counties with the power to terminate a CRA operating or located within its boundaries, if the Board determines certain conditions exist. The Board is required to notify the CRA of the proposed termination and the grounds for the termination in writing at least 30 days before the public hearing on the CRA's termination. An approved termination plan is required and the elements of the plan are provided in the bill. The bill also establishes additional requirements regarding the operation of a CRA's redevelopment trust fund.

In addition to the audit required by the Act a CRA located and operating in a county as defined in s. 125.011(1), F.S., is required submit to a forensic audit performed by a licensed and independent forensic accountant at least every 5 years, as requested by the Board. The forensic audit must include, but is not limited to, a review of an agency's assets, liabilities, income, and operating expenses to ensure that the agency has not engaged in financial misconduct or wasteful activity.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

Special Districts

Special districts are local units of special purpose government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.[2]

The largest categories of special districts that focus on community and/or economic development are community redevelopment agencies (CRAs) and community development districts (CDDs). As of January 13, 2012, there are 205 CRAs and 577 CDDs in Florida.[3] Other special districts that focus on community and/or economic development are:[4]

- Neighborhood improvement districts – 29
- Industrial development districts – 24
- Downtown development/improvement districts – 14
- Municipal -type services and improvements - 12
- Economic development districts – 10
- Infrastructure development districts - 10
- Capital improvement districts – 4
- Business improvement districts – 1

Community Redevelopment Act

The Community Redevelopment Act of 1969, Ch. 163, Part II, F.S. (Act), was enacted to provide a mechanism to revitalize slum and blighted areas "which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state." The Act authorizes each local government to establish a Community Redevelopment Agency (CRA) to revitalize designated slum and blighted areas upon a "finding of necessity" and a further finding of a "need for a CRA to carry out community redevelopment."[5]

---

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

[2] Section 189.403(1), F.S.

[3] 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 January 19, 2012).

[4] *Id.*

[5] Section 163.335, F.S.

Creation of Community Redevelopment Agencies

Upon the finding of necessity and finding a need for a CRA to function in the county or municipality to carry out community redevelopment, any county or municipality may create a CRA. A charter county having a population less than or equal to 1.6 million may create more than one CRA. CRAs of a county have the power to function within the corporate limits of a municipality only as, if, and when the governing body of the municipality has, by resolution, concurred in the community redevelopment plan or plans proposed by the county's governing body.[6] The governing body adopting a resolution declaring a need for a CRA is required to appoint a board of commissioners of the CRA, which must consist of five to nine commissioners, serving four-year terms.[7]

The county or municipal governing body is required to designate a chair and vice chair from among the commissioners. The CRA may employ an executive director, technical experts, and other employees. The CRA is required to file with the governing body, on or before March 31 of each year, a report of its activities for the preceding fiscal year. The CRA must provide a complete financial statement including its assets, liabilities, income, and operating expenses as of the end of the fiscal year. The CRA must publish in a newspaper of general circulation in the community a notice to the effect that the report has been filed with the county or municipality and that the report is available for inspection during business hours in the office of the clerk of the city or county commission and in the office of the CRA.[8]

Community Redevelopment Agency Plans

Each community redevelopment area must have an approved community redevelopment plan that is consistent with the local government comprehensive plan.[9] The community redevelopment plan must be sufficiently complete to indicate any land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation to be carried out in the designated area.[10] The plan must also provide for the development of affordable housing in the area or state the reasons for not addressing the issue in the plan.[11] The local government may subsequently modify the community redevelopment plan upon the recommendation of the CRA.[12]

The Act also authorizes CRAs, those created by counties or municipalities, to modify community redevelopment plans after public notice and a public hearing. Amendments to the community redevelopment plan are permitted to change the boundaries of a redevelopment area or the development and implementation of community policing innovations.[13]

CRAs are funded primarily through tax increment financing (TIF).[14] As property tax values in the redevelopment area rise above property values in the base year the redevelopment area was created, increment revenues are generated by applying the current millage rate levied by each taxing authority in the area to the increase in value. Each non-exempt taxing authority that levies taxes on property within a community redevelopment area must annually appropriate the amount of increment revenues to the CRA trust fund. These revenues are used primarily to service bonds issued to finance redevelopment projects. CRAs created prior to 2002 may receive TIF contributions for 60 years, while CRAs subsequently created may receive TIF contributions for 40 years.[15]

The Community Redevelopment Act and Counties with Home Rule Charters

The Act provides that in any county which has adopted a home rule charter, the powers must be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon the county within the boundaries of a municipality to the

---

[6] Section 163.356(1), F.S.
[7] Section 163.356(2), F.S.
[8] Section 163.356((3)(c), F.S.
[9] Section 163.358(2)(a), F.S.
[10] Section 163.358(2)(b), F.S.
[11] Section 163.358(2)(c), F.S.
[12] Section 163.361, F.S.
[13] Section 163.361, F.S.
[14] *See* s. 163.387, F.S.
[15] Section 163.387(2)(a), F.S.

governing body of such municipality. Such a delegation to a municipality must confer only such powers upon a municipality as are specifically enumerated in the delegating resolution. Any power not specifically delegated must be reserved exclusively to the governing body of the county. These provisions do not affect any CRA created by a municipality prior to the adoption of a county home rule charter.[16]

County Government

Chapter 125, F.S., relates to county governance. "County" means "any county operating under a *home rule charter* adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county."[17]

Section 6(e) of Art. VIII of the State Constitution provides that ss. 9, 10, 11 and 24 of Art. VIII of the Constitution of 1885, as amended, remain in full force and effect as to each county affected, until a county expressly adopts a charter or home rule plan pursuant to that article. Sections 9, 10, 11 and 24 refer to Duval, Monroe, Dade and Hillsborough counties, respectively. The Miami-Dade County Home Rule Charter was approved by its voters and adopted in 1957.

Effect of Proposed Changes

Creation and Termination of a Community Redevelopment Agency

The provisions in this bill apply to counties defined in s. 125.011(1), F.S.,[18] and require CRAs operating within such counties to submit annual performance reviews conducted by, and at the discretion of, the board of county commissioners (Board). The bill grants these counties with the power to terminate a CRA operating or located within its boundaries, if the Board determines:

- The CRA has been inefficient in removing slum and blight within the community redevelopment area;
- The CRA has neglected its duties and responsibilities under the community redevelopment plan or under an interlocal agreement between the county's governing body and/or any taxing authority and the CRA;
- The CRA has engaged in financial misconduct or wasteful activities as evidenced by any forensic audit, annual performance review, or annual report of the CRA's activities for the previous fiscal year, including the complete financial statement; or
- There is no longer a need for the CRA.

A public hearing is required before the Board terminates the CRA by the adoption of a resolution approving the termination pursuant to a termination plan.

The Board is required to notify the CRA of the proposed termination and the grounds for the termination in writing at least 30 days before the public hearing on the CRA's termination. Once the CRA has been given notice, the CRA is prohibited from issuing bonds, incurring further debt, or entering into any contract, unless approved by the Board. The CRA must respond to the notice of proposed termination and the grounds for the termination in writing at least 5 days prior to the public hearing.

The termination plan approved by the Board:

- Must, if the CRA has outstanding debt, including debt that pledges increment revenues as a source of repayment, require repayment of the debt, or make provision for the repayment, on or before it is due and may require taxing authorities to continue making required contributions until the repayment is paid;

[16] Section 163.410, F.S.
[17] Section 125.011(1), F.S.
[18] *See County Government* in this Staff Analysis, p.4.

- May require the governing body of the county to assume the powers of the CRA and act as the CRA's board of commissioners for purposes of overseeing the continued payment of outstanding debt or the completion of projects begun before the date of the notice of termination;
- Must provide an effective date for the CRA to be terminated, which must be a date after payment or provision for payment of all outstanding debt of the CRA; and
- Must provide that after the CRA's termination the obligation of a taxing authority to contribute to the redevelopment trust fund is automatically terminated by operation of law and any funds remaining in the trust fund is required to be disbursed to the taxing authorities in proportion to the amounts contributed by such taxing authorities.

The bill further provides that notwithstanding any provision of law to the contrary, consent to termination is not required from the CRA, from the governing body of a municipality within which the CRA operates or which was delegated the authority to create the CRA, from the taxing authorities that contribute to the CRA's redevelopment trust fund, or from any other person or entity.

Community Redevelopment Plans

The bill provides that in any county defined in s. 125.011(1), F.S., any redevelopment plan that is approved or amended after July 1, 2012, must also provide a specific date by which each redevelopment activity that is a part of a redevelopment project proposed to be funded by the increment fund is scheduled to be completed.

Redevelopment Trust Fund

The bill provides that for the purpose of the expenditure of moneys in redevelopment trust funds in counties defined in s. 125.011(1), F.S., the following apply:

- A CRA operating in the county must submit an annual budget indicating any proposed expenditures of increment revenues by August 15 of each year.
- The Board may approve the budget by resolution.
- Increment revenues contributed by the county may not be expended for redevelopment activities without the approval of the Board, unless such expenditures are to pay existing debts and contractual obligations of the CRA.
- Existing debts or contractual obligations include only such debt incurred pursuant revenue bonds issued and moneys owed from contracts entered into before the date of the termination notice. Existing debts or contractual obligations may not include salaries of at-will employees whose duties are directly associated with the provision of administrative or other services and who are employed by a CRA or a municipality that provides administrative or other services to a CRA. Existing debts or contractual obligations may not include contracts that are terminable at will.
- The CRA may not seek permission to issue bonds, incur further indebtedness, or enter into contracts until the Board has approved the CRA's annual budget.

Notwithstanding any provision in this section, in a county as defined in s. 125.011(1), if the CRA's issuance of debt has been approved, the CRA's payment of debt service for debt secured by increment revenues does not require the approval of the Board as a part of the CRA's annual budgetary approval process.

Current law provides that on the last day of the CRA's fiscal year, any money that remains in the redevelopment trust fund after expenses have been paid must be appropriated to a specific redevelopment project pursuant to an approved community redevelopment plan. The bill amends this provision to provide that in a county defined in s. 125.011(1), F.S., such funds may only be appropriated if:

- The project will be completed within three years after the date of such appropriation; and
- Before the appropriation, an acceptable construction timeline and budget for the project is submitted to and approved by the Board.

In addition to the audit required by the Act, a CRA located and operating in a county as defined in s. 125.011(1), F.S., is required submit to a forensic audit performed by a licensed and independent forensic accountant at least every 5 years, as requested by the Board. The forensic audit must include, but is not limited to, a review of an agency's assets, liabilities, income, and operating expenses to ensure that the agency has not engaged in financial misconduct or wasteful activity.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.356, F.S., relating to the creation of a community redevelopment agency.

Section 2: Amends s. 163.362, F.S., relating to the contents of a community redevelopment plan.

Section 3: Amends s. 163.387, F.S., relating to the redevelopment trust fund.

Section 4: 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.

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 to take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 133 refers to the "increment fund." The correct term should be "redevelopment trust fund."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

A bill to be entitled

An act relating to community redevelopment agencies; amending s. 163.356, F.S.; providing reporting requirements for certain community redevelopment agencies; providing for the termination of community redevelopment agencies by the board of county commissioners of certain counties; providing public hearing and notice and termination plan requirements; providing that consent from certain entities is not required for such termination; amending s. 163.362, F.S.; providing additional redevelopment plan requirements for certain counties; amending s. 163.387, F.S.; providing requirements for the expenditure of moneys from redevelopment trust funds in certain counties; exempting payment of debt service in such counties from certain approval; providing requirements for the appropriation of certain trust fund moneys in such counties; requiring a forensic audit of agencies in such counties at least every 5 years for certain purposes; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 163.356, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

163.356 Creation and termination of a community

redevelopment agency.—

(3)

(c) The governing body of the county or municipality shall designate a chair and vice chair from among the commissioners. An agency may employ an executive director, technical experts, and such other agents and employees, permanent and temporary, as it requires, and determine their qualifications, duties, and compensation. For such legal service as it requires, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this part shall file with the governing body, on or before March 31 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the county or municipality and that the report is available for inspection during business hours in the office of the clerk of the city or county commission and in the office of the agency. Agencies operating within a county as defined in s. 125.011(1) are required to submit to annual performance reviews conducted by and at the discretion of the board of county commissioners.

(5)(a) In any county as defined in s. 125.011(1) that has created a community redevelopment agency or has delegated the creation of a community redevelopment agency to a municipality pursuant to s. 163.410, the board of county commissioners may

terminate the agency operating or located in its boundaries, if the board finds:

1. The agency has been inefficient in removing slum and blight within the community redevelopment area;

2. The agency has neglected its duties and responsibilities under the approved redevelopment plan or under any interlocal agreement between the governing body of the county or any taxing authority and the agency under this part;

3. The agency has engaged in financial misconduct or wasteful activities as evidenced by any forensic audit required by s. 163.387(9), any annual performance review, or any annual report of the agency's activities for the previous fiscal year, including the complete financial statement required in paragraph (3)(c); or

4. There is no longer a need for the agency.

(b)1. After a public hearing on the proposed termination of an agency under this subsection, the board of county commissioners may effectuate the termination of the agency by adopting a resolution that approves termination of the agency pursuant to a termination plan consistent with the provisions of subparagraph 3.

2. The board of county commissioners must notify the agency of the proposed termination and the grounds for termination in writing at least 30 days before the public hearing on the termination of the agency. After the agency has been given notice pursuant to this subparagraph, the agency may not issue bonds, incur further indebtedness, or enter into any contract, unless approved by the board. The agency must respond

to the notice of proposed termination and the grounds for termination in writing at least 5 days before the public hearing.

3. A termination plan approved by the board of county commissioners:

a. Shall, if the agency has outstanding debt, including debt that pledges increment revenues as a source of repayment, require repayment of the debt, or make provision for the repayment, on or before it is due and may require taxing authorities to continue making required contributions until the repayment is paid;

b. May require the governing body of the county to assume the powers of the agency and act as the board of commissioners for the agency for purposes of overseeing the continued payment of outstanding debt or the completion of projects begun before the date of the notice of termination;

c. Shall provide an effective date of termination of the agency, which shall be a date after payment or provision for payment of all outstanding debt of the agency; and

d. Shall provide that after termination of the agency the obligation of a taxing authority to contribute to the trust fund pursuant to s. 163.387 is automatically terminated by operation of law and any funds remaining in the trust fund shall be disbursed to the taxing authorities in proportion to the amounts contributed by such taxing authorities.

(c) Notwithstanding any provision of law to the contrary, consent to termination under this subsection is not required from the agency, from the governing body of a municipality

within which the agency operates or which was delegated the authority to create the agency, from the taxing authorities that contribute to the redevelopment trust fund of the agency, or from any other person or entity.

Section 2. Subsection (10) of section 163.362, Florida Statutes, is amended, to read:

163.362 Contents of community redevelopment plan.—Every community redevelopment plan shall:

(10) Provide a time certain for completing all redevelopment financed by increment revenues. Such time certain shall occur no later than 30 years after the fiscal year in which the plan is approved, adopted, or amended pursuant to s. 163.361(1). However, for any agency created after July 1, 2002, the time certain for completing all redevelopment financed by increment revenues must occur within 40 years after the fiscal year in which the plan is approved or adopted. In any county as defined in s. 125.011(1), any redevelopment plan that is approved or amended on or after July 1, 2012, must also provide a specific date by which each redevelopment activity that is a part of a redevelopment project proposed to be funded by the increment fund is scheduled to be completed.

Section 3. Subsections (6) and (7) of section 163.387, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

163.387 Redevelopment trust fund.—

(6)(a) Moneys in the redevelopment trust fund may be expended from time to time for undertakings of a community redevelopment agency as described in the community redevelopment

plan for the following purposes, including, but not limited to:

1.~~(a)~~ Administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan adopted by the agency.

2.~~(b)~~ Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the community redevelopment agency for such expenses incurred before the redevelopment plan was approved and adopted.

3.~~(c)~~ The acquisition of real property in the redevelopment area.

4.~~(d)~~ The clearance and preparation of any redevelopment area for redevelopment and relocation of site occupants within or outside the community redevelopment area as provided in s. 163.370.

5.~~(e)~~ The repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness.

6.~~(f)~~ All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds, bond anticipation notes, or other form of indebtedness, including funding of any reserve, redemption, or other fund or account provided for in the ordinance or resolution authorizing such bonds, notes, or other form of indebtedness.

7.~~(g)~~ The development of affordable housing within the community redevelopment area.

8.~~(h)~~ The development of community policing innovations.

(b) For the purpose of the expenditure of moneys in redevelopment trust funds in counties as defined in s.

125.011(1), the following apply:

1. An agency operating in the county must submit an annual budget indicating any proposed expenditures of increment revenues by August 15 of each year.

2. The board of county commissioners may approve the budget by resolution.

3. Increment revenues contributed by the county may not be expended for redevelopment activities without the approval of the board of county commissioners, unless such expenditures are to pay existing debts and contractual obligations of the agency.

4. Existing debts or contractual obligations, as described in paragraph 3., include only such debt incurred pursuant to s. 163.385 and moneys owed from contracts entered into before the date of a notice of termination as authorized by s. 163.356(5). Existing debts or contractual obligations may not include salaries of at-will employees whose duties are directly associated with the provision of administrative or other services and who are employed by an agency or a municipality that provides administrative or other services to an agency. Existing debts or contractual obligations may not include contracts that are terminable at will.

5. The agency may not seek permission to issue bonds, incur further indebtedness, or enter into contracts until the governing body of the county has approved the agency's annual budget.

(c) Notwithstanding any provision in this section, in a county as defined in s. 125.011(1), if the agency's issuance of debt has been approved pursuant to s. 163.385, the agency's

payment of debt service for debt secured by increment revenues does not require the approval of the board of county commissioners as a part of the annual agency budgetary approval process.

(7) On the last day of the fiscal year of the community redevelopment agency, any money that ~~which~~ remains in the trust fund after the payment of expenses pursuant to subsection (6) for such year shall be:

(a) Returned to each taxing authority that ~~which~~ paid the increment in the proportion that the amount of the payment of such taxing authority bears to the total amount paid into the trust fund by all taxing authorities for that year;

(b) Used to reduce the amount of any indebtedness to which increment revenues are pledged;

(c) Deposited into an escrow account for the purpose of later reducing any indebtedness to which increment revenues are pledged; or

(d) Appropriated to a specific redevelopment project pursuant to an approved community redevelopment plan. However, in a county as defined in s. 125.011(1), such funds may only be appropriated in accordance with this paragraph if:

1. The ~~which~~ project will be completed within 3 years after ~~from~~ the date of such appropriation.

2. Before the appropriation, an acceptable construction timeline and budget for the project is submitted to and approved by the board of county commissioners.

(9) In addition to the audit required by subsection (8), an agency located and operating in a county as defined in s.

125.011(1) shall submit to a forensic audit performed by a licensed and independent forensic accountant at least every 5 years, as requested by the board of county commissioners. The forensic audit shall include, but is not limited to, a review of an agency's assets, liabilities, income, and operating expenses to ensure that the agency has not engaged in financial misconduct or wasteful activity.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 625 Disposition of Human Remains
SPONSOR(S): Health & Human Services Access Subcommittee; Roberson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 956

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	14 Y, 0 N, As CS	Mathieson	Schoolfield
2) Community & Military Affairs Subcommittee		Nelson	Hoagland
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The disposition of human remains in Florida is regulated pursuant to part II, of ch. 406, F.S. This part of the Florida Statutes provides authority to the Anatomical Board of the State of Florida (Board), to collect and distribute human remains for medical education and research.

The CS for HB 625 provides:

- a new definition section;
- modified procedures for disposition of unclaimed human remains;
- for a funeral director licensed under ch. 497, F.S., to become a legally authorized person, to authorize arterial embalming, and transfer unclaimed remains to the Board, without liability;
- clarification regarding the transfer of eligible veterans, or spouses or dependents of veterans of the United States Armed Forces, United States Reserve Forces or National Guard, to national cemeteries;
- authority for boards of county commissioners to develop policies for the final disposition of unclaimed and indigent remains;
- that the Board be notified at least three business days before, and approve a conveyance of human remains into or out of the state by designated entities;
- criteria for the Board to evaluate requests to convey human remains;
- for the removal of the sunset provision related to submission of affidavits to the Board by entities accredited by the American Association of Museums;
- that non-transplant anatomical donation organizations be accredited by the American Association of Tissue Banks to convey human remains within, into or out of the state;
- that the Board can be a donee of anatomical gifts under ch. 765, F.S.; and
- repeal of s. 406.54, F.S., related to bodies claimed after delivery to the Board.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regulation of the Conveyance of Anatomical Remains

Part II of ch. 406, F.S., regulates the disposition of dead human bodies in the state of Florida. This chapter provides for the transfer of unclaimed bodies to the state Anatomical Board (Board),[1] and from the Board to Florida medical and dental schools, teaching hospitals, medical institutions and health-related teaching programs that require the use of anatomical material for study.[2] The Board is authorized to collect fees to defray expenses, can receive additional public or private moneys for expenses, and can reimburse any person who delivers anatomical remains to the Board.[3] Additionally, the Board is permitted to contract, and is annually audited by the Department of Financial Services (DFS).[4]

The Board is located at the University of Florida College of Medicine Health Science Center,[5] and comprised of representatives from the medical schools in the state.[6] The Board's purpose is to provide cadavers, and parts thereof, to teaching and research programs in Florida. The Board must hold a body for at least 48 hours before it can be used for medical science.[7]

Section 406.56, F.S., provides the Board with the authority to accept a body that has been donated through a will, to be given to a Florida medical or dental school. Such an anatomical gift is provided for in part V, of ch. 765, F.S. These provisions of law outline the specific process for donation, and require that persons who wish to donate their body for transplant or anatomical study memorialize their intent by signing an organ donor card, registering with the online donor database, or completing an advance directive or other document.[8]

The bartering, selling and trading of human remains is prohibited in the state of Florida, punishable by a misdemeanor of the first degree.[9] Additionally, the transmission or conveyance of such anatomical remains outside the state is a first degree misdemeanor.[10] However, a statutory exception exists for recognized Florida medical or dental schools, which allows these institutions to transfer or convey human remains outside the state for research or other specific purposes.

Human remains may be conveyed into and out of the state, for medical education or research purposes, by a person, institution, or organization that has received prior approval from the Board.[11] There is an exception for an entity accredited by the American Association of Museums to convey, in specific circumstances, plastinated anatomical remains into and out of the state for exhibition purposes.[12] This exception sunset on January 1, 2012.[13]

---

[1] Section 406.50, F.S.
[2] The Board is also given the discretionary authority to provide cadavers to recognized associations of licensed embalmers or funeral directors, or the examining boards of medical and dental schools. Section 406.57, F.S.
[3] Section 406.58, F.S.
[4] *Id.*
[5] Section 406.50, F.S. The anatomical board was created by the Legislature at the University of Florida in 1996, by ch. 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.
[6] www.med.ufl.edu/anatbd/, site last visited December 12, 2011.
[7] Section 406.52, F.S.
[8] Section 765.514, F.S.
[9] Section 406.61(1), F.S,.
[10] *Id.*
[11] *Id.*
[12] Section 406.61(2), F.S.
[13] Section 406.61(3), F.S.

Nontransplant Anatomical Donation Organizations

An organization that stores human remains for the purposes of research, rather than transplant, is known in the industry as a nontransplant anatomical donation organization. In medical research and education, the donation of human remains is critical to the advancement of new techniques, and nontransplant anatomical donation organizations are a key component of this market.[14]

The American Association of Tissue Banks

The American Association of Tissue Banks (AATB) is an organization that promulgates industry standards and accredits tissue banks in both the United States and Canada.[15] Membership is voluntary, and the initial accreditation fee is $3,000, with an annual fee that is determined by volume and ranges from $3,250— $75,000.[16] The AATB requires onsite inspections every three years.[17] Currently, the AATB is developing an accreditation standard for nontransplant anatomical donation organizations that is expected to be completed in January 2012.[18]

Effect of Proposed Changes

Section One – Definitions

The CS for HB 625 creates s. 406.49, F.S., a definition section for part II, of ch. 406, F.S. The bill provides a definition of "unclaimed remains." Additionally, the bill transfers the definitions of "anatomical board" and "indigent person" from existing sections of ch. 406, F.S., and provides that "cremated remains," "final disposition," "human remains," "remains" and "legally authorized person" have the same meaning as s. 497.005, F.S, the definition section for ch. 497, F.S., the "Florida Funeral, Cemetery, and Consumer Services Act." Conforming changes are made throughout ch. 406, F.S., to change "disposition" to "final disposition."

Section Two – Unclaimed Remains Disposition

This section of the bill amends s. 406.50, F.S., directing any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at public expense to notify the Board, unless:

- the remains are decomposed or mutilated by wounds;
- an autopsy is performed on the remains;
- the remains contain a contagious disease;
- a legally authorized person objects to use of the remains for medical education or research; or
- the deceased person was a veteran, or the spouse or dependent child of a veteran of the United States Armed Forces, United States Reserve Forces or National Guard, and eligible for burial in a national cemetery.

The bill removes the notification exception for death by crushing. This is because crushed remains likely have limited utility in an educational setting.

---

[14] *See e.g.*, www.nih.gov/news/health/oct2010/nhgri-07.htm, site last accessed December 20, 2011, regarding a federal grant awarded to understand how genetic variation interacts with disease; www.iiam.org/researcherArticles.php, site last accessed December 20, 2011, the published research page for the International Institute for the Advancement of Medicine, using donated tissue for research.

[15] Founded in 1976, the AATB has produced best practice standards for the operation of tissue banks since 1984. The association also provides an educational network for member organizations to encourage the dissemination of new practices. www.aatb.org/About-AATB, site last visited December 12, 2011.

[16] AATB currently accredits 119 tissue banks in the U.S. and Canada. Email from AATB, on file with the House Health and Human Services Access Subcommittee, December 12, 2011. There are currently 12 organizations in Florida that are accredited by the AATB. www.aatb.org/index.asp?bid=15 , site last visited December 12, 2011.

[17] Email from AATB, on file with the House Health and Human Services Access Subcommittee, December 29, 2011.

[18] *Id.*

The bill clarifies existing law requiring determination of a veteran's eligibility for burial in a national cemetery, pursuant to 38 C.F.R. s. 38.620.

The bill provides for a funeral director licensed under ch. 497, F.S., to assume the responsibility of a legally authorized person for unclaimed remains, when no family exists or is available. After 24 hours from the time of death, the funeral director may authorize arterial embalming for the purposes of storage and transfer of the unclaimed remains to the Board. The bill releases a funeral director from liability for damages, when acting in accordance with this subsection.

The bill provides that if the identity of the unclaimed remains cannot be ascertained, the remains may not be:

- cremated;
- donated as an anatomical gift;
- buried at sea; or
- removed from the state.

If the Board does not accept unclaimed remains, the county in which the remains are discovered or where the death occurred is authorized to bury or cremate the entire remains. The bill provides that a board of county commissioners may develop policies and procedures for the final disposition of unclaimed remains by resolution or ordinance.

The bill repeals existing law related to competing claims for the same unclaimed remains by legally authorized persons. Precedence for competing claims to direct disposition of remains is provided for in s. 497.005, F.S, the definition of "legally authorized person."

Section Three – Disposition of Unclaimed Deceased Veterans

This section of the bill provides conforming changes to include the term "final disposition," and updates a reference to the federal regulation for burial eligibility in a national cemetery.

Section Four - Retention of Human Remains before Use; Claim after Delivery to Anatomical Board; Procedures for Unclaimed Remains or Remains of Indigent Persons

The bill substantially rewords s. 406.52, F.S., which relates to the retention of human remains, and a process for reclaiming the remains from the Board. The following changes to current law are made:

- human remains may be embalmed by the Board when received;
- at any point prior to use for medical education or research, a legally authorized person may reclaim the remains from the Board, after payment of the Board's expenses incurred for transporting, embalming and storing the remains;
- the Board is authorized to reject unclaimed or indigent remains for any reason;
- county boards of commissioners are authorized to, by resolution or ordinance, prescribe policies and procedures for the burial or cremation of the unclaimed remains of an indigent person whose remains are found or whose death occurred in the county; and
- funeral directors licensed under ch. 497, F.S., are relieved from liability for burying or cremating these remains, at the written direction of a county board of commissioners.

Additionally, the bill deletes a provision requiring a county to make a reasonable effort to accommodate the preference of a relative for either burial or cremation.

Section Five - Unclaimed Remains of Indigent Person; Exemption from Notice to the Anatomical Board

Section 406.53, F.S., also is substantially reworded by the bill. Notification of the Board at the death of an indigent by counties is changed by removing the exceptions for instances where:

- the death was caused by crushing injuries;
- the deceased had a contagious disease;
- a relative claims the body; or

- a friend or representative of a fraternal organization of which the deceased was a member, or a representative of a charitable or a religious organization, or governmental agency which was providing residential care to the indigent person claims the body for burial and assumes the expense.

The bill adds new exceptions to the requirement for notification of the Board for bodies mutilated by wounds, and for notifications already made and certified by funeral directors, and clarifies that provisions relating to veterans includes the spouse or dependent child of a veteran eligible for burial in a national cemetery.

The bill also removes current law in s. 406.53, F.S., which directs the Department of Health to collect burial fees for remains identified as their clients.[19]

Section Six - Contracts for Delivery of Human Remains after Death Prohibited

The bill amends s. 406.55, F.S., changing the word "body" to "human remains" and rewording the existing statute.

Section Seven - Acceptance of Human Remains under Will

Section 406.56, F.S., is amended to change "the advancement of medical science" to "medical education and research" and reword the existing statute.

Section Eight - Distribution of Human Remains

The bill amends s. 406.57, F.S., allowing accredited colleges of mortuary science, rather than recognized associations of licensed embalmers or funeral directors, to be loaned remains for educational or research purposes.

Section Nine - Fees; Authority to Accept Additional Funds; Annual Audit

The bill amends s. 406.58, F.S., to reflect the changes to s. 406.57, F.S., and eliminates associations as a source of fees to be collected by the Board. The bill also limits the Board's ability to provide reimbursement for the transportation of remains to funeral establishments licensed under ch. 497, F.S.

Section Ten - Institutions Receiving Human Remains

This section contains rewording of s. 406.59, F.S., and removes associations from the list of entities allowed to receive human remains.

Section Eleven - Disposition of Human Remains after Use

This section amends s. 406.60, F.S., and allows the disposal of human remains, or any part thereof, by either the Board, or a cinerator facility licensed under ch. 497, F.S., by cremation when such remains are deemed no longer of value to medical or dental education or research.

Section Twelve - Selling, Buying, Bartering, or Conveying Human Remains Outside or Within State Prohibited; Exceptions; Penalty

The bill amends s. 406.61, F.S., and expands the prohibition on selling buying or conveying human remains outside the state to include bartering and all transactions within the state.

The bill limits the conveyance of human remains in or out of the state for medical research purposes to nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks or accredited medical or dental schools. Current law which limits conveyance to persons,

[19] The Department of Health retains the capacity to assess fees for services, subject to s. 402.33, F.S.

institutions or organizations is struck. The bill also expands permitted uses for medical education or research to include dental education. The bill requires organizations to give three business days notice to the Board prior to conveying human remains. After receipt of the required information, the Board is given three business days to approve or deny a request, or it is deemed approved.

The bill requires specific information to be submitted to the Board by the organization seeking approval to convey human remains:

- the name, physical location and date of the course, conference or seminar, and the organization or facility receiving the remains or specimens, including the physical address and telephone number;
- a description and intended use of the remains or specimens;
- the name, physical address and telephone number of the organization or facility supplying specimen, and handling the transfer of the remains or specimens;
- documentation from legally authorized persons who make an anatomical gift pursuant to s. 765.512, F.S., authorizing its use in medical or dental education or research: if the body is to be segmented or disarticulated, the documentation is to specifically include legally authorized consent, and describe which body parts are to be segmented or disarticulated; an exception to this requirement is made for the conveyance of specimens into the state by nontransplant anatomical donation organizations, which may provide an affidavit that states the organization has the donation and consent forms, and that no specimen has been received from a second party;
- an outline of the security measures in place for maintaining control and safeguarding the remains or specimens; and
- the disposal process for the remains or specimens, once the course, conference, seminar or facility has concluded its use.

The Board is directed to provide a written statement if it denies a request.

The bill also removes a sunset provision regarding submission of affidavits to the Board by entities accredited by the American Association of Museums.

Section 13 - Bodies May be Claimed after Delivery to the Anatomical Board

The bill repeals s. 406.54, F.S., which allowed human remains to be claimed from the Board by friends, members of fraternal, charitable or religious entities, as other provisions of the law provide a process for claiming remains.

Section 14 - Donees; Purposes for which Anatomical Gifts May be Made

The Board is added to s. 765.513, F.S., as an entity that can become a donee of anatomical gifts of whole bodies for medical or dental education or research.

B. SECTION DIRECTORY:

Section 1: Creates s. 406.49, F.S., relating to definitions.
Section 2: Amends s. 406.50, F.S., relating to unclaimed remains; disposition, procedure.
Section 3: Amends s. 406.51, F.S., relating to final disposition of unclaimed deceased veterans; contract requirements.
Section 4: Amends s. 406.52, F.S., relating to retention of human remains before use; claim after delivery to anatomical board; procedures for unclaimed remains of an indigent person.
Section 5: Amends s. 406.53, F.S., relating to unclaimed remains of indigent persons; exemption from notice to the anatomical board.
Section 6: Amends s. 406.55, F.S., relating to contracts for delivery of human remains after death prohibited.
Section 7: Amends s. 406.56, F.S., relating to acceptance of human remains under will.
Section 8: Amends s. 406.57, F.S., relating to distribution of human remains.

Section 9: Amends s. 406.58, F.S., relating to fees; authority to accept additional funds; annual audit.
Section 10: Amends s. 406.59, F.S., relating to institutions receiving human remains.
Section 11: Amends s. 406.60, F.S., relating to disposition of human remains after use.
Section 12: Amends s. 406.61, F.S., relating to selling, buying, bartering, or conveying human remains outside or within state prohibited; exceptions; penalty.
Section 13: Repeals s. 406.54, F.S., relating to claiming of bodies after delivery to anatomical board.
Section 14: Amends s. 765.513, F.S., relating to donees; purposes for which anatomical gifts may be made.
Section 15: Provides 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:

The bill has a direct impact on the private sector. Nontransplant anatomical donation organizations will be required to be accredited by the American Association of Tissue Banks to convey human remains outside and into the state. This will cost each facility required to be accredited. The estimated cost of accreditation is $3,000 initially, and then between $3,250 and $75,000 annually.[20]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

[20] Email from AATB, on file with House Health and Human Services Access Subcommittee, December 29, 2011.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

The Florida Association of Counties has indicated that it supports this bill.[21]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Health & Human Services Access Subcommittee adopted two amendments to HB 625:

Amendment 1 provides that the Board may embalm remains upon receipt.

Amendment 2 provides criteria for the Board to use when evaluating a request to convey remains or specimens:

- name, physical location and date of the course, conference or seminar, of the facility receiving the remains or specimens received;
- a description and intended use of the remains or specimens;
- the name, physical address and telephone number of the organization or facility supplying the remains or specimens, and the organization handling the transfer;
- documentation pursuant to s. 406.61(2)(b), F.S., with an exception made for the conveyance of specimens into the state by nontransplant anatomical donation organizations, which may provide an affidavit that states the organization has the donation and consent forms, and that no specimen has been received from a second party;
- an outline of the security measures for maintaining control and safeguarding the remains or specimens; and
- the disposal process for the remains or specimen(s), once the course, conference, seminar or facility has concluded their use.

The amendment also clarifies that an organization must apply three business days prior to conveyance, and the Board has three business days to approve or deny the request. If the Board does not act within three business days, the request is deemed approved. The Board must provide a written statement with a denial.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

[21] E-mail from Healther Wildermuth, Senior Legislative Advocate, Health & Human Services, Florida Association of Counties, dated January 12, 2012, on file with the Community & Military Affairs Subcommittee.

A bill to be entitled

An act relating to disposition of human remains; creating s. 406.49, F.S.; providing definitions; amending s. 406.50, F.S.; revising procedures for the reporting and disposition of unclaimed remains; prohibiting certain uses or dispositions of the remains of deceased persons whose identities are not known; amending s. 406.51, F.S.; requiring that local governmental contracts for the final disposition of unclaimed remains comply with certain federal regulations; conforming provisions to changes in terminology; conforming a cross-reference; amending s. 406.52, F.S.; revising procedures for the anatomical board's retention of human remains before their use; providing for claims by, and the release of human remains to, legally authorized persons after payment of certain expenses; authorizing county ordinances or resolutions for the final disposition of the unclaimed remains of indigent persons; limiting the liability of certain licensed persons for cremating or burying human remains under certain circumstances; amending s. 406.53, F.S.; revising exceptions from requirements for notice to the anatomical board of the death of indigent persons; deleting a requirement that the Department of Health assess fees for the burial of certain bodies; amending ss. 406.55, 406.56, 406.57, 406.58, and 406.59, F.S.; conforming provisions to changes made by the act; amending s. 406.60, F.S.;

authorizing certain facilities to dispose of human remains by cremation; amending s. 406.61, F.S.; revising provisions prohibiting the selling, buying, or bartering of human remains or the transmitting or conveying of such remains outside the state to include application to transmissions and conveyances within the state; providing penalties; allowing certain accredited schools and organizations to convey human remains in or out of state for medical or research purposes; establishing criteria for the anatomical board to approve the conveyance of human remains; requiring documentation authorizing the use of an anatomical gift for medical or dental education or research purposes; deleting provisions relating to procedures for the conveyance of plastinated human remains into or out of the state pursuant to their scheduled expiration; conforming terminology; repealing s. 406.54, F.S., relating to claims of bodies after delivery to the anatomical board; amending s. 765.513, F.S.; revising the list of donees who may accept anatomical gifts and the purposes for which such a gift may be used; providing an effective date.

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

Section 1. Section 406.49, Florida Statutes, is created to read:

406.49 Definitions.—As used in this part, the term:

(1) "Anatomical board" means the anatomical board of the state headquartered at the University of Florida Health Science Center.

(2) "Cremated remains" has the same meaning as in s. 497.005.

(3) "Final disposition" has the same meaning as in s. 497.005.

(4) "Human remains" or "remains" has the same meaning as in s. 497.005.

(5) "Indigent person" means a person whose family income does not exceed 100 percent of the current federal poverty guidelines prescribed for the family's household size by the United States Department of Health and Human Services.

(6) "Legally authorized person" has the same meaning as in s. 497.005.

(7) "Unclaimed remains" means human remains that are not claimed by a legally authorized person, other than a medical examiner or the board of county commissioners, for final disposition at the person's expense.

Section 2. Section 406.50, Florida Statutes, is amended to read:

406.50 Unclaimed ~~dead bodies or human~~ remains; disposition, procedure.—

(1) A person or entity that comes ~~All public officers, agents, or employees of every county, city, village, town, or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons~~

~~coming~~ into possession, charge, or control of unclaimed ~~any dead human body or~~ remains that ~~which are unclaimed or which~~ are required to be buried or cremated at public expense shall ~~are hereby required to notify,~~ immediately notify~~,~~ the anatomical board, unless:

(a) The unclaimed remains are decomposed or mutilated by wounds;

(b) An autopsy is performed on the remains;

(c) The remains contain ~~whenever any such body, bodies, or remains come into its possession, charge, or control. Notification of the anatomical board is not required if the death was caused by crushing injury, the deceased had~~ a contagious disease;

(d) A legally authorized person~~, an autopsy was required to determine cause of death, the body was in a state of severe decomposition, or a family member~~ objects to use of the remains ~~body~~ for medical education or ~~and~~ research; or

(e) The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery or was the spouse or dependent child of a veteran eligible for burial in a national cemetery.

(2)~~(1)~~ Before the final disposition of unclaimed remains, the person or entity in charge or control of the ~~dead body or human~~ remains shall make a reasonable effort to ~~determine~~:

(a) Determine the identity of the deceased person and ~~shall further make a reasonable effort to~~ contact any relatives of the ~~such~~ deceased person.

(b) Determine whether ~~or not~~ the deceased person is eligible under 38 C.F.R. s. 38.620 for ~~entitled to~~ burial in a national cemetery as a veteran of the armed forces and, if eligible ~~so~~, to cause the deceased person's remains or cremated remains to be delivered to a national cemetery ~~shall make arrangements for such burial services in accordance with the provisions of 38 C.F.R~~.

For purposes of this subsection, "a reasonable effort" includes contacting the National Cemetery Scheduling Office, the county veterans service office, or the regional office of the United States Department of Veterans Affairs.

(3) ~~(2)~~ Unclaimed remains ~~Such dead human bodies as described in this chapter~~ shall be delivered to the anatomical board as soon as possible after death. When no family exists or is available, a funeral director licensed under chapter 497 may assume the responsibility of a legally authorized person and may, after 24 hours have elapsed from the time of death, authorize arterial embalming for the purposes of storage and delivery of unclaimed remains to the anatomical board. A funeral director licensed under chapter 497 is not liable for damages under this subsection.

(4) The remains of a deceased person whose identity is not known may not be cremated, donated as an anatomical gift, buried at sea, or removed from the state.

(5) If the anatomical board does not accept the unclaimed remains, the county commission, or its designated county department, of the county in which the remains are found or the

death occurred may authorize and arrange for the burial or cremation of the entire remains. A board of county commissioners may, in accordance with applicable laws and rules, prescribe policies and procedures for final disposition of unclaimed remains by resolution or ordinance.

(6) ~~(3)~~ This part does not ~~Nothing herein shall~~ affect the right of a medical examiner to hold human ~~such dead body or~~ remains for the purpose of investigating the cause of death or~~, nor shall this chapter affect~~ the right of any court of competent jurisdiction to enter an order affecting the disposition of such ~~body or~~ remains.

~~(4) In the event more than one legally authorized person claims a body for interment, the requests shall be prioritized in accordance with s. 732.103.~~

~~For purposes of this chapter, the term "anatomical board" means the anatomical board of this state located at the University of Florida Health Science Center, and the term "unclaimed" means a dead body or human remains that is not claimed by a legally authorized person, as defined in s. 497.005, for interment at that person's expense.~~

Section 3. Section 406.51, Florida Statutes, is amended to read:

406.51 Final disposition of unclaimed deceased veterans; contract requirements.—Any contract by a local governmental entity for the final disposition ~~disposal~~ of unclaimed ~~human~~ remains must provide for compliance with s. 406.50(2) ~~(1)~~ and

require that the procedures in 38 C.F.R. s. 38.620, relating to disposition of unclaimed deceased veterans, are ~~be~~ followed.

Section 4. Section 406.52, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 406.52, F.S., for present text.)

406.52 Retention of human remains before use; claim after delivery to anatomical board; procedures for unclaimed remains of indigent persons.—

(1) The anatomical board shall keep in storage all human remains that it receives for at least 48 hours before allowing their use for medical education or research. Human remains may be embalmed when received. The anatomical board may, for any reason, refuse to accept unclaimed remains or the remains of an indigent person.

(2) At any time before their use for medical education or research, human remains delivered to the anatomical board may be claimed by a legally authorized person. The anatomical board shall release the remains to the legally authorized person after payment of the anatomical board's expenses incurred for transporting, embalming, and storing the remains.

(3)(a) A board of county commissioners may, in accordance with applicable laws and rules, prescribe policies and procedures for the burial or cremation of the entire unclaimed remains of an indigent person whose remains are found, or whose death occurred in the county, by resolution or ordinance.

(b) A person licensed under chapter 497 is not liable for any damages resulting from cremating or burying such human

remains at the written direction of the board of county commissioners or its designee.

Section 5. Section 406.53, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 406.53, F.S., for present text.)

406.53 Unclaimed remains of indigent person; exemption from notice to the anatomical board.—A county commission or designated county department that receives a report of the unclaimed remains of an indigent person, notwithstanding s. 406.50(1), is not required to notify the anatomical board of the remains if:

(1) The indigent person's remains are decomposed or mutilated by wounds or if an autopsy is performed on the remains;

(2) A legally authorized person or a relative by blood or marriage claims the remains for final disposition at his or her expense or, if such relative or legally authorized person is also an indigent person, in a manner consistent with the policies and procedures of the board of county commissioners of the county in which the remains are found or the death occurred;

(3) The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery or was the spouse or dependent child of a veteran eligible for burial in a national cemetery; or

(4) A funeral director licensed under chapter 497 certifies that the anatomical board has been notified and either

accepted or declined the remains.

Section 6. Section 406.55, Florida Statutes, is amended to read:

406.55 Contracts for delivery of human remains ~~body~~ after death prohibited.—The anatomical board may not enter ~~is specifically prohibited from entering~~ into any contract, oral or written, that provides for ~~whereby~~ any sum of money to ~~shall~~ be paid to any living person in exchange for ~~which~~ the delivery of that person's remains ~~body of said person shall be delivered~~ to the anatomical board when the ~~such living~~ person dies.

Section 7. Section 406.56, Florida Statutes, is amended to read:

406.56 Acceptance of human remains ~~bodies~~ under will.—If any person ~~being~~ of sound mind executes ~~shall execute~~ a will leaving his or her remains ~~body~~ to the anatomical board for ~~the advancement of~~ medical education or research ~~science~~ and the ~~such~~ person dies within the geographical limits of the state, the anatomical board may ~~is hereby empowered to~~ accept and receive the person's remains ~~such body~~.

Section 8. Section 406.57, Florida Statutes, is amended to read:

406.57 Distribution of human remains ~~dead bodies~~.—The anatomical board or its duly authorized agent shall take and receive human remains ~~the bodies~~ delivered to it as provided in ~~under the provisions of~~ this chapter and shall:

(1) Distribute the remains ~~them~~ equitably ~~to and~~ among the medical and dental schools, teaching hospitals, medical institutions, and health-related teaching programs that require

cadaveric material for study; or

(2) Loan the remains ~~same may be loaned for examination or study purposes~~ to accredited colleges of mortuary science ~~recognized associations of licensed embalmers or funeral directors,~~ or medical or dental examining boards for educational or research purposes ~~at the discretion of the anatomical board~~.

Section 9. Section 406.58, Florida Statutes, is amended to read:

406.58 Fees; authority to accept additional funds; annual audit.—

(1) The anatomical board may:

(a) Adopt ~~is empowered to prescribe~~ a schedule of fees to be collected from the institutions ~~institution or association~~ to which the human remains ~~bodies, as described in this chapter,~~ are distributed or loaned to defray the costs of obtaining and preparing the remains ~~such bodies~~.

(b) ~~(2) The anatomical board is hereby empowered to~~ Receive money from public or private sources, in addition to the fees collected from the institutions ~~institution or association~~ to which human remains ~~the bodies~~ are distributed, to be used to defray the costs of embalming, handling, shipping, storing, cremating, and otherwise ~~storage, cremation, and other costs relating to the~~ obtaining and using the remains. ~~use of such bodies as described in this chapter; the anatomical board is empowered to~~

(c) Pay the reasonable expenses, as determined by the anatomical board, incurred by a funeral establishment licensed under chapter 497 transporting unclaimed human remains ~~any~~

~~person delivering the bodies as described in this chapter~~ to the anatomical board. ~~and is further empowered to~~

(d) Enter into contracts and perform such other acts ~~as are~~ necessary for ~~to~~ the proper performance of its duties. ~~;~~

(2) The Department of Financial Services shall keep and annually audit a complete record of all fees and other financial transactions of the ~~said~~ anatomical board and shall annually submit ~~be kept and audited annually by the Department of Financial Services, and~~ a report of the ~~such~~ audit ~~shall be made annually~~ to the University of Florida.

Section 10. Section 406.59, Florida Statutes, is amended to read:

406.59 Institutions receiving human remains ~~bodies~~. ~~—~~A ~~No~~ university, school, college, teaching hospital, or institution may not~~, or association shall be allowed or permitted to~~ receive any human remains from the anatomical board ~~such body or bodies as described in this chapter~~ until its facilities are ~~have been~~ inspected and approved by the anatomical board. Human remains ~~All such bodies~~ received by such university, school, college, teaching hospital, or institution may not~~, or association shall~~ be used for any ~~no other~~ purpose other than ~~the promotion of~~ medical education or research ~~science~~.

Section 11. Section 406.60, Florida Statutes, is amended to read:

406.60 Disposition of human remains ~~bodies~~ after use. ~~—At any time~~ When human remains ~~any body or bodies or part or parts of any body or bodies, as described in this chapter, shall~~ have been used for, and are not ~~deemed~~ of any ~~no~~ further value to,

medical or dental education or research ~~science~~, ~~then~~ the anatomical board or a cinerator facility licensed under chapter 497 ~~person or persons having charge of said body or parts of said body~~ may dispose of the remains or any part thereof by cremation.

Section 12. Section 406.61, Florida Statutes, is amended to read:

406.61 Selling, buying, bartering, or conveying human remains ~~bodies~~ outside or within state prohibited; exceptions;~~,~~ penalty.—

(1) Any person who sells, ~~or~~ buys, or barters human remains or any part thereof, ~~body or parts of bodies as described in this chapter~~ or any person except a recognized Florida medical or dental school who transmits or conveys or causes to be transmitted or conveyed such remains ~~body~~ or part thereof ~~parts of bodies~~ to any place outside or within this state, commits a misdemeanor of the first degree, punishable as provided in s. ~~ss.~~ 775.082 or s. ~~and~~ 775.083. However, this chapter does not prohibit the anatomical board from transporting human remains ~~specimens~~ outside or within the state for educational or scientific purposes or prohibit the transport of human remains, any part of such remains ~~bodies, parts of bodies~~, or tissue specimens for purposes ~~in furtherance~~ of lawful examination, investigation, or autopsy conducted pursuant to s. 406.11.

(2) Any nontransplant anatomical donation organization accredited by the American Association of Tissue Banks or an accredited medical or dental college or university may convey

human remains ~~person, institution, or organization that conveys bodies~~ or any part thereof within, ~~parts of bodies~~ into, or out of the state for medical or dental education or research purposes. The organization or accredited medical or dental college or university must ~~shall~~ notify the anatomical board at least 3 business days before the entity intends to convey ~~of~~ such remains ~~intent~~ and must receive approval from the anatomical board before conveyance. If the 3rd business day falls on a weekend or legal holiday, the next business day is deemed to be the 3rd business day. The anatomical board shall require the following information to be submitted by the entity before approval:

(a) The name, physical location, and date of the course, conference, or seminar and the organization or facility receiving the remains or specimens, including the physical address and telephone number.

(b) A description and intended use of the remains or specimens.

(c) The name, physical address, and telephone number of the organization or facility supplying specimens and handling the transfer of the remains or specimens.

(d) Documentation from a legally authorized person who may make an anatomical gift pursuant to s. 765.512 authorizing its use in medical or dental education or research. If the remains or any part thereof is to be segmented or disarticulated, such documentation must include the legally authorized person's specific consent and must describe any part of the remains that is to be segmented or disarticulated. An exception to the

documentation requirements of this paragraph may be made for specimens being shipped into the state, in which case an affidavit may be submitted by an accredited nontransplant anatomical organization as provided in this section stating that the organization has donation and consent forms on file for the remains from which each specimen has been provided specifically authorizing segmentation or disarticulation of the remains. The affidavit must also state that no specimen being shipped into the state has been received from a second party.

(e) An outline of the security measures in place for maintaining control of and safeguarding the remains or specimens at the organization or facility before, during, and after the course, conference, or seminar.

(f) The procedures for disposal of the remains or specimens after the course, conference, or seminar is concluded or after the organization or facility receiving the remains or specimens has completed their use, including the name, address, and telephone number of the entity responsible for performing cremation.

The anatomical board shall grant or deny requests for approval within 3 business days after receipt of the required information. Failure to provide such information is grounds for denial of the request. If the request is not approved or denied within 3 business days after receipt, it is deemed approved. If the 3rd business day falls on a weekend or legal holiday, the next business day is deemed to be the 3rd business day. If the

anatomical board denies a request, it must provide a written statement of the reasons for denial.

(3) ~~(2)~~ Any entity accredited by the American Association of Museums may convey plastinated human remains ~~bodies~~ or any part thereof within, ~~parts of bodies~~ into, or out of the state for exhibition and public educational purposes without the consent of the anatomical board if the accredited entity:

(a) Notifies the anatomical board of the conveyance and the duration and location of the exhibition at least 30 days before the intended conveyance.

(b) Submits to the anatomical board a description of the remains ~~bodies~~ or any part thereof ~~parts of bodies~~ and the name and address of the company providing the remains ~~bodies~~ or any part thereof ~~parts of bodies~~.

(c) Submits to the anatomical board documentation that the remains or each part thereof ~~body~~ was donated by the decedent or his or her next of kin for purposes of plastination and public exhibition, or, in lieu of such documentation, an affidavit stating that the remains or each part thereof ~~body~~ was donated directly by the decedent or his or her next of kin for such purposes to the company providing the remains ~~body~~ and that such company has a donation form on file for the remains ~~body~~.

~~(3) Notwithstanding paragraph (2)(c) and in lieu of the documentation or affidavit required under paragraph (2)(c), for a plastinated body that, before July 1, 2009, was exhibited in this state by any entity accredited by the American Association of Museums, such an accredited entity may submit an affidavit to the board stating that the body was legally acquired and that~~

~~the company providing the body has acquisition documentation on file for the body. This subsection expires January 1, 2012.~~

Section 13. Section 406.54, Florida Statutes, is repealed.

Section 14. Subsection (1) of section 765.513, Florida Statutes, is amended to read:

765.513 Donees; purposes for which anatomical gifts may be made.—

(1) The following persons or entities may become donees of anatomical gifts of bodies or parts of them for the purposes stated:

(a) Any procurement organization or accredited medical or dental school, college, or university for education, research, therapy, or transplantation.

(b) Any individual specified by name for therapy or transplantation needed by him or her.

(c) The anatomical board as defined in s. 406.49(1) for donation of the whole body for medical or dental education or research.

Section 15. This act shall take effect July 1, 2012.

Amendment No.

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: Community & Military Affairs Subcommittee

Representative Roberson, K. offered the following:

Amendment

Remove line 339 and insert:

purposes. A nontransplant anatomical donation organization need not be accredited as required by this section until July 1, 2013. The organization or accredited medical or dental

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 673 Preference in Award of State Contracts
SPONSOR(S): Governmental Operations Subcommittee; Brodeur and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	8 Y, 3 N, As CS	Meadows	Williamson
2) Community & Military Affairs Subcommittee		Duncan pdd	Hoagland
3) Government Operations Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Current law authorizes state agencies, counties, municipalities, school districts, and other political subdivisions to award a preference to a Florida based business for the purchase of personal property, through competitive solicitation, when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state. The reciprocal preference law is discretionary and may be used by a procuring entity to award a preference to the lowest responsible and responsive vendor having a principal place of business in Florida. The preference available is limited to the preference provided for by an out-of-state bidder's home state. Florida state and local agencies can only apply a preference against a bidder from another state if, and to the extent that, the other state imposes a preference on Florida bidders.

The bill expands the reciprocal preference provided in current law to include the purchase of construction services. It also provides that for a competitive solicitation in which payment is to be made, in whole or in part, from funds appropriated by the state, Florida's reciprocal preference preempts and supersedes any local ordinance or regulation based upon specified criteria. Finally, the bill provides that, other than the requirements imposed for solicitations involving state funds, a county, municipality, school district, or other political subdivision of the state is not prevented from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

The bill does not appear to have a fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Procurement of Construction Services

Chapter 255, F.S., regulates construction services[1] for public property and publically owned buildings. The Department of Management Services is responsible for establishing, through administrative rules, the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state.[2]

The Florida Building Code[3] and the Florida Fire Prevention Code[4], govern the design, construction, erection, alteration, modification, repair, and demolition of all public and private buildings. The codes must be enforced by local jurisdictions or local enforcement districts unless specifically exempted.[5]

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[6] In addition, such projects must be advertised in the Florida Administrative Weekly at least 21 days prior to the bid opening.[7,8] Counties, municipalities, special districts[9], or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of $300,000.[10]

Florida Preference to State Residents

Florida law provides a preference that requires contracts for construction projects funded by money appropriated with state funds to contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal

---

[1] As defined in s. 255.072(2), F.S., "construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term "construction services" does not include contracts or work performed for the Department of Transportation.

[2] Section 255.29, F.S.

[3] *See* s. 553.73, F.S.

[4] *See* s. 633.0215, F.S.

[5] *See* s. 255.31(1), F.S.

[6] *See* 60D-5.0073, F.A.C.; *see also* s. 255.0525, F.S.

[7] Section 255.0525(1), F.S.

[8] State construction projects that are projected to exceed $500,000 are required to be published 30 days prior to bid opening in the Florida Administrative Weekly, and at least once in a newspaper of general circulation in the county where the project is located. *See* s. 255.0525, F.S.(1).

[9] As defined in s. 189.403(1), F.S., "special district" means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts must be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

[10] *See* s. 255.20(1), F.S.

qualifications[11] to those of non-residents.[12] If a construction contract is funded by local funds, the contract is not required to contain such provision.[13]

Procurement of Personal Property and Services

Chapter 287, F.S., regulates state agency[14] procurement of personal property and services. The Department of Management Services is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[15] The Division of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[16]

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposal," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.[17]

Current law requires contracts for commodities or contractual services in excess of $35,000 to be procured utilizing a competitive solicitation process.[18,19]

Local governmental units are not subject to the provisions of Chapter 287, F.S. Local governmental units may look to Chapter 287, F.S., for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

Florida In-state Preference

Florida law authorizes state agencies, counties[20], municipalities, school districts, and other political subdivisions to use a preference in the award of contracts for the purchase of personal property through competitive solicitation when the lowest responsible and responsive bid, proposal, or reply is

---

[11] Section 255.099(1)(a), F.S., defines "substantially equal qualifications" as, the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

[12] Section 255.099(1), F.S.

[13] *Id.*

[14] As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

[15] *See* ss. 287.032 and 287.042, F.S.

[16] Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.

[17] *See* ss. 287.012(6) and 287.057, F.S.

[18] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold provided in s. 287.017, F.S., to be competitively bid.

[19] As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

[20] Thirty three of the 67 Florida counties currently have a local procurement preference. (Testimony from Representative Brodeur, Government Operations Subcommittee meeting, January 18, 2012.)

by a vendor whose principal place of business is another state, or political subdivision of that state.[21] The reciprocal preference is discretionary and may be used by a procuring entity to award a preference to the lowest responsible and responsive vendor having a principal place of business in this state.[22] The preference available is limited to the preference provided for by an out-of-state bidder's home state.[23] Florida state and local agencies can only apply a preference against a bidder from another state if, and to the extent that, the other state imposes a preference on Florida bidders.[24]

If a solicitation to purchase personal property provides for the granting of a preference, any vendor whose principal place of business is not in Florida must submit with the bid, proposal, or reply a written opinion of an attorney, licensed in the vendor's state, explaining the preferences that the vendor's state provides to vendors for public contracts.[25]

Florida's preference law does not apply to transportation projects for which federal aid funds are available.[26]

Effect of Proposed Changes

The bill expands the reciprocal preference in current law to include the purchase of construction services.

The bill requires the procuring entity to disclose in its solicitation documents if state funds are being used in the payment, and the amount of the funds or the percentage of the funds compared to the anticipated total cost of the personal property or construction services. For a competitive solicitation in which payment is to be made, in whole or in part, from funds appropriated by the state, the bill provides that Florida's reciprocal preference preempts and supersedes any local ordinance or regulation that grants a preference to a vendor based upon the following specified criteria:

- The vendor maintaining an office or place of business within a particular jurisdiction;
- The vendor hiring employees or subcontractors from within a specific jurisdiction; or
- The vendor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The bill provides that, other than the requirements imposed for solicitations involving state funds, a county, municipality, school district, or other political subdivision of the state is not prevented from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

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

B. SECTION DIRECTORY:

Section 1 creates s. 255.0991, F.S., relating to preference to Florida business.

Section 2 amends s. 287.084, F.S., relating to preference to Florida business.

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

---

[21] Section 287.084(1), F.S.
[22] *Id.*
[23] *Id.*
[24] Currently, 38 states offer reciprocal procurement preferences. It is unknown whether the preferences are for commodities, construction, or both. *See* Oregon State Procurement Office, *Reciprocal Preference Information*, available online at https://www.oregon.gov/DAS/SSD/SPO/reciprocal.shtml (last visited on January 18, 2012).
[25] Section 287.084(2), F.S.
[26] *See* s. 287.084(1), F.S. The Common Grant Rule issued by the U.S. Department of Transportation, 49 C.F.R.s. 18.36(c)(2), prohibits the use of state or local geographical preferences in the evaluation of bids or proposals for projects involving federal funds.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could result in more business being awarded to Florida based companies as a result of the new preference for construction services.

D. FISCAL COMMENTS:

There is no known fiscal impact on local governments; however, there may be an operational impact as the statute would preempt local ordinances or regulations in certain circumstances.[27]

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 counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties or municipalities.

2. Other:

The establishment of local preference laws could implicate the Equal Protection Clause and the Commerce Clause of the United States Constitution.

The Equal Protection Clause

The United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction, the equal protection of law."[28] The in-state preference provisions in this bill could constitute an equal protection violation. If such legislation is challenged, the court would use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.[29] Under

---

[27] Substantive Analysis of HB 427, Department of Management Services, February 24, 2011 (on file with the Government Operations Subcommittee). HB 673 is identical to HB 427 which was filed during the 2011 Legislative Session.

[28] U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

[29] *Nordlinger v. Hahn,* 505 U.S. 1, 33-34 (1992) (stating that a "classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose.")

the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.[30]

The Commerce Clause

The United States Constitution provides that Congress shall have the power "to regulate commerce . . . among the states."[31] The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.[32]

Courts have used a two-tiered analysis to determine whether a statutory scheme violates the Commerce Clause:

1. "If a statute 'directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,' the court may declare it unconstitutional as applied, without further inquiry."[33]
2. ". . . if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state's interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits."[34]

However, when a state or local government is acting as a "market participant" rather than a "market regulator," it is not subject to the limitations of the Commerce Clause.[35] A state is considered to be a "market participant" when it is acting as an economic actor such as a purchaser of goods and services.[36]

B. RULE-MAKING AUTHORITY:

The bill does not appear to require additional rulemaking authority; however, the Department of Management Services may need to adopt rules for purposes of implementing the changes to the reciprocal preference found in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law does not provide for a definition of "principle place of business." There are two competing tests to determine where a company's principle place of business is located.

The first is the "substantial predominance" test, which analyzes the following criteria: the location of its employees, where sales took place, its production activities, its tangible property, its sources of income, the value of land owned and leased, and the replacement cost of assets located in a certain state.[37]

The second test is the "nerve center test." Under this test, a company's principle place of business refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities.[38]

The Department of Management Services has previously utilized the "nerve center" test to determine a company's principle place of business. In a 2010 memorandum to purchasing directors, the department indicated it intended to use the nerve center test when applying the Florida based business

---

[30] *Id.*

[31] U.S. CONST. art. I, s. 8, cl. 3.

[32] *See Gibbons v. Ogden*, 22 U.S. 1 (1824).

[33] *National Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1201, 1211(Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579).

[34] *Id.* (citations omitted); *See Bainbridge v. Turner*, 311 F.3d 1104, 1108-1109.

[35] See *White v. Massachusetts Council of Constr. Employers*, 460 U.S. 204, 204 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).

[36] *Id.*

[37] *Ghaderi v. United Airlines, Inc.*, 136 F.Supp.2d 1041, 1044-46 (N.D. Cal. 2001). *See also, Diaz v. Target Corp.*, No. 09-3477, 2009 U.S.Dist. LEXIS 62000 (C.D. Cal. July 2, 2009); *Castaneda v. Costco Wholesale Corp.*, No. 08-7599, 2009 U.S. Dist. LEXIS 3595 (C.D. Cal. Jan. 9, 2009).

[38] *Hertz Corp. v. Friend et al.*, 130 S.Ct. 1181 (2010).

preference found in section 49 of Chapter 2010-151, Laws of Florida, to both state term contracts and other department issued solicitations.[39]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Government Operations Subcommittee adopted a strike-all amendment and passed HB 673 as a committee substitute. The amendment moves the construction services in-state preference from Chapter 287, F.S., which relates to personal property and services, to Chapter 255, F.S., which regulates construction services.

The strike-all amendment also corrects a drafting error in the title of the bill.

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

[39] Memorandum to Purchasing Directors, Department of Management Services, September 2, 2010 at 3 (on file with the Government Operations Subcommittee).

A bill to be entitled

An act relating to preference in award of governmental entity contracts; creating s. 255.0991, F.S.; authorizing an agency, county, municipality, school district, or other political subdivision of the state to provide preferential consideration to a Florida business in awarding competitively bid contracts to purchase construction services; providing that for specified competitive solicitations the authority to grant preference supersedes any local ordinance or regulation which grants preference to specified vendors; requiring a county, municipality, school district, or other political subdivision of the state to make specified disclosures in competitive solicitation documents; amending s. 287.084, F.S., relating to preference to Florida businesses in awarding competitively bid contracts to purchase personal property; providing that for specified competitive solicitations the authority to grant preference supersedes any local ordinance or regulation which grants preference to specified vendors; requiring a county, municipality, school district, or other political subdivision of the state to make specified disclosures in competitive solicitation documents; providing an effective date.

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

Section 1. Section 255.0991, Florida Statutes, is created to read:

255.0991 Preference to Florida businesses.—

(1)(a) When an agency, county, municipality, school district, or other political subdivision of the state is required to make purchases of construction services through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such construction services to a person whose principal place of business is in such state, then the agency, county, municipality, school district, or other political subdivision of this state may award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. However, this section does not apply to transportation projects for which federal aid funds are available.

(b)1. For a competitive solicitation in which payment for the construction services is to be made in whole or in part from funds appropriated by the state, this section preempts and supersedes any local ordinance or regulation that grants preference to a vendor based upon:

a. The vendor maintaining an office or place of business within a particular local jurisdiction;

b. The vendor hiring employees or subcontractors from within a particular local jurisdiction; or

c. The vendor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

2. In any competitive solicitation subject to this section, a county, municipality, school district, or other political subdivision shall disclose in the solicitation document whether payment will come from funds appropriated by the state and, if known, the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the construction services.

3. Except as provided in subparagraph 1., this section does not prevent a county, municipality, school district, or other political subdivision of this state from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

(2) If a solicitation provides for the granting of such preference as is provided in this section, any vendor whose principal place of business is outside the State of Florida must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

Section 2. Subsection (1) of section 287.084, Florida Statutes, is amended to read:

287.084 Preference to Florida businesses.—

(1)(a) When an agency, county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, county, municipality, school district, or other political subdivision of this state may award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. However, this section does not apply to transportation projects for which federal aid funds are available.

(b)1. For a competitive solicitation in which payment for the personal property is to be made in whole or in part from funds appropriated by the state, this section preempts and supersedes any local ordinance or regulation that grants preference to a vendor based upon:

a. The vendor maintaining an office or place of business within a particular local jurisdiction;

b. The vendor hiring employees or subcontractors from within a particular local jurisdiction; or

c. The vendor's prior payment of local taxes, assessments,

or duties within a particular local jurisdiction.

2. In any competitive solicitation subject to this section, a county, municipality, school district, or other political subdivision shall disclose in the solicitation document whether payment will come from funds appropriated by the state and, if known, the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the personal property.

3. Except as provided in subparagraph 1., this section does not prevent a county, municipality, school district, or other political subdivision of this state from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

Committee/Subcommittee hearing bill: Community & Military Affairs Subcommittee

Representative Brodeur offered the following:

Amendment (with title amendment)

Remove lines 32-126 and insert:

(1)(a) With respect to a construction project in which 10 percent or more of the project is funded using state capital outlay funds, when an agency, county, municipality, school district, or other political subdivision of the state is required to make purchases of construction services through competitive solicitation for such project and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such construction services to a person whose principal place of business is in such state, then the agency, county, municipality, school district, or other political subdivision of this state may award a preference to the lowest

responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. However, this section does not apply to transportation projects for which federal aid funds are available.

(b)1. For a competitive solicitation in which payment for the construction services is to be made in whole or in part from funds appropriated by the state, this section preempts and supersedes any local ordinance or regulation that grants preference to a vendor based upon:

a. The vendor maintaining an office or place of business within a particular local jurisdiction;

b. The vendor hiring employees or subcontractors from within a particular local jurisdiction; or

c. The vendor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

2. In any competitive solicitation subject to this section, a county, municipality, school district, or other political subdivision shall disclose in the solicitation document whether payment will come from funds appropriated by the state and, if known, the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the construction services.

3. Except as provided in subparagraph 1., this section does not prevent a county, municipality, school district, or other political subdivision of this state from awarding a

contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

(2) If a solicitation provides for the granting of such preference as is provided in this section, any vendor whose principal place of business is outside the State of Florida must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

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

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

Remove lines 7-25 and insert:

business in awarding specified competitively bid contracts to purchase construction services; providing that for specified competitive solicitations the authority to grant preference supersedes any local ordinance or regulation which grants preference to specified vendors; requiring a county, municipality, school district, or other political subdivision of the state to make specified disclosures in competitive solicitation documents; providing an effective date.

Amendment No. 1 to Amendment 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: Community & Military Affairs Subcommittee

Representative Brodeur offered the following amendment to the amendment by Representative Brodeur:

Amendment

Remove line 7 and insert:

(1)(a) With respect to a construction project in which 51

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1319 County Boundary Lines
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Nelson	Hoagland
2) Finance & Tax Committee			
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.

HB 1319 proposes to relocate 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. Beau Rivage's 550-plus residents all have Stuart, Florida, addresses, and can only travel into the rest of the 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. 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. *See*, the III. COMMENTS, C. DRAFTING ISSUES OR OTHER COMMENTS, portion of the analysis for the St. Lucie County Board of County Commissioners' remarks regarding this issue.

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.

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

---

[1] The Local Government Formation Manual, Community & Military Affairs Subcommittee, Florida House of Representatives, 2012.
[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.

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., to alter the boundary lines for Martin County, Florida.

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

Section 3: Creates an unnumbered section of law that transfers public roads and rights-of-way.

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. Typical allocation formulas include:

Constitutional Fuel Tax

$\frac{1}{4} \times \frac{\text{County Area}}{\text{State Area}}$

$\frac{1}{4} \times \frac{\text{County Population}}{\text{State Population}}$

$\frac{1}{2} \times \frac{\text{Total Tax Collected Countywide during the previous fiscal year}}{\text{Total Tax Collected Statewide during the previous fiscal year}}$

County Fuel Tax:

¼ x $\frac{\text{County Area}}{\text{State Area}}$

¼ x $\frac{\text{County Population}}{\text{State Population}}$

½ x $\frac{\text{Total Tax Collected on County Retail Sales and Use in the Prior FY}}{\text{Total Tax Collected Statewide on Retail Sales and Use in the Prior FY}}$

County Revenue Sharing Program:

$$\text{Apportionment Factor} = \frac{\text{County Population Factor} + \text{Unincorporated County Population Factor} + \text{County Sales Tax Collection Factor}}{3}$$

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.[3]

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, but will be within the jurisdiction of Martin County. According to the 2010 Florida County Ad Valorem Tax Profile, Martin County had an estimated population of 143,777 and a taxable value of $17,492,910,077.Total taxes levied per capita were $947. St. Lucie County had an estimated 272,782 residents and a taxable value of $15,165,938,592. Total taxes levied per capita were $453.[4]

Ad valorem millage rates in the two counties for 2010 were as follows:[5]

St. Lucie County		Martin County	
County	6.9331	County	5.6076
School	8.1770	School	6.9560
Special Districts	3.6909	Special Districts	1.0108

[3] *Ibid.*
[4] http://edr.state.fl.us/Content/local-government/data/data-a-to-z/index.cfm.
[5] http://edr.state.fl.us/Content/area-profiles/county/index.cfm

D. FISCAL COMMENTS:

No fiscal information regarding this proposal has been analyzed.

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.

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. *Department of Business Regulation v. Classic Mile, Inc.,* 541 So. 2d 1155 (Fla. 1989) quoting from *State ex rel. Landis v. Harris,* 120 Fla. 555, 1633 So. 237 (Fla. 1934).

A "special law" is defined as a special or local law.[6] Section 10, Art. III of the State Constitution, requires a special law to be noticed as provided by general law, [7] unless the bill is conditioned on a referendum of the electors of the area affected. 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 [8] published notices of the proposed general bill on October 19, 2011, in the *Stewart 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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The Sponsor of the bill has advised that the legal description for Martin County is inaccurate, and will be corrected.

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):[9]

---

[6] Section 12(g), Art. X of the State Constitution.
[7] *See,* s. 11.02, F.S.
[8] Senator Joe Negron, sponsor of SB 800.
[9] Letter from chairman of the St. Lucie County Board of County Commissioners to Representative Gayle Harrell and Senator Joe Negron dated January 27, 2012.

- 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. 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. [10]

House Local Bill Policy

As noted in III. COMMENTS, A. CONSTITUTIONAL ISSUES, 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; (2) the legislative delegation must hold a local public hearing in the area affected; 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. House Local Bill Policy also requires that no local bill be considered by a committee or subcommittee without a completed Economic Impact Statement.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[10] January 25, 2012, e-mail from Kate Parmelee, Intergovernmental and Grants Coordinator, Martin County Board of County Commissioners.

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 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 of 45 degrees north, 16 minutes east, a distance of 2,355 feet, more or less, to a point intersecting with the south 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 south 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 south shore

of the north fork of the St. Lucie River and the municipal boundary line of the City of Port St. Lucie, 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 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.

Amendment No.

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: Community & Military Affairs Subcommittee

Representative Harrell offered the following:

Amendment

Remove lines 28-117 and insert:

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 <u>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-</u>

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1443 Local Administrative Action to Abate Public Nuisances and Criminal Gang Activity
SPONSOR(S): Criminal Justice Subcommittee; Frishe and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Krol	Cunningham
2) Community & Military Affairs Subcommittee		Gibson	Hoagland
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 893.138, F.S., authorizes counties and municipalities to create an administrative board to hear complaints regarding certain public nuisances. These nuisances may include places or premises that have been used:

- on more than two occasions within a 6-month period, as the site of a violation relating to prostitution;
- on more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- on one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- by a criminal gang for the purpose of conducting criminal gang activity;
- on more than two occasions within a 6-month period, as the site of dealing in stolen property.

If the administrative board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt a procedure considered to be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:

- The maintaining of the nuisance;
- The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

An order entered expires after 1 year or earlier if stated in the order.

The bill amends s. 893.138, F.S., to add the following to the list of places that may be declared to be a public nuisance and that are subject to the local administrative abatement procedures:

- Places or premises that have been used on more than two occasions within a 6-month period, as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises.

The bill also allows an administrative board to extend the term of the abatement order for up to 1 year upon a finding of recurring public nuisance activity or noncompliance and after hearing and notice.

The bill may have a positive fiscal impact on counties and municipalities. See fiscal comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Nuisances

Chapter 823, F.S., contains a variety of provisions that declare certain places public nuisances. For example, s. 823.05(1), F.S., declares any building, booth, tent, or place a public nuisance if such building, booth, tent, or place:

- tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, F.S.;[1]
- constitutes a place of prostitution, assignation, or lewdness;
- is a place or building where games of chance are engaged in violation of law; or
- is a place where any law of the state is violated.[2]

Section 823.10, F.S., provides that a public nuisance is any store, shop, warehouse, dwelling house, building, structure, vehicle, ship, boat, vessel, or aircraft, or any place, which is:

- visited by persons to unlawfully use any substance controlled under ch. 893, F.S.,[3] or any drugs as described in ch. 499, F.S.,[4] or
- used to illegally keep, sell, or deliver the drugs described above.

Generally, the remedy for those harmed by a public nuisance is injunctive relief pursuant to the provisions of ch. 60, F.S. However, some statutes set forth criminal penalties for maintaining a public nuisance. For example, it is a third degree felony for any person to willfully keep or maintain a public nuisance described in s. 823.10, F.S., where such public nuisance is a warehouse, structure, or building.[5]

Abatement of Public Nuisances

Section 60.05, F.S., provides that when a nuisance as defined in s. 823.05, F.S., exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court may issue a temporary injunction without bond upon evidence[6] or affidavit that a location is shown to be a public nuisance, to enjoin:

- the maintaining of a nuisance;
- the operating and maintaining of the place or premises where the nuisance is maintained;
- the owner or agent of the building or ground upon which the nuisance exists;
- the conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.[7]

---

[1] A violation of s. 823.01, F.S., is a second degree misdemeanor and punishable by a fine of up to $500. Section 775.083, F.S.
[2] Section 823.05(1), F.S., also provides that if a person is found guilty of maintaining a public nuisance, the building, erection, place, tent, or booth and the furniture, fixtures, and contents are declared a nuisance.
[3] Section 893.02(4), F.S., defines "controlled substance" as "any substance named or described in Schedules I-V of s. 893.03, F.S."
[4] Section 499.003(19), F.S., defines "drug" as "an article that is: (a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications; (b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals; (c) Intended to affect the structure or any function of the body of humans or other animals; or (d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), but does not include devices or their components, parts, or accessories." Section 499.003, F.S., also defines the following drugs: "compressed medical gas;" "contraband prescription drug;" "new drug;" "prescription drug;" "proprietary drug" or "OTC drug;" and "veterinary prescription drug."
[5] A third degree felony is punishable by up to 5 years imprisonment and a fine of up to $5,000. Ss. 775.082 and 775.083, F.S.
[6] Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of the nuisance. Section 60.05(3), F.S.
[7] S. 60.05(2), F.S.

The injunction must specify the activities enjoined and must omit any lawful business unrelated to the maintenance of the nuisance complained of.[8] At least 3 days' notice in writing must be given to the defendant of the time and place of application for the temporary injunction.[9]

If the existence of the nuisance is proved at trial, the court will:

- issue a permanent injunction;
- order the costs to be paid by the person establishing or maintaining the nuisance; and
- assess the costs as a lien on all personal property found in the place of the nuisance.[10]

In a proceeding abating a nuisance pursuant to s. 823.10, F.S., or s. 823.05, F.S., if a tenant has been convicted of an offense under ch. 893, F.S., or s. 796.07, F.S., the court may order the tenant to vacate the property within 72 hours if the tenant and owner of the premises are parties to the nuisance abatement action and the order will lead to the abatement of the nuisance.[11]

Abatement of Public Nuisances through Administrative Boards

In addition to the abatement of public nuisances through court proceedings pursuant to ch. 60, F.S., s. 893.138, F.S., provides counties and municipalities with local administrative action to abate criminal gang activity, and drug-related, prostitution-related, or stolen property-related public nuisances. Any county or municipality may, by ordinance, create an administrative board (board) to hear complaints regarding the public nuisances described below.[12]

Section 893.138(2), F.S., provides that the following places and premises may be declared a public nuisance if the place or premise has been used:

- on more than two occasions within a 6-month period, as the site of a violation of s. 796.07, F.S., relating to prostitution;
- on more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;[13]
- on one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- by a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03, F.S.;[14] or
- on more than two occasions within a 6-month period, as the site of a violation of s. 812.019, F.S., relating to dealing in stolen property.

Section 893.138(3), F.S., also provides that any pain-management clinic, as described in s. 458.3265, F.S., or s. 459.0137, F.S., may be declared to be a public nuisance if the location has been used on more than two occasions within a 6-month period as the site of a violation of:

- s. 784.011, F.S., s. 784.021, F.S., s. 784.03, F.S., or s. 784.045, F.S., relating to assault and battery;
- s. 810.02, F.S., relating to burglary;

---

[8] *Id.*
[9] *Id.*
[10] S. 60.05(4), F.S., providing that if the property is not enough to pay the costs then the lien will be placed on the real estate occupied by the nuisance. No lien will be attached to the real estate of any other than said persons unless 5 days' written notice has been given to the owner or his or her agent who fails to begin to abate the nuisance within the 5 days provided.
[11] S. 60.05(4), F.S.
[12] S. 893.138(4), F.S.
[13] "Controlled substance" is defined in s. 893.138(10), F.S. as includeing any substance sold in lieu of a controlled substance in violation of s. 817.563, F.S., or any imitation controlled substance defined in s. 817.564, F.S.
[14] Section 874.03(4), F.S., defines "criminal gang-related activity" as "an activity committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purposes of increasing a person's own standing or position within a criminal gang; an activity in which the participants are identified as criminal gang members or criminal gang associates acting individually or collectively to further any criminal purpose of a criminal gang; an activity that is identified as criminal gang activity by a documented reliable informant; or an activity that is identified as criminal gang activity by an informant of previously untested reliability and such identification is corroborated by independent information."

- s. 812.014, F.S., relating to dealing in theft;
- s. 812.131, F.S., relating to robbery by sudden snatching; or
- s. 893.13, F.S., relating to the unlawful distribution of controlled substances.

Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving at least 3 days' written notice of such complaint to the owner of the place or premises at the owner's last known address.[15] A hearing must then be held, where the board may consider any evidence[16] and the owner of the premises has an opportunity to present evidence in his or her defense. After such hearing, the board may declare the place or premises to be a public nuisance as described above.[17]

If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt a procedure considered to be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:

- the maintaining of the nuisance;
- the operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or
- the conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.[18]

An order expires after 1 year, or earlier if stated in the order.[19] The order may be enforced pursuant to the procedures contained in s. 120.69, F.S.[20,21]

The board may also bring a complaint under s. 60.05, F.S., seeking temporary and permanent injunctive relief against any nuisance described in subsection (2).[22,23]

Nothing contained within s. 893.138, F.S., prohibits a county or municipality from proceeding against a public nuisance by any other means.[24]

Section 893.138(11), F.S., provides that the provisions outlined above may be supplemented by a county or municipal ordinance, which may include, but is not limited to, provisions that establish additional penalties for public nuisances that:

- include fines not to exceed $250 per day;[25]
- provide for the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
- provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance;
- establish penalties, including fines not to exceed $500 per day for recurring public nuisances;[26]
- provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order;

---

[15] S. 893.138(4), F.S.
[16] S. 893.138(4), F.S., provides that evidence of the general reputation of the place or premises is admissible at the hearing.
[17] *Id.*
[18] S. 893.138(5), F.S.
[19] S. 893.138(6), F.S.
[20] S. 120.69, F.S., relates to enforcement of agency action. This section provides that an agency may seek enforcement of an action by filing a petition for enforcement in the circuit court where the subject matter of the enforcement is located.
[21] S. 893.138(7), F.S.
[22] S. 893.138(8), F.S.
[23] S. 893.138(9), F.S., provides that this section does not restrict the right of any person to proceed under s. 60.05, F.S., against any public nuisance.
[24] S. 893.138(11), F.S.
[25] S. 893.138(11), F.S., provides that the total fines imposed pursuant to the authority of this section shall not exceed $15,000.
[26] *Id.*

- provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and
- provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure.[27]

Effect of the Bill

The bill amends s. 893.138(2), F.S., to add the following to the list of places that may be declared to be a public nuisance and that are subject to the local administrative abatement procedures established in s. 893.138, F.S.:

- Places or premises that have been used on more than two occasions within a 6-month period, as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises.

Upon receiving a complaint of recurring public nuisance activity or noncompliance and after providing at least 3 days' notice to the owner of a place or premises that has been declared to be a public nuisance, the board must conduct a hearing to determine whether the owner has violated the administrative order. If a violation is found, the bill allows the administrative board to extend the term of the abatement order for up to 1 year and may impose additional penalties authorized by s. 893.138, F.S., and by a supplemental county or municipal ordinance.

The bill specifies that the above extension allows the administrative board continued jurisdiction over any place or premise that has been or is declared to be a public nuisance.

The bill also fixes statutory drafting errors created by the 2011 addition of subsection (3).[28]

B. SECTION DIRECTORY:

Section 1: amends s. 893.138, F.S., relating to local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill provides counties and municipalities with the ability to administer fines on public nuisances where the place or premise has been used on two or more occasions within a 6-month period as the site of storage of a controlled substance with intent to sell or deliver the controlled substance off the premises. This may provide counties and municipalities with increased revenue.

[27] Section 893.138(11), F.S., provides that no lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution.
[28] Ch. 2011-141, L.O.F.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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:

Section 893.138, F.S., authorizes a place or premises to be declared a public nuisance when such location is associated with multiple violations of specified criminal activity. The bill authorizes a place or premises to be declared a public nuisance if the location has been used on more than two occasions within a 6-month period as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises. This does not require that there be any unlawful activity.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Criminal Justice Subcommittee approved a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Specifies that a place or premise that has been used on more than two occasions as the site of storage of a controlled substance with intent to sell or deliver the controlled substance off the premises may be declared a public nuisance.
- Clarifies the process the local administrative abatement board must follow when determining whether the owner of a place or premise declared to be a public nuisance has violated an order.
- Fixes statutory drafting errors.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

A bill to be entitled

An act relating to local administrative action to abate public nuisances and criminal gang activity; amending s. 893.138, F.S.; authorizing a local administrative board to declare a place to be a public nuisance if the place is used on more than two occasions within a 6-month period as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises; authorizing an administrative board to hear complaints regarding any pain-management clinic declared to be a public nuisance; providing that an order entered against a person for a public nuisance expires after 1 year or at an earlier time if so stated in the order unless the person has violated the order during the term of the order; requiring that the board conduct a hearing to determine whether the person violated the administrative order; authorizing an administrative board to seek temporary and permanent injunctive relief against any pain-management clinic declared to be a public nuisance; authorizing the board to extend the term of the order by up to 1 additional year and to impose a penalty if the board finds that the person violated the order; authorizing a county or municipal ordinance to include fines for days of public nuisance activities outside the 6-month period in which the minimum number of activities are shown to have occurred; authorizing a local ordinance to provide for

continuing jurisdiction over a place or premises that are subject to an extension of the administrative order; providing an effective date.

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

Section 1. Section 893.138, Florida Statutes, is amended to read:

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

(1) It is the intent of this section to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing ordinances in counties and municipalities under circumstances when a pending or repeated violation continues to exist.

(2) Any place or premises that has been used:

(a) On more than two occasions within a 6-month period, as the site of a violation of s. 796.07;

(b) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of a ~~any~~ controlled substance, or as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises;

(c) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of a ~~any~~ controlled substance;

(d) By a criminal gang for the purpose of conducting criminal gang-related ~~gang~~ activity as defined in ~~by~~ s. 874.03; or

(e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to ~~the procedures provided in~~ this section.

(3) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137, which has been used on more than two occasions within a 6-month period as the site of a violation of:

(a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;

(b) Section 810.02, relating to burglary;

(c) Section 812.014, relating to dealing in theft;

(d) Section 812.131, relating to robbery by sudden snatching; or

(e) Section 893.13, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

(4) Any county or municipality may, by ordinance, create an administrative board to hear complaints regarding the nuisances described in subsections ~~subsection~~ (2) and (3). Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises shall have an opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance as described in subsection (2) or subsection (3).

(5) If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:

(a) The maintaining of the nuisance;

(b) The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or

(c) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

(6) An order entered under subsection (5) expires ~~(4) shall expire~~ after 1 year or at such earlier time as is stated in the order unless the owner of a place or premises that has been declared to be a public nuisance has violated the order

during the term of the order. Upon receiving a complaint of recurring public nuisance activity or noncompliance and after providing at least 3 days' written notice to the owner of such place or premises, the board shall conduct a hearing to determine whether the owner violated the administrative order entered under subsection (5). If the board finds that the owner of such place or premises violated the order, the board may extend the term of the order by up to 1 additional year and may impose an additional penalty to the extent authorized by this section and by a supplemental county or municipal ordinance.

(7) An order entered under subsection (5) ~~(4)~~ may be enforced pursuant to the procedures contained in s. 120.69. This subsection does not subject a municipality that creates a board under this section, or the board so created, to any other provision of chapter 120.

(8) The board may bring a complaint under s. 60.05 seeking temporary and permanent injunctive relief against any nuisance described in subsection (2) or subsection (3).

(9) This section does not restrict the right of any person to proceed under s. 60.05 against any public nuisance.

(10) As used in this section, the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of s. 817.563 or any imitation controlled substance defined in s. 817.564.

(11) ~~The provisions of~~ This section may be supplemented by a county or municipal ordinance. The ordinance may include, but need ~~is~~ not be limited to, provisions that establish additional penalties for public nuisances, including fines not to exceed

$250 per day for each day that the public nuisance activities described in subsections (2) and (3) have occurred, including days outside the 6-month period in which the minimum number of public nuisance activities are shown to have occurred. The ordinance may also~~;~~ provide for the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances; provide for continuing jurisdiction for a period of 1 year over any place or premises that have ~~has~~ been or are ~~is~~ declared to be a public nuisance, subject to an extension for up to 1 additional year as provided in subsection (6); establish penalties, including fines not to exceed $500 per day for recurring public nuisances; provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order; provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and provide for the foreclosure of the property that is subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. A ~~No~~ lien created pursuant to ~~the provisions of~~ this section may not be foreclosed on real property that ~~which~~ is a homestead under s. 4, Art. X of the State Constitution. When ~~Where~~ a local government seeks to bring an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner is ~~shall~~ not ~~be~~ subject to a lien

against his or her property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant. The total fines imposed pursuant to ~~the authority of~~ this section may ~~shall~~ not exceed $15,000. ~~Nothing contained within~~ This section does not prohibit ~~prohibits~~ a county or municipality from proceeding against a public nuisance by any other means.

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

Amendment No. 1

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

Committee/Subcommittee hearing bill: Community & Military Affairs Subcommittee

Representative Frishe offered the following:

Amendment (with title amendment)

Remove line 55 and insert:

storage of a controlled substance with intent to unlawfully sell or deliver

---

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

Remove line 8 and insert:

storage of a controlled substance with intent to unlawfully sell