Ways and Means Committee

Wednesday, April 5, 2017

9:00 a.m. – 2:00 p.m.

Morris Hall

MEETING PACKET

Part I

Richard Corcoran
Speaker

Jim Boyd
Chair

The Florida House of Representatives

Ways and Means Committee

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AGENDA

April 5, 2017
9:00 a.m. – 2:00 p.m.
Morris Hall

I. Call to Order/Roll Call

II. Chair's Opening Remarks

III. *Consideration of the following bill(s):*
CS/HB 13 Community Redevelopment Agencies by Local, Federal & Veterans Affairs Subcommittee, Raburn
HB 139 Local Tax Referenda by Ingoglia, Avila
HB 149 Fantasy Contests & Fantasy Contest Operators by Brodeur
CS/HB 259 Martin County by Local, Federal & Veterans Affairs Subcommittee, Magar
CS/HB 289 Property Taxes by Agriculture & Property Rights Subcommittee, Donalds, Avila
CS/HB 313 Child Support by Children, Families & Seniors Subcommittee, Daniels
CS/HB 689 Division of Alcoholic Beverages and Tobacco by Careers & Competition Subcommittee, Burton
CS/HB 903 Homestead Exemption Fraud by Local, Federal & Veterans Affairs Subcommittee, Cortes, B.
HB 1123 Fee and Surcharge Reductions by Drake
CS/HB 1351 Renewable Energy Source Devices by Energy & Utilities Subcommittee, Rodrigues
HB 7011 Health Care Access by Health Quality Subcommittee, Pigman
PCS for CS/HB 1231 -- Agricultural Practices

IV. *Consideration of the following proposed committee bill(s):*
PCB WMC 17-04 -- Homestead Exemption
PCB WMC 17-06 -- Taxation
PCB WMC 17-07 -- Homestead Exemption Implementation

V. Closing Remarks and Adjournment

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 13 Community Redevelopment Agencies
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Raburn
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	9 Y, 6 N, As CS	Darden	Miller
2) Ways & Means Committee		Dobson MD	Langston
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Community Redevelopment Act authorizes counties and municipalities to create community redevelopment agencies (CRAs) as a means of redeveloping slums and blighted areas. CRAs are controlled by a governing board that either is composed of members of the local governing body creating the CRA or commissioners appointed by the local governing body. CRAs operate under a community redevelopment plan that is approved by the local governing body. CRAs are primarily funded by tax increment financing, calculated based on the increase of property values inside the boundaries of the CRA.

The bill increases accountability and transparency for CRAs by:

- Requiring the governing board members of a CRA to undergo 4 hours of ethics training annually;
- Requiring each CRA to use the same procurement and purchasing processes as the creating county or municipality;
- Expanding the annual reporting requirements for CRAs to include audit information and performance data and requiring the information and data to be published on the agency website;
- Providing that moneys in the redevelopment trust fund may only be expended pursuant to an annual budget adopted by the board of commissioners of the CRA and only for those purposes specified in current law beginning October 1, 2017;
- Requiring a CRA created by a municipality to provide its proposed budget, and any amendments to the budget, to the board of county commissioners for the county in which the CRA is located by a time certain; and
- Requiring counties and municipalities to include CRA data in their annual financial report.

The bill prohibits the creation of new CRAs on or after July 1, 2017. It provides for the eventual phase-out of existing CRAs at the earlier of the expiration date stated in the agency's charter or on September 30, 2037, with the exception of those CRAs with any outstanding bond obligations. The bill provides a process for the Department of Economic Opportunity to declare a CRA inactive if it has no revenue, expenditures, and debt for three consecutive fiscal years.

The bill may have a fiscal impact on the state and local governments.

The effective date of the bill is July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Community Redevelopment Act

The Community Redevelopment Act of 1969 (Act)[1] authorizes a county or municipality to create a community redevelopment agency (CRA) as a means of redeveloping slums and blighted areas. The Act defines a "blighted area" as an area in which there are a substantial number of deteriorated structures causing economic distress or endangerment to life or property and two or more of the following factors are present:

- Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
- Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;
- Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- Unsanitary or unsafe conditions;
- Deterioration of site or other improvements;
- Inadequate and outdated building density patterns;
- Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
- Tax or special assessment delinquency exceeding the fair value of the land;
- Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
- Incidence of crime in the area higher than in the remainder of the county or municipality;
- Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
- A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
- Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area;
- Governmentally owned property with adverse environmental conditions caused by a public or private entity; or
- A substantial number or percentage of properties damaged by sinkhole activity which have not been adequately repaired or stabilized.[2]

An area also may be classified as blighted if one of the above factors is present and all taxing authorities with jurisdiction over the area have agreed that the area is blighted by interlocal agreement or by passage of a resolution by the governing bodies.[3]

The Act defines a "slum area" as "an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements" in poor states of repair with one of the following factors present:

- Inadequate provision for ventilation, light, air, sanitation, or open spaces;
- High density of population, compared to the population density of adjacent areas within the county or municipality, and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the Florida Building Code; or

[1] Chapter 163, F.S., part III.
[2] Section 163.340(8), F.S.
[3] *Id.*

- The existence of conditions that endanger life or property by fire or other causes.[4]

Creation of Community Redevelopment Agencies

A CRA may be created by either a county or municipal government.[5] Before creating a CRA, a county or municipal government must adopt a resolution with a "finding of necessity."[6] This resolution must make legislative findings "supported by data and analysis" that the area to be included in the CRA's jurisdiction is either blighted or a slum and that redevelopment of the area is necessary to promote "the public health, safety, morals, or welfare" of residents.

A county or municipality may create a CRA upon the adoption of a finding of necessity and a finding that a CRA is necessary for carrying out the community redevelopment goals embodied by the Act.[7] A CRA created by a county may only operate within the boundaries of a municipality when the municipality has concurred by resolution with the community redevelopment plan adopted by the county. A CRA created by a municipality may not include more than 80 percent of the municipality if it was created after July 1, 2006.[8]

The ability to create, expand, or modify a CRA is also determined by the county's status as a charter or non-charter county, as summarized below:

County Status	Authority
Charter County - CRA created after adoption of charter[9]	County possesses authority to create CRAs within the county, but may delegate authority to a municipality via interlocal agreement.
Charter County - CRA created before adoption of charter[10]	County does not have authority over CRA operations, including modification of redevelopment plan or expansion of CRA boundaries.
Non-Charter County[11]	County does not have authority over CRA operations, including modification of redevelopment plan or expansion of CRA boundaries.

As of March 1, 2017, there are 222 CRAs in Florida, which is a 30 percent increase over the past decade.[12]

Community Redevelopment Agency Boards

The Act allows the local governing body creating a CRA to choose between two structures for the agency's governing board.

One option is to appoint a board of commissioners consisting of five to nine members serving four year terms.[13] The local governing body may appoint any person as a commissioner who lives in or is

[4] Section 163.340(7), F.S.
[5] *See* s. 163.355, F.S. (prohibiting counties and municipalities from exercising powers under the Act without a finding of necessity).
[6] *Id.*
[7] Section 163.356(1), F.S.
[8] Section 163.340(10), F.S.
[9] Section 163.410, F.S.
[10] *Id.*
[11] Section 163.415, F.S.
[12] *Compare* Dept. of Economic Opportunity, Special District Accountability Program, *Official List of Special Districts Online*, https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last accessed Mar. 1, 2017) (222 active CRAs as of Mar. 1, 2017) *with* Bill Analysis for HB 1583 (2006) (stating there were 171 CRAs in operation as of Mar. 26, 2006).
[13] Section 163.356(2), F.S.

engaged in business in the agency's area of operation.[14] The local governing body making the appointment selects the chair and vice chair of the commission.[15] Commissioners are not entitled to compensation for their services, but may receive reimbursement for expenses incurred in the discharge of their official duties.[16] Commissioners and employees of an agency are subject to the code of ethics for public officers and employees under ch. 112, F.S.[17]

The other option is for the local governing body to appoint itself as the agency board of commissioners.[18] If the local governing body consists of five members, the local governing body may appoint two additional members to four year terms.[19] The additional members must either meet the selection criteria for appointed board members under s. 163.356, F.S., or may be representatives of another taxing authority within the agency's area of operation, subject to an interlocal agreement between the local governing body creating the CRA and the other taxing authority.[20]

As of March 1, 2017, the local governing body creating the CRA serves as the CRA board for 155 of the 222 active CRAs.[21]

Community Redevelopment Agency Operations

The CRA board of commissioners is responsible for exercising the powers of the agency.[22] A majority of the board's members are required for a quorum. An agency is authorized to employ an executive director, technical experts, legal counsel, and other agents and employees necessary to fulfill its duties.[23]

A CRA exercising its powers under the Act must file an annual report to the governing body of the creating local government entity.[24] The report must contain a complete financial statement of the assets, liabilities, income, and operating expenses of the agency. The CRA must publish a notice in a newspaper of general circulation in the community that the report has been filed and is available for inspection during business hours in the office of the clerk of the city or county commission and the office of the agency.

Community Redevelopment Plans

A community redevelopment plan must be in place before a CRA can engage in operations.[25] The plan may be submitted by the county, municipality, the CRA itself, or members of the public and the CRA then chooses which plan it will use as its community redevelopment plan.[26] Next, the CRA must submit the plan to the local planning agency for review before the plan can be considered.[27] The local planning agency must complete its review within 60 days.

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[14] Section 163.356(3)(b), F.S. A person is "engaged in business" if he or she owns a business, performs services for compensation, or serves as an officer or director of a business that owns property or performs services in the agency's area of operation.
[15] Section 163.356(3)(c), F.S.
[16] Section 163.356(3)(a), F.S.
[17] Section 163.367(1), F.S, *but cf.* s. 112.3142, F.S. (requiring ethics training for specific constitutional officers and elected municipal officers).
[18] Section 163.357(1)(a), F.S.
[19] Section 163.357(1)(c), F.S.
[20] Section 163.357(1)(c)-(d), F.S.
[21] Dept. of Economic Opportunity, Special District Accountability Program, *Official List of Special Districts Online*, https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last accessed Mar. 1, 2017).
[22] Section 163.356(3)(b), F.S.
[23] Section 163.356(3)(c), F.S.
[24] *Id.*
[25] Section 163.360(1), F.S.
[26] Section 163.360(4), F.S.
[27] *Id.*

The CRA must submit the community redevelopment plan to the governing body that created the CRA as well as each taxing authority that levies ad valorem taxes on taxable real property contained in the boundaries of the CRA.[28] The local governing body that created the CRA must hold a public hearing before the plan is approved.[29]

To approve the plan, the local governing body must find that:

- A feasible method exists to relocate families who will be displaced by redevelopment in safe and sanitary accommodations within their means and without undue hardship;
- The community redevelopment plan conforms to the general plan of the county or municipality as a whole;
- The community redevelopment plan gives due consideration to the utilization of community policing innovations and other factors encouraging neighborhood improvement, with special consideration for impacts on children;
- The community redevelopment plan encourages redevelopment by private enterprise to the maximum possible extent; and
- The community redevelopment plan will reduce or maintain evacuation time and ensure protection for property against exposure to natural disasters, if the CRA is in a coastal tourist area. [30]

The community redevelopment plan must also:

- Conform to the comprehensive plan for the county or municipality;
- Indicate land acquisition, demolition, and removal of structures; redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area; zoning and planning changes, if any; land uses; maximum densities; and building requirements; and
- Provide for the development of affordable housing in the area, or state the reasons for not addressing in the plan the development of affordable housing. [31]

Redevelopment Trust Fund

CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund that is funded through tax increment financing (TIF). The amount of TIF available to the agency in a given year is equal to 95 percent of the difference between:

- The amount of ad valorem taxes levied in the current year by each taxing authority, excluding any debt service millage, on taxable real property within the boundaries of the community redevelopment area; and
- The amount of ad valorem taxes that would have been produced by levying the current year's millage rate for each taxing authority, excluding any debt service millage, on taxable real property within the boundaries of the community redevelopment area at the total assessed value of the taxable real property prior to the effective rate of the ordinance providing for the redevelopment trust fund.[32]

A CRA created by a county on or after July 1, 1994, may set the amount of funding provided at less than 95 percent, with a floor of 50 percent.

The TIF authority of a CRA may be limited where the CRA:

- Did not authorize a study to consider whether a finding of necessity resolution should be adopted by June 5, 2006, did not adopt a finding of necessity study by March 31, 2007, did not

[28] Section 163.360(5), F.S.
[29] Section 163.360(6), F.S.
[30] Section 163.360(7), F.S.
[31] Section 163.360(2), F.S.
[32] Section 163.387(1)(a), F.S.

adopt a community redevelopment plan by June 7, 2007, and was not authorized to exercise community redevelopment powers pursuant to a delegation of authority under s. 163.410, F.S., by a charter county; [33] or
- Adopted a modified community redevelopment plan after October 1, 2006, which expands the boundaries of the community redevelopment area, if the CRA is in a charter county and was not created pursuant to a delegation of authority under s.163.410, F.S.[34]

If either of these conditions occurs, a CRA may have TIF proceeds from other taxing entities capped at the millage rate imposed by the municipality that created the CRA.[35] If either of these conditions occurs and the CRA is more than 25 years old, the CRA's TIF contributions from other taxing authorities may be capped by resolution of the other taxing authority at the sum of the amount of TIF available in the year before the resolution was approved and any increased increment subject to an area reinvestment agreement.[36]

TIF funds must be transferred by each taxing authority to the redevelopment trust fund of the CRA by January 1 of each year.[37] For CRAs created before July 1, 2002, each taxing authority must make an annual appropriation to the trust fund for the lesser of 60 years from when the community redevelopment plan was adopted or 30 years from when it was amended. For CRAs created on or after July 1, 2002, each taxing authority must make an annual appropriation to the trust fund for 40 years from when the community redevelopment plan was adopted. If there are any outstanding loans, advances, or indebtedness at the conclusion of these time periods, the local governing body that created the CRA must continue transfers to the redevelopment trust fund until the debt has been retired.[38]

If a taxing authority does not transfer the TIF funds to the redevelopment trust fund, the taxing authority is required to pay a penalty of 5 percent of the TIF amount to the trust fund as well as 1 percent interest per month for the outstanding amount.[39] A CRA may choose to waive these penalties in whole or in part.

Certain taxing authorities are exempt from contributing to the redevelopment trust fund:
- A special district that levies ad valorem taxes on taxable real property in more than one county;
- A special district for which ad valorem taxation is the sole source of revenue;
- A library district, unless the library district is in a jurisdiction where the CRA had validated bonds as of April 30, 1984;
- A neighborhood improvement district;
- A metropolitan transportation authority;
- A water management district created under s. 373.069, F.S.; and
- A hospital district that is a special district if the CRA was created on or after July 1, 2016.[40]

Additionally, the local governing body creating the CRA may choose to exempt other special districts levying ad valorem taxes in the community redevelopment area.[41] The decision to grant the exemption must be based on statutory criteria, adopted at a public hearing, and the conditions of the exemption must be included in an interlocal agreement between the county or municipality and the special district.

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[33] Section 163.387(1)(b)1., F.S.
[34] Section 163.387(1)(b)2., F.S.
[35] Section 163.387(1)(b)1.a., F.S.
[36] Section 163.387(1)(b)1.b., F.S. An "area reinvestment agreement" is an agreement between the CRA and a private party which requires the increment computed for a specific area to be reinvested in services or public or private projects, or both, including debt service, supporting one or more projects consistent with the community redevelopment plan that is identified in the agreement to be constructed within that area.
[37] Section 163.387(2)(a), F.S.
[38] Section 163.387(3)(a), F.S.
[39] Section 163.387(2)(b), F.S.
[40] Section 163.387(2)(c), F.S.
[41] Section 163.387(2)(d), F.S.

Any revenue bonds issued by the CRA are payable from revenues pledged to and received by the CRA and deposited into the redevelopment trust fund.[42] The lien created by the revenue bonds does not attach to the bonds until the revenues are deposited in the redevelopment trust fund and do not grant bondholders any right to require taxation in order to retire the bond. Revenue bonds issued by a CRA are not a liability of the state or any political subdivision of the state and this status must be made clear on the face of the bond.[43]

A CRA may spend funds deposited in its redevelopment trust fund for "purposes, including, but not limited to":

- Administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan adopted by the agency;
- Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the CRA for such expenses incurred before the redevelopment plan was approved and adopted;
- Acquisition of real property in the redevelopment area;
- 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, F.S.;
- Repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness;
- 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;
- Development of affordable housing within the community redevelopment area; and
- Development of community policing innovations.[44]

If any funds remain in the redevelopment trust fund on the last day of the fiscal year, the funds must be:

- Returned to each taxing authority on a pro rata basis;
- Used to reduce the amount of any indebtedness to which increment revenues are pledged;
- Deposited into an escrow account for the purpose of later reducing any indebtedness to which increment revenues are pledged; or
- Appropriated to a specific redevelopment project pursuant to an approved community redevelopment plan and the project must be completed within 3 years from the date of such appropriation.[45]

Each CRA is required to provide for an annual audit of its redevelopment trust fund, conducted by an independent certified public accountant or firm.[46]

CRA Oversight and Accountability

Miami-Dade County Grand Jury Report

A Miami-Dade County grand jury issued a report in 2016 after "learning of several examples of mismanagement of large amounts of public dollars" by CRAs.[47] The report found that some CRA boards were "spending large amounts of taxpayer dollars on what appeared to be pet projects of elected officials" and "there is a significant danger of CRA funds being used as a slush fund for elected

[42] Section 163.387(4), F.S.
[43] Section 163.387(5), F.S.
[44] Section 163.387(6), F.S.
[45] Section 163.387(7), F.S.
[46] Section 163.387(8), F.S.
[47] Miami-Dade County Grand Jury, *Final Report for Spring Term A.D. 2015*, at 1 (filed Feb. 3, 2016).

officials."[48] In the event funds were misused, the report found that the Act lacked any accountability and enforcement measures.

The report noted that while county and municipal governments may not pledge ad valorem tax proceeds to finance bonds without voter approval, the board of a CRA can pledge TIF funds to finance bonds without any public input.[49]

The grand jury found that redevelopment trust fund money was often used "without the exercise of any process of due diligence, without justification and without recourse."[50] The report notes that the Act does not provide guidelines for the proper use of CRA funds, resulting in questionable expenditures.[51] For example, one CRA highlighted in the report spent $300,000 of its $400,000 budget on administrative expenses. The report also found examples of the CRA funds being used to fund fairs, carnivals, and other community entertainment events.[52] Additionally, the report found that funds may have been misused as part of the CRA contracting process since there is no specified procurement process for CRAs.[53]

While the Act states affordable housing is one of the three primary purposes for the existence of CRAs, the report found that the provision of affordable housing by CRAs "appears to be the exception and not the rule."[54] The report stated that while CRAs cite prohibitive costs as a reason for not developing affordable housing, funds are often used for other purposes.[55] Some CRAs have requested that their boundaries be extended to include areas for low income housing while not providing any affordable housing.[56] Some CRA board members have stated the agencies do not focus on affordable housing because it does not produce sufficient revenue.[57]

Another area of concern for the grand jury was a focus on removing blight by improving the appearance of commercial areas, but leaving slum conditions in place, particularly in the form of multi-family housing that is "unsafe, unsanitary, and overcrowded."[58] The grand jury points to news coverage of some apartment buildings with overflowing toilets and frequent losses of power due to the need for repairs. The report notes the contrast between these conditions and the use of some CRA proceeds to "fund ball stadiums, performing arts centers[,] and dog parks."[59]

The grand jury report also notes that while a finding of necessity is required for creating a CRA, there is no process for determining whether the mission of the CRA has been fulfilled.[60]

The report concludes by making 29 recommendations for ensuring transparency and accountability in the operation of CRAs, including:

- Requiring all CRA boards to contain members of the community;
- Imposing a cap on annual CRA expenditures used for administrative costs;
- Requiring CRAs to adopt procurement guidelines that mirror those of the associated county or municipality;
- Requiring each CRA to submit its budget to the county commission with sufficient time for full consideration;

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[48] *Id.* at 7.
[49] *Id.* at 9.
[50] *Id.* at 14.
[51] *Id.* at 15.
[52] *Id.* at 16.
[53] *Id.* at 17.
[54] *Id.* at 19.
[55] *Id.*
[56] *Id.*
[57] *Id.* at 20.
[58] *Id.* at 22.
[59] *Id.*
[60] *Id.* at 32.

- Setting aside a percentage of TIF revenue for affordable housing; and
- Imposing ethics training requirements.[61]

Broward County Inspector General Reports

The Broward County Office of the Inspector General has conducted two investigations into CRA operations in the past five years: Hallandale Beach CRA in 2013[62] and Margate CRA in 2014.[63]

The investigation into the Hallandale Beach CRA showed that the agency failed to create a trust fund and that the city commission failed to operate the CRA as an entity separate from the city.[64] The former executive director of the CRA stated the city had "free reign" to use funds from the CRA's account.[65] The report found over $2 million of questionable expenditures by the Hallandale Beach CRA between 2007 and 2012, including $125,000 in inappropriate loans and $152,494 spent on "civic promotions such as festivals and fireworks displays."[66] After some of these issues were bought to the attention of the city and the CRA, the CRA continued working on a funding plan that included spending $5,347,000 on two parks outside of the boundaries of the CRA. The report also found that CRA paid "substantially more than its appraised value" to purchase a property owned by a church whose pastor was a city commissioner at the time.[67]

The investigation of the Margate CRA showed a failure to properly allocate TIF funds received from the county and other taxing authorities.[68] While the CRA stated unused funds were not returned because they were allocated for a specific project, the investigation showed the agency had a pattern of intentionally retaining excess unallocated funds for later use.[69] This pattern of misuse had resulted in a debt to the county of approximately $2.7 million for fiscal years 2008-2012.[70]

Auditor General Report

The Auditor General is required to conduct a performance audit of the local government financial information reporting system every three years.[71] As part of the most recent performance audit, the Auditor General made five findings concerning CRAs:

- Current law could be enhanced to be more specific as to the types of expenditures that qualify for undertakings of a CRA.
- Current law could be enhanced to provide county taxing authorities more control over expenditures of CRAs created by municipalities to help ensure that CRA trust fund moneys are used appropriately.
- Current law could be revised to require all CRAs, including those created before October 1, 1984, to follow the statutory requirements governing the specific authorized uses of CRA trust fund moneys.
- Current law could be enhanced to allow CRAs to provide for reserves of unexpended CRA trust fund balances to be used during financial downturns.

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[61] *Id.* at 34-36.
[62] Broward Office of the Inspector Gen., *Final Report Re: Gross Mismanagement of Public Funds by the City of Hallandale Beach and the Hallandale Beach Community Redevelopment Agency*, OIG 11-020 (Apr. 18, 2013).
[63] Broward Office of the Inspector Gen., *Final Report Re: Misconduct by the Margate Community Redevelopment Agency in the Handling of Taxpayer Funds*, OIG 13-015A (July 22, 2014).
[64] *City of Hallandale Beach, supra* note 62, at 1.
[65] *Id.* at 28.
[66] *Id.* at 1.
[67] *Id.* at 2.
[68] *Margate Community Redevelopment Agency, supra* note 63, at 1.
[69] *Id.*
[70] *Id.* at 2.
[71] Section 11.45(2)(g), F.S.

- Current law could be enhanced to promote compliance with the audit requirement in s. 163.387(8), F.S., and to require such audits to include a determination of compliance with laws pertaining to expenditure of, and disposition of unused, CRA trust fund moneys. [72]

Ethics Training Requirements for Public Officials

Constitutional officers and all elected municipal officers must complete four hours of ethics training on an annual basis.[73] The required ethics training must include instruction on s. 8, Art. II of the Florida Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws. This requirement may be met by attending a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

Inactive Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,[74] special act,[75] local ordinance,[76] or by rule of the Governor and Cabinet.[77] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[78] A special district may be "dependent"[79] or "independent."[80] All CRAs are dependent special districts.[81]

The Special District Accountability Program within the Department of Economic Opportunity (DEO) is responsible for maintaining and electronically publishing the official list of all special districts in Florida.[82] The official list currently reports all active special districts as well as those declared inactive by DEO.

Whether dependent or independent, when a special district no longer fully functions or fails to meet its statutory responsibilities, DEO must declare that district inactive by following a specified process.[83] DEO must first document the factual basis for declaring the district inactive.

A special district may be declared inactive if it meets one of the following criteria:
- The registered agent of the district, the chair of the district governing body, or the governing body of the appropriate local general-purpose government:
  - Provides DEO with written notice that the district has taken no action for two or more years;

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[72] Florida Auditor Gen., Report No. 2015-037 (Oct. 2014).
[73] Section 112.3142, F.S. A "constitutional officer" is defined as the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.
[74] Section 189.031(3), F.S.
[75] *Id.*
[76] Section 189.02(1), F.S.
[77] Section 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[78] *2017 – 2018 Local Gov't Formation Manual*, 64, available at http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2911 (last accessed Mar. 1, 2017).
[79] Section 189.012(2), F.S. A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of governing body of a single county or municipality.
[80] Section 189.012(3), F.S. An "independent special district" is a special district that is not a dependent district.
[81] *See* ss. 163.356, 163.357, F.S. (board of commissions of CRAs are appointed by a local governing body or are the local governing body).
[82] Sections 189.061(1), 189.064(2), F.S. Dept. of Economic Opportunity, Special District Accountability Program, *Official List of Special Districts Online*, https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last accessed Mar. 1, 2017).
[83] Section 189.062(1), F.S.

- Provides DEO with written notice that the district has not had any members on its governing body or insufficient numbers to constitute a quorum for two or more years; or
- Fails to respond to an inquiry by DEO within 21 days.[84]

- Following statutory procedure,[85] DEO determines the district failed to file specified reports,[86] including required financial reports.[87]
- For more than one year, no registered office or agent for the district was on file with DEO.[88]
- The governing body of the district unanimously adopts a resolution declaring the district inactive and provides documentation of the resolution to DEO.[89]

Once DEO determines which criterion applies to the district, notice of the proposed declaration of inactive status is published by DEO, the local general-purpose government for the area where the district is located, or the district itself.[90] The notice must state that any objections to declaring the district inactive must be filed with DEO pursuant to chapter 120, F.S., within 21 days after the publication date.[91] If no objection is filed within the 21 day period, DEO declares the district inactive.[92]

After declaring certain special districts inactive, DEO must send written notice of the declaration to the authorities that created the district. If the district was created by special act, DEO sends written notice to the Speaker of the House of Representatives, the President of the Senate, and the standing committees in each chamber responsible for special district oversight.[93] The statute provides that the declaration of inactive status is sufficient notice under the Florida Constitution[94] to authorize the repeal of special laws creating or amending the charter of the inactive district.[95] This statute stands in lieu of the normal requirement for publication of notice of intent to file a local bill at least 30 days before introducing the bill in the Legislature.[96]

The property and assets of a special district declared inactive by DEO are first used to pay any debts of the district and any remaining property or assets then escheat to the county or municipality in which the district was located. If the district's assets are insufficient to pay its outstanding debts, the local general-purpose government in which the district was located may assess and levy within the territory of the inactive district such taxes as necessary to pay the remaining debt.[97]

A district declared inactive may not collect taxes, fees, or assessments.[98] This prohibition continues until the declaration of invalid status is withdrawn or revoked by DEO[99] or invalidated in an administrative proceeding[100] or civil action[101] timely brought by the governing body of the special

[84] Section 189.062(1)(a)1.-3., F.S.
[85] Section 189.067, F.S.
[86] Section 189.066, F.S.
[87] Section 189.062(1)(a)4., F.S. *See*, ss. 189.016(9), 218.32, 218.39, F.S.
[88] Section 189.062(1)(a)5., F.S.
[89] Section 189.062(1)(a)6., F.S.
[90] Publication must be in a newspaper of general circulation in the county or municipality where the district is located and a copy sent by certified mail to the district's registered agent or chair of the district's governing body, if any.
[91] Section 189.062(10(b), F.S. The published notice also must include the name of the district, the law under which it was organized and operating, and a description of the district's territory.
[92] Section 189.062(1)(c), F.S.
[93] Section 189.062(3), F.S.
[94] Art. III, s. 10, Fla. Const.
[95] Section 189.062(3), F.S.
[96] Section 11.02, F.S.
[97] Section 189.062(2), F.S.
[98] Section 189.062(5), F.S.
[99] Section 189.062(5)(a), F.S.
[100] Section 189.062(5)(b)1., F.S. Administrative proceedings are conducted pursuant to s. 120.569, F.S.
[101] Section 189.062(5)(b)2., F.S. The action for declaratory and injunctive relief is brought under ch. 86, F.S.

district.[102] Failure of the special district to challenge (or prevail against) the declaration of inactive status enables DEO to enforce the statute through a petition for enforcement in circuit court.[103]

Declaring a special district to be inactive does not dissolve the district or otherwise cease its legal existence. Subsequent action is required to repeal the legal authority creating the district, whether by the Legislature[104] or the entity that created the district.[105]

Annual Financial Reports for Local Government Entities

Counties, municipalities, and special districts must submit an annual financial report for the previous fiscal year to the Department of Financial Services (DFS).[106] The report must include component units of the local government entity submitting the report. If a local government entity is required to conduct an audit under s. 218.39, F.S., for the fiscal year, the annual financial report, as well as a copy of the audit report, must be submitted to DFS within 45 days of completion of the audit report, but no later than nine months after the end of the fiscal year. If the local government entity is not required to conduct an audit under s. 218.39, F.S., for the fiscal year, the annual financial report is due no later than nine months after the end of the fiscal year. Each local government must provide a link to the annual audit report on its website.

Effect of Proposed Changes

Termination of Community Redevelopment Agencies

The bill prohibits the creation of new CRAs on or after July 1, 2017. It provides for the termination of existing CRAs at the earlier of the expiration date stated in the agency's charter [107] or on September 30, 2037. Existing CRAs are prohibited from issuing new debt or initiating new projects on or after October 1, 2017.

If an existing CRA has outstanding bond obligations as of July 1, 2017 that do not mature until after the earlier of the termination date of the agency or September 30, 2037, the bill provides that the CRA remains in existence until the maturity of the bond. A CRA in operation on or after September 30, 2037, may not extend the maturity date of its bonds. The bill requires a county or municipality operating an existing CRA to issue a new finding of necessity that is limited to meeting the remaining bond obligations of the CRA in a timely manner.

Inactive Community Redevelopment Agencies

The bill provides a new inactivity criterion for CRAs. Beginning October 1, 2014, any CRA reporting no revenues, no expenditures, and no debt for three consecutive fiscal years must be declared inactive by the Department of Economic Opportunity (DEO). DEO must notify the CRA of the declaration of inactive status. If the CRA has no board or agent, the notice of inactive status must be delivered to the governing board of the creating local government entity. The governing board of a CRA declared inactive by this procedure may seek to invalidate the declaration by initiating proceedings under s. 189.062(5), F.S., within 30 days after the date of receipt of the DEO notice.

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[102] The special district must initiate the legal challenge within 30 days after the date the written notice of DEO's declaration of inactive status is provided to the special district. Section 189.062(5)(b), F.S.

[103] Section 189.062(5)(c), F.S. The enforcement action is brought in the circuit court in and for Leon County.

[104] Sections 189.071(3), 189.072(3), F.S.

[105] Section 189.062(4), F.S. Unless otherwise provided by law or ordinance, dissolution of a special district transfers title to all district property to the local general-purpose government, which also must assume all debts of the dissolved district. Section 189.076(2), F.S.

[106] Section 218.32, F.S.

[107] The bill fixes the expiration date stated in the CRA charter as of July 1, 2017.

A CRA declared inactive may only expend funds from its redevelopment trust fund necessary to service outstanding bond debt. The CRA may not expend other funds without an ordinance of the governing body of the creating local government entity consenting to the expenditure of funds.

A CRA declared inactive by this criterion is exempt from the provisions of ss. 189.062(2) and 189.062(4), F.S. The bill further provides that the provisions of the new section are cumulative and where conflicting, superior to the provisions of s. 189.062, F.S., which provides special procedures for inactive special districts. However, if the provisions in the new section conflict with s. 189.062, F.S., the bill provides that the newly created section prevails.

The bill directs DEO to maintain a separate list on its website of CRAs declared inactive pursuant to this new section. By November 1 of each year, the bill also requires DFS to submit an annual report to the Special District Accountability Program listing each CRA with no revenues, expenditures, or debt for the previous fiscal year.

Budget

The bill requires CRAs to comply with budgeting, auditing, and reporting requirements of s. 189.016, F.S., except as otherwise provided by s. 163.387, F.S.

The bill requires each CRA created by a municipality to adopt a proposed budget within 90 days before the start of its fiscal year. It requires the CRA to submit its proposed budget and projections for the next fiscal year to the board of county commissioners for the county in which the CRA is located within 60 days before the start of the CRA's fiscal year. In addition, all amendments to the CRA's operating budget must be submitted to the board of county commissioners within 10 days after the date of the adoption of the amended budget. The bill also permits a CRA budget to include administrative and overhead expenses directly or indirectly necessary to implementing a community redevelopment plan adopted by the CRA.

Effective October 1, 2017, the bill provides that moneys in the redevelopment trust fund may only be expended pursuant to an annual budget adopted by the board of commissioners of the CRA and only for those purposes specified in current law.

Reporting Requirements

Annual Report

The bill requires each CRA to submit an annual report to the county or municipality that created the agency by March 31 of each year and to publish the report to the agency's website. The CRA must also publish a notice in a newspaper of general circulation in the community that the report has been filed and is available for inspection during business hours in the office of the clerk of the city or county commission and the office of the agency and on the agency's website. The report must include the most recent complete audit report of the redevelopment trust fund and provide performance data for each community redevelopment plan overseen by the CRA. The performance data report must include the following information as of December 31 of the year being reported:

- Total number of projects the CRA started, completed, and the estimated cost of each project;
- Total expenditures from the redevelopment trust fund;
- Number of jobs created within the CRA's area of authority and the sector of the economy to which these jobs pertain;
- Number of jobs retained within the CRA's area of authority;
- Original assessed real property values within the CRA's area of authority as of the day the agency was created;
- Total assessed real property values within the CRA's area of authority as of January 1 of the year being reported; and
- Total amount expended for affordable housing for low and middle income residents.

By January 1, 2018, the bill requires each CRA to publish a digital map to its website depicting the boundaries of the district and the total acreage of the district. If any change is made to the boundaries or total acreage, the bill requires the CRA to post the updated map files within 60 days after the date such change takes effect.

Audit and Financial Report

The bill expands the current reporting requirements for the audit report of the redevelopment trust fund to include:

- A complete financial statement identifying all assets, liabilities, income, and operating expenses of the CRA as of the end of fiscal year; and
- A finding by the auditor determining whether the CRA complied with the requirements concerning remaining funds at the conclusion of the fiscal year.

The bill requires the audit report for each CRA to be included with the annual financial report submitted to DFS by the county or municipality that created the CRA, even if the CRA files a separate financial report under s. 218.32, F.S. The bill provides that if a county or municipality has a CRA, failure to include the CRA's annual audit as part of its annual report constitutes a failure to complete the annual financial report under s. 218.32, F.S.

Governance

The bill requires commissioners of a CRA to comply with the ethics training requirements in s. 112.3142, F.S., which requires four hours of ethics training.

The bill requires CRAs to utilize the same procurement and purchasing processes for commodities and services as the county or municipality that created the CRA.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.356, F.S., providing reporting requirements.

Section 2: Amends s. 163.367, F.S., requiring ethics training for CRA commissioners.

Section 3: Amends s. 163.370, F.S., establishing procurement procedures.

Section 4: Creates s. 163.371, F.S., providing reporting requirements and requiring a CRA to publish annual reports and boundary maps on its website.

Section 5: Creates s. 163.3755, F.S., prohibiting the creation of new CRAs after a time certain and providing a phase-out for existing agencies.

Section 6: Creates s. 163.3756, F.S., providing criteria for determining whether a CRA is inactive and hearing procedures.

Section 7: Amends s. 163.387, F.S., revising requirements for the use of redevelopment trust fund proceeds and auditing requirements.

Section 8: Amends s. 218.32, F.S., requiring local governments to include CRA annual audit reports as part of the local government entity's annual audit report.

Section 9: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may require expenditures by DEO and DFS to the extent additional staff are necessary to comply with duties created by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill would increase revenue to some local governments to the extent ad valorem taxation that would otherwise be received by those governments is currently deposited in the redevelopment trust fund.

2. Expenditures:

   The bill may have a fiscal impact on CRA expenditures due to auditing and reporting requirements in the bill, including the newspaper advertising requirement associated with posting certain information on the agency's website.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The first amendment requires a CRA to publish notice of the filing of its annual report in a newspaper of general circulation in the community. The second

amendment clarifies that a CRA may be declared inactive by DEO if the agency reports no revenues, no expenditures, and no debt for three consecutive fiscal years. The third amendment revised the start date of the requirement that moneys in the redevelopment trust fund may only be expended pursuant to an annual budget adopted by the board of commissioners of the CRA and only for those purposes specified in current law from July 1, 2017 to October 1, 2017.

This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to community redevelopment agencies; amending s. 163.356, F.S.; providing reporting requirements; deleting provisions requiring certain annual reports; amending s. 163.367, F.S.; requiring ethics training for community redevelopment agency commissioners; amending s. 163.370, F.S.; establishing procurement procedures; creating s. 163.371, F.S.; providing annual reporting requirements; requiring publication of notices of reports; requiring reports to be available for inspection in designated places; requiring a community redevelopment agency to publish annual reports and boundary maps on its website; creating s. 163.3755, F.S.; prohibiting the creation of new community redevelopment agencies after a date certain; providing a phase-out period for existing community redevelopment agencies; providing a limited exception for community redevelopment agencies with certain outstanding bond obligations; creating s. 163.3756, F.S.; providing legislative findings; requiring the Department of Economic Opportunity to declare inactive community redevelopment agencies that have reported no financial activity for a specified number of years; providing hearing procedures; authorizing certain financial activity by a community

redevelopment agency that is declared inactive; requiring the Department of Economic Opportunity to maintain a website identifying all inactive community redevelopment agencies; amending s. 163.387, F.S.; revising requirements for the use of the redevelopment trust fund proceeds; limiting allowed expenditures; revising requirements for the annual budget of a community redevelopment agency; requiring municipal community redevelopment agencies to provide annual budget to county commission; revising requirements for the annual audit; requiring the audit to be included with the financial report of the county or municipality that created the community redevelopment agency; amending s. 218.32, F.S.; requiring county and municipal governments to report community redevelopment agency annual audit reports as part of the county or municipal annual report; revising criteria for finding that a county or municipality failed to file report; requiring the Department of Financial Services to provide a report to the Department of Economic Opportunity concerning community redevelopment agencies with no revenues, no expenditures, and no debts; providing an effective date.

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

Section 1. Paragraphs (c) and (d) of subsection (3) of section 163.356, Florida Statutes, are amended to read:

163.356 Creation of 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.

(d) An agency authorized to transact business and exercise powers under this part shall file with the governing body the report required pursuant to s. 163.371(1).~~, 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.~~

(e)~~(d)~~ At any time after the creation of a community redevelopment agency, the governing body of the county or municipality may appropriate to the agency such amounts as the governing body deems necessary for the administrative expenses and overhead of the agency, including the development and implementation of community policing innovations.

Section 2. Subsection (1) of section 163.367, Florida Statutes, is amended to read:

163.367 Public officials, commissioners, and employees subject to code of ethics.—

(1)(a) The officers, commissioners, and employees of a community redevelopment agency created by, or designated pursuant to, s. 163.356 or s. 163.357 are ~~shall be~~ subject to the provisions and requirements of part III of chapter 112.

(b) Commissioners of a community redevelopment agency must comply with the ethics training requirements in s. 112.3142.

Section 3. Subsection (5) is added to section 163.370, Florida Statutes, to read:

163.370 Powers; counties and municipalities; community redevelopment agencies.—

(5) A community redevelopment agency shall procure all commodities and services under the same purchasing processes and requirements that apply to the county or municipality that created the agency.

Section 4. Section 163.371, Florida Statutes, is created to read:

163.371 Reporting requirements.—

(1) Beginning March 31, 2018, and no later than March 31 of each year thereafter, a community redevelopment agency shall file an annual report with the county or municipality that created the agency and publish the information on the agency's website. At the time the report is filed and the information is published on the website, the agency shall also 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 or on the website of the agency. The report must include the following information:

(a) A complete audit report of the redevelopment trust fund pursuant to s. 163.387(8).

(b) The performance data for each plan authorized, administered, or overseen by the community redevelopment agency as of December 31 of the year being reported, including the:

1. Total number of projects started, completed, and the estimated project cost for each project.

2. Total expenditures from the redevelopment trust fund.

3. Number of jobs created within the community

redevelopment agency's area of authority.

4. Sector of the economy to which the new jobs pertain.

5. Number of jobs retained in the area within the community redevelopment agency's authority.

6. Original assessed real property values within the community redevelopment agency's area of authority as of the day the agency was created.

7. Total assessed real property values of property within the boundaries of the community redevelopment agency as of January 1 of the year being reported.

8. Total amount expended for affordable housing for low and middle income residents.

(2) By January 1, 2018, each community redevelopment agency shall publish on its website digital maps that depict the geographic boundaries and total acreage of the community redevelopment agency. If any change is made to the boundaries or total acreage, the agency shall post updated map files on its website within 60 days after the date such change takes effect.

Section 5. Section 163.3755, Florida Statutes, is created to read:

163.3755 Termination of community redevelopment agencies; prohibition on future creation.—

(1) A community redevelopment agency in existence on July 1, 2017, shall terminate on the expiration date provided in the community redevelopment agency's charter on July 1, 2017, or on

September 30, 2037, whichever is earlier.

(2) A community redevelopment agency may not initiate any new projects or issue any new debt on or after October 1, 2017.

(3)(a) Notwithstanding subsection (1), a community redevelopment agency with outstanding bonds as of July 1, 2017 and that do not mature until after the earlier of the termination date of the agency or September 30, 2037, remains in existence until the date the bonds mature.

(b) A community redevelopment agency operating under this subsection on or after September 30, 2037, may not extend the maturity date of any outstanding bonds.

(c) The county or municipality that created the community redevelopment agency must issue a new finding of necessity limited to timely meeting the remaining bond obligations of the community redevelopment agency.

(4) A community redevelopment agency may not be created on or after July 1, 2017. A community redevelopment agency in existence before July 1, 2017, may continue to operate as provided in this part.

Section 6. Section 163.3756, Florida Statutes, is created to read:

163.3756 Inactive community redevelopment agencies.—

(1) The Legislature finds that a number of community redevelopment agencies continue to exist but report no revenues, no expenditures, and no outstanding debt in their annual report

to the Department of Financial Services pursuant to s. 218.32.

(2)(a) Beginning October 1, 2014, a community redevelopment agency that has reported no revenues, no expenditures, and no debt under s. 218.32 or s. 189.016(9), for 3 consecutive fiscal years shall be declared inactive by the Department of Economic Opportunity. The department shall notify the agency of the declaration of inactive status under this subsection. If the agency has no board members or no agent, the notice of inactive status must be delivered to the governing board or commission of the county or municipality that created the agency.

(b) The governing board of a community redevelopment agency declared inactive under this subsection may seek to invalidate the declaration by initiating proceedings under s. 189.062(5) within 30 days after the date of the receipt of the notice from the department.

(3) A community redevelopment agency declared inactive under this section is authorized only to expend funds from the redevelopment trust fund as necessary to service outstanding bond debt. The agency may not expend other funds without an ordinance of the governing body of the local government that created the agency consenting to the expenditure of funds.

(4) The provisions of s. 189.062(2) and (4) do not apply to a community redevelopment agency that has been declared inactive under this section.

(5) The provisions of this section are cumulative to the provisions of s. 189.062. To the extent the provisions of this section conflict with the provisions of s. 189.062, this section prevails.

(6) The Department of Economic Opportunity shall maintain on its website a separate list of community redevelopment agencies declared inactive under this section.

Section 7. Subsections (6) and (8) of section 163.387, Florida Statutes, are amended to read:

163.387 Redevelopment trust fund.—

(6) Beginning October 1, 2017, 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 only pursuant to an annual budget adopted by the board of commissioners of the community redevelopment agency and only for the ~~following~~ purposes stated in this subsection.~~,~~ ~~including, but not limited to:~~

(a) Except as provided in this subsection, a community redevelopment agency shall comply with the requirements of s. 189.016.

(b) A community redevelopment agency created by a municipality shall:

1. Adopt its proposed budget within 90 days before the beginning of its fiscal year.

2. Submit its proposed budget and projections for the next

fiscal year to the board of county commissioners for the county in which the community redevelopment agency is located within 60 days before the start of the agency's fiscal year.

3. Submit amendments to its operating budget to the board of county commissioners of the county in which the community redevelopment agency is located within 10 days after the date of adoption of the amended budget. ~~Administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan adopted by the agency.~~

(c) The annual budget of a community redevelopment agency may provide for payment of the following expenses:

1. Administrative and overhead expenses directly or indirectly necessary to implement 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.

(8)(a) Each community redevelopment agency shall provide for an audit of the trust fund each fiscal year and a report of such audit to be prepared by an independent certified public accountant or firm.

(b) The audit ~~Such~~ report shall:

1. Describe the amount and source of deposits into, and the amount and purpose of withdrawals from, the trust fund during such fiscal year and the amount of principal and interest paid during such year on any indebtedness to which increment revenues are pledged and the remaining amount of such indebtedness.

2. Include a complete financial statement identifying the assets, liabilities, income, and operating expenses of the community redevelopment agency as of the end of such fiscal

year.

3. Include a finding by the auditor determining whether the community redevelopment agency complies with the requirements of subsection (7).

(c) The audit report for the community redevelopment agency shall be included with the annual financial report submitted by the county or municipality that created the agency to the Department of Financial Services as provided in s. 218.32, regardless of whether the agency reports separately under s. 218.32.

(d) The agency shall provide ~~by registered mail~~ a copy of the audit report to each taxing authority.

Section 8. Subsection (3) of section 218.32, Florida Statutes, is amended to read:

218.32 Annual financial reports; local governmental entities.—

(3)(a) The department shall notify the President of the Senate and the Speaker of the House of Representatives of any municipality that has not reported any financial activity for the last 4 fiscal years. Such notice must be sufficient to initiate dissolution procedures as described in s. 165.051(1)(a). Any special law authorizing the incorporation or creation of the municipality must be included within the notification.

(b) Failure of a county or municipality to include in its

annual report to the department the full audit required by s. 163.387(8) for each community redevelopment agency created by that county or municipality constitutes a failure to report under this section.

(c) By November 1 of each year, the department must provide the Special District Accountability Program of the Department of Economic Affairs with a list of each community redevelopment agency reporting no revenues, no expenditures, and no debt for the community redevelopment agency's previous fiscal year.

Section 9. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 139 Local Tax Referenda
SPONSOR(S): Ingoglia and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	15 Y, 0 N	Darden	Miller
2) Ways & Means Committee		Dugan RD	Langston
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Florida Constitution preempts all forms of taxation, except for ad valorem taxes on real estate and tangible personal property, to the state unless otherwise provided by general law. Section 212.055, F.S., provides counties limited authority to levy discretionary sales surtaxes for specific purposes on transactions subject to state sales tax. With some exceptions, discretionary sales surtaxes generally are subject to approval by a majority of the qualified electors in a referendum.

Fifty-six counties and 18 school districts across the state levy at least one local discretionary sales surtax. These surtaxes will generate an estimated $2.3 billion in revenue during fiscal year 2017-18.

The bill requires any referendum to levy a discretionary sales surtax to be held during a general election and approved by a majority of electors voting on the ballot question.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation, except for ad valorem taxes on real estate and tangible personal property, to the state unless otherwise provided by general law.[1] By statute, counties have limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax.[2] These purposes include:

- Operating a transportation system in a charter county;[3]
- Financing local government infrastructure projects;[4]
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;[5]
- Providing medical care for indigent persons;[6]
- Funding trauma centers;[7]
- Operating, maintaining, and administering a county public general hospital;[8]
- Constructing and renovating schools;[9]
- Providing emergency fire rescue services and facilities; and[10]
- Funding pension liability shortfalls.[11]

The surtax is collected by the Department of Revenue (DOR) using the same procedures utilized for the administration, collection, and enforcement of the general state sales tax.[12] DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund. A separate account is established for each county imposing a discretionary surtax. The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of three percent or administrative costs solely and directly attributable to the surtax, whichever is less. Each county is liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide. [13]

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.[14] The governing body of the county or the school district must notify DOR of the imposition, termination, or rate change of a discretionary sales surtax within 10 days of final adoption by ordinance or referendum, but no later than November 16. The notification must include the duration of the surtax, the surtax rate, a copy of the ordinance, and any additional information DOR requires by rule.[15] If the county or school district fails to provide timely notice, the

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[1] Art. VII, s. 1(a), Fla. Const..
[2] Section 212.054, F.S.; s. 212.055, F.S.
[3] Section 212.055(1), F.S.
[4] Section 212.055(2), F.S.
[5] Section 212.055(3), F.S.; Note that the small county surtax may be levied by extraordinary vote of the county governing board if the proceeds are to be expended only for operating purposes.
[6] Section 212.055(4)(a), F.S. (for counties with more than 800,000 residents); s. 212.055(7), F.S. (for counties with less than 800,000 residents)
[7] Section 212.055(4)(b), F.S.
[8] Section 212.055(5), F.S.
[9] Section 212.055(6), F.S.
[10] Section 212.055(8), F.S.
[11] Section 212.055(9), F.S.
[12] Section 212.054(4)(a), F.S.
[13] Section 212.054(4)(b), F.S.
[14] Section 212.054(5), F.S.
[15] Section 212.054(7)(a), F.S.

effective date of the change is delayed by one year.[16] Counties and school districts are also required to notify DOR if a referendum or consideration of an ordinance to impose, terminate, or change the rate of a surtax is to occur after October 1.[17]

The 56 counties and 18 school districts levying one or more discretionary sales surtaxes are projected to realize $2.3 billion in revenue in fiscal year 2017-18.[18] If all counties and school districts levied discretionary sales surtaxes at the maximum possible rate, they would be projected to raise $11.68 billion in revenue in fiscal year 2016-17.[19]

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.[20] For those requiring voter approval, the referendum must be approved by a majority of electors voting.[21] Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.[22]

Referendum Process

The Florida Election Code states the general requirements for a referendum.[23] The question presented to voters must contain a ballot summary with clear and unambiguous language, such that a "yes" or "no" vote on the measure indicates approval or rejection, respectively.[24] The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.[25] The ballot summary and title must be included in the resolution or ordinance calling for the referendum.[26] For some discretionary sales surtaxes, the form of the ballot question is specified by statute.[27]

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.[28] A "general election" is held on the first Tuesday after the first Monday in November in even-numbered years to fill national, state, county, and district offices, and for voting on constitutional amendments.[29]

Proposed Changes

The bill requires any referendum to levy a discretionary sales surtax to be held during a general election and to be approved by a majority of electors voting on the ballot question.

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[16] *Id.*
[17] Section 212.054(7)(b), F.S. The deadline for this notification is October 1.
[18] *2017 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220; DOR Discretionary Sales Surtax Information for Calendar Year 2017, available at: http://floridarevenue.com/Forms_library/current/dr15dssyear2017.pdf (last viewed March 30, 2017).
[19] *2016 Local Government Financial Information Handbook,* Office of Economic and Demographic Research, p. 150.
[20] *See generally* s. 212.055, F.S., *but see* s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission, as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).
[21] Section 212.055, F.S.
[22] *E.g.* s. 212.055(1)(c), F.S. (referendum for charter county and regional transportation system to be held at a time "set at the discretion of the governing body"); *but see* s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a "regularly scheduled election").
[23] Section 101.161, F.S.
[24] Section 101.161(1), F.S.
[25] *Id.*
[26] *Id.*
[27] *See* s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).
[28] Section 97.021(11), F.S.
[29] Art. VI, s. 5(a), Fla. Const. (also codified as s. 97.021(15), F.S.)

B. SECTION DIRECTORY:

Section 1: Amends 212.055, F.S., requiring discretionary sales surtax referendums to be during a general election and approved a majority of electors voting on the ballot question.

Section 2: Provides an effective date of July 1, 2017.

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:

   By requiring any discretionary sales surtax referendum to occur on the day of the general election, this bill reduces local government expenditures to the extent local governments would otherwise expend funds to call a special election for approval of a discretionary sales surtax.

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. The bill does not appear to require counties or municipalities to spend funds or take 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 state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to local tax referenda; amending s. 212.055, F.S.; requiring local government discretionary sales surtax referenda to be held on the date of a general election; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), subsections (4) and (5), paragraph (a) of subsection (6), paragraph (a) of subsection (7), paragraph (b) of subsection (8), and paragraph (a) of subsection (9) of section 212.055, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the

procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax~~, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county~~.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law and must be approved in a referendum as set forth in subsection (10) ~~at a time to be set at the discretion of the governing body~~.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(a)1. The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy

of the surtax shall be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax shall be placed on the ballot and shall take effect if approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in the referendum on the surtax.

2. If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance, or, if the ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. The levy of such surtax may be extended only by approval of ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum on the surtax.

(3) SMALL COUNTY SURTAX.—

(a) The governing authority in each county that has a population of 50,000 or fewer ~~less~~ on April 1, 1992, may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to ordinance enacted by an extraordinary vote of the members of the county governing authority if the surtax revenues are expended for operating

purposes. If the surtax revenues are expended for the purpose of servicing bond indebtedness, the surtax shall be approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum on the surtax.

(4) INDIGENT CARE AND TRAUMA CENTER SURTAX.—

(a)1. The governing body in each county the government of which is not consolidated with that of one or more municipalities, which has a population of at least 800,000 residents and is not authorized to levy a surtax under subsection (5), may levy, pursuant to an ordinance either approved by an extraordinary vote of the governing body or conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

2. If the ordinance is conditioned on a referendum, a statement that includes a brief and general description of the purposes to be funded by the surtax and that conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing body of the county. The following questions shall be placed on the ballot:

FOR THE. . . .CENTS TAX

AGAINST THE. . . .CENTS TAX

3. The ordinance adopted by the governing body providing for the imposition of the surtax shall set forth a plan for

providing health care services to qualified residents, as defined in subparagraph 4. Such plan and subsequent amendments to it shall fund a broad range of health care services for both indigent persons and the medically poor, including, but not limited to, primary care and preventive care as well as hospital care. The plan must also address the services to be provided by the Level I trauma center. It shall emphasize a continuity of care in the most cost-effective setting, taking into consideration both a high quality of care and geographic access. Where consistent with these objectives, it shall include, without limitation, services rendered by physicians, clinics, community hospitals, mental health centers, and alternative delivery sites, as well as at least one regional referral hospital where appropriate. It shall provide that agreements negotiated between the county and providers, including hospitals with a Level I trauma center, will include reimbursement methodologies that take into account the cost of services rendered to eligible patients, recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care, promote the advancement of technology in medical services, recognize the level of responsiveness to medical needs in trauma cases, and require cost containment including, but not limited to, case management. It must also provide that any hospitals that are owned and operated by government entities on May 21, 1991, must,

as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to meetings of the governing board, the subject of which is budgeting resources for the rendition of charity care as that term is defined in the Florida Hospital Uniform Reporting System (FHURS) manual referenced in s. 408.07. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service delivery and funding.

4. For the purpose of this paragraph, the term "qualified resident" means residents of the authorizing county who are:

a. Qualified as indigent persons as certified by the authorizing county;

b. Certified by the authorizing county as meeting the definition of the medically poor, defined as persons having insufficient income, resources, and assets to provide the needed medical care without using resources required to meet basic needs for shelter, food, clothing, and personal expenses; or not being eligible for any other state or federal program, or having medical needs that are not covered by any such program; or having insufficient third-party insurance coverage. In all cases, the authorizing county is intended to serve as the payor of last resort; or

c. Participating in innovative, cost-effective programs approved by the authorizing county.

5. Moneys collected pursuant to this paragraph remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

a. Maintain the moneys in an indigent health care trust fund;

b. Invest any funds held on deposit in the trust fund pursuant to general law;

c. Disburse the funds, including any interest earned, to any provider of health care services, as provided in subparagraphs 3. and 4., upon directive from the authorizing county. However, if a county has a population of at least 800,000 residents and has levied the surtax authorized in this paragraph, notwithstanding any directive from the authorizing county, on October 1 of each calendar year, the clerk of the court shall issue a check in the amount of $6.5 million to a hospital in its jurisdiction that has a Level I trauma center or shall issue a check in the amount of $3.5 million to a hospital in its jurisdiction that has a Level I trauma center if that county enacts and implements a hospital lien law in accordance with chapter 98-499, Laws of Florida. The issuance of the checks on October 1 of each year is provided in recognition of the Level I trauma center status and shall be in addition to the base contract amount received during fiscal year 1999-2000 and

any additional amount negotiated to the base contract. If the hospital receiving funds for its Level I trauma center status requests such funds to be used to generate federal matching funds under Medicaid, the clerk of the court shall instead issue a check to the Agency for Health Care Administration to accomplish that purpose to the extent that it is allowed through the General Appropriations Act; and

d. Prepare on a biennial basis an audit of the trust fund specified in sub-subparagraph a. Commencing February 1, 2004, such audit shall be delivered to the governing body and to the chair of the legislative delegation of each authorizing county.

6. Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this paragraph and subsections (2) and (3) in excess of a combined rate of 1 percent.

(b) Notwithstanding any other provision of this section, the governing body in each county the government of which is not consolidated with that of one or more municipalities and which has a population of <u>fewer</u> ~~less~~ than 800,000 residents, may levy, by ordinance subject to approval by ~~a majority of~~ the electors of the county<u>, as set forth in subsection (10),</u> voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.25 percent for the sole purpose of funding trauma services provided by a trauma center licensed pursuant to chapter 395.

1. A statement that includes a brief and general description of the purposes to be funded by the surtax and that conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing body of the county. The following shall be placed on the ballot:

FOR THE. . . .CENTS TAX

AGAINST THE. . . .CENTS TAX

2. The ordinance adopted by the governing body of the county providing for the imposition of the surtax shall set forth a plan for providing trauma services to trauma victims presenting in the trauma service area in which such county is located.

3. Moneys collected pursuant to this paragraph remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

a. Maintain the moneys in a trauma services trust fund.

b. Invest any funds held on deposit in the trust fund pursuant to general law.

c. Disburse the funds, including any interest earned on such funds, to the trauma center in its trauma service area, as provided in the plan set forth pursuant to subparagraph 2., upon directive from the authorizing county. If the trauma center receiving funds requests such funds be used to generate federal

matching funds under Medicaid, the custodian of the funds shall instead issue a check to the Agency for Health Care Administration to accomplish that purpose to the extent that the agency is allowed through the General Appropriations Act.

d. Prepare on a biennial basis an audit of the trauma services trust fund specified in sub-subparagraph a., to be delivered to the authorizing county.

4. A discretionary sales surtax imposed pursuant to this paragraph shall expire 4 years after the effective date of the surtax, unless reenacted by ordinance subject to approval by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a subsequent referendum.

5. Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this paragraph and subsections (2) and (3) in excess of a combined rate of 1 percent.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002

which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(a) The rate shall be 0.5 percent.

(b) If the ordinance is conditioned on a referendum, the proposal to adopt the county public hospital surtax shall be placed on the ballot in accordance with subsection (10) ~~law at a time to be set at the discretion of the governing body~~. The referendum question on the ballot shall include a brief general description of the health care services to be funded by the surtax.

(c) Proceeds from the surtax shall be:

1. Deposited by the county in a special fund, set aside from other county funds, to be used only for the operation, maintenance, and administration of the county public general hospital; and

2. Remitted promptly by the county to the agency, authority, or public health trust created by law which administers or operates the county public general hospital.

(d) Except as provided in subparagraphs 1. and 2., the county must continue to contribute each year an amount equal to at least 80 percent of that percentage of the total county budget appropriated for the operation, administration, and maintenance of the county public general hospital from the county's general revenues in the fiscal year of the county ending September 30, 1991:

1. Twenty-five percent of such amount must be remitted to a governing board, agency, or authority that is wholly independent from the public health trust, agency, or authority responsible for the county public general hospital, to be used solely for the purpose of funding the plan for indigent health care services provided for in paragraph (e);

2. However, in the first year of the plan, a total of $10 million shall be remitted to such governing board, agency, or authority, to be used solely for the purpose of funding the plan for indigent health care services provided for in paragraph (e), and in the second year of the plan, a total of $15 million shall be so remitted and used.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida

Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(44). Where consistent with these objectives, the plan

may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined before program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also

provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of

poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

(f) Notwithstanding any other provision of this section, a county may not levy local option sales surtaxes authorized in this subsection and subsections (2) and (3) in excess of a combined rate of 1 percent.

(6) SCHOOL CAPITAL OUTLAY SURTAX.—

(a) The school board in each county may levy, pursuant to resolution conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

(7) VOTER-APPROVED INDIGENT CARE SURTAX.—

(a)1. The governing body in each county that has a population of fewer than 800,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum. The surtax may be levied at a rate not to exceed 0.5 percent, except that if a publicly supported medical school is located in the county, the rate shall not exceed 1 percent.

2. Notwithstanding subparagraph 1., the governing body of any county that has a population of fewer than 50,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by ~~a majority vote~~

~~of~~ the electors of the county, as set forth in subsection (10), voting in a referendum. The surtax may be levied at a rate not to exceed 1 percent.

(8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.—

(b) Upon the adoption of the ordinance, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance. The ordinance will take effect if approved by ~~a majority of~~ the electors of the county, as set forth in subsection (10), voting in a referendum held for such purpose. The referendum shall be placed on the ballot of a regularly scheduled election. The ballot for the referendum must conform to the requirements of s. 101.161.

(9) PENSION LIABILITY SURTAX.—

(a) The governing body of a county may levy a pension liability surtax to fund an underfunded defined benefit retirement plan or system, pursuant to an ordinance conditioned to take effect upon approval by ~~a majority vote of~~ the electors of the county, as set forth in subsection (10), voting in a referendum, at a rate that may not exceed 0.5 percent. The county may not impose a pension liability surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63 must be used to establish the level of actuarial funding for

purposes of determining eligibility to impose the surtax. The governing body of a county may only impose the surtax if:

1. An employee, including a police officer or firefighter, who enters employment on or after the date when the local government certifies that the defined benefit retirement plan or system formerly available to such an employee has been closed may not enroll in a defined benefit retirement plan or system that will receive surtax proceeds.

2. The local government and the collective bargaining representative for the members of the underfunded defined benefit retirement plan or system or, if there is no representative, a majority of the members of the plan or system, mutually consent to requiring each member to make an employee retirement contribution of at least 10 percent of each member's salary for each pay period beginning with the first pay period after the plan or system is closed.

3. The pension board of trustees for the underfunded defined benefit retirement plan or system, if such board exists, is prohibited from participating in the collective bargaining process and engaging in the determination of pension benefits.

4. The county currently levies a local government infrastructure surtax pursuant to subsection (2) which is scheduled to terminate and is not subject to renewal.

5. The pension liability surtax does not take effect until the local government infrastructure surtax described in

subparagraph 4. is terminated.

(10) DATES FOR REFERENDA.—A referendum to adopt or amend a local government discretionary sales surtax under this section shall be held only at a general election, as defined in s. 97.021, and requires the approval of a majority of the voters voting on the ballot question for passage.

Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 149 Fantasy Contests & Fantasy Contest Operators
SPONSOR(S): Brodeur
TIED BILLS: **IDEN./SIM. BILLS:** SB 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism & Gaming Control Subcommittee	10 Y, 0 N	Sarsfield	Barry
2) Ways & Means Committee		Aldridge	Langston
3) Commerce Committee			

SUMMARY ANALYSIS

A fantasy contest (also called fantasy sports or fantasy game) is a type of contest in which participants assemble, own, and manage imaginary teams made up of actual professional sports players. The fantasy teams compete based on the statistical performance of actual players in actual sports games. Participants can play fantasy contests at home or online, through a fantasy contest operator or with friends, with or without an entry fee, and over a full season or over a shorter period of time.

Although fantasy contests began as small-scale contests played amongst friends or co-workers, the advent of new technologies beginning in the 1990s allowed for broader access for the public to participate in fantasy contests because statistics could be easily and quickly compiled online. Additionally, news and information about players was more readily available through growing access to the Internet. Daily fantasy contests are an accelerated version of fantasy contests, which are played across a shorter period of time.

In recent years, the prevalence of daily fantasy contests has grown dramatically across the United States and abroad. As major advertising campaigns by operators of daily fantasy contests websites such as FanDuel and DraftKings have popularized the contests and led to millions of new participants, daily fantasy contests have attracted scrutiny from state officials concerning their compliance with state anti-gambling laws. In response, some states have pursued investigations and litigation to halt daily fantasy contests, while other states have proposed or passed legislation to allow such daily fantasy contests to continue.

The bill defines "fantasy contest" as a fantasy or simulated game or contest in which:

- The sponsor of the fantasy contest is not a participant in the fantasy contest.
- The value of all prizes and awards offered to winning participants are established and made known in advance of the contest.
- Winning outcomes must reflect the relative knowledge and skill of the players and are determined by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events.
- Winning outcomes must not be based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of an individual athlete in a single sporting event.

The bill provides that "fantasy contests" are exempt from regulation under ch. 849, F.S., entitled "Gambling."

The bill does not have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background of fantasy contest industry:

A fantasy contest (also called a fantasy sport or fantasy game) is a type of contest where participants assemble, own, and manage imaginary teams made up of actual professional sports players. The teams compete based on the statistical performance generated by the actual players in an actual sports game. The players' performances are converted into points that are compiled according to the participant's team roster. In fantasy contests, participants draft, trade, and cut players similar to a real team owner.

Although fantasy contests began as a contest played amongst friends or co-workers, new technology in the mid-1990s allowed for broader access to the public to participate in fantasy contests because statistics could be easily and quickly compiled online. Additionally, news and information about players was more readily available through growing access to the Internet.

Daily fantasy contests are an accelerated version of fantasy contests, which are played across a shorter period of time. For example, daily fantasy contests may be played over a single week in a season, rather than the entire season. Daily fantasy contests are typically played as "contests" which require an entry fee. The fee funds an advertised prize pool from which the fantasy contest operator (such as FanDuel and DraftKings) takes a percentage as revenue.[1]

The legality of daily fantasy contests has been challenged in many states and jurisdictions, with some critics arguing that the contests more closely resemble proposition wagering on athlete performance than traditional fantasy contests.

The online fantasy contest industry is now a multi-billion dollar industry in the United States.[2] In 2015, an estimated 57.4 million people competed in fantasy contests in the United States and Canada.[3]

Current situation:

In general, gambling is illegal in Florida.[4] Chapter 849, F.S., prohibits keeping a gambling house,[5] running a lottery,[6] or the manufacture, sale, lease, play, or possession of slot machines.[7] Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,[8] bingo,[9] cardrooms,[10]charitable drawings,[11] game promotions (sweepstakes),[12] and bowling tournaments.[13]

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[1] THE WASHINGTON POST, *Daily fantasy sports Web sites find riches in Internet gaming law loophole*, (Mar. 27, 2015) https://www.washingtonpost.com/sports/daily-fantasy-sports-web-sites-find-riches-in-internet-gaming-law-loophole/2015/03/27/92988444-d172-11e4-a62f-ee745911a4ff_story.html.
[2] THE BOSTON GLOBE, *Fantasy sports book gives insider view of DraftKings' explosion*, (Mar. 6, 2017) https://www.bostonglobe.com/business/2017/03/06/fantasy-sports-book-gives-insider-view-draftkings-explosion/qntMQJiIW2IKhrBNXPx2SK/story.html.
[3] FANTASY SPORTS TRADE ASS'N, http://fsta.org/research/industry-demographics/ (last visited Mar. 24, 2017).
[4] s. 849.08, F.S.
[5] s. 849.01, F.S.
[6] s. 849.09, F.S.
[7] s. 849.16, F.S.
[8] s. 849.085, F.S.
[9] s. 849.0931, F.S.
[10] s. 849.086, F.S.
[11] s. 849.0935, F.S.
[12] Section. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[13] s. 546.10, F.S.

Lotteries

Lotteries are generally prohibited by the Florida Constitution.[14] The constitutional prohibition is codified in statute at s. 849.09, F.S. Other than the statement in the Florida Constitution that indicates that the term "lottery" does not include "types of pari-mutuel pools authorized by law as of the effective date of this constitution," the term "lottery" is not defined by the Florida Constitution or statute. Generally, a lottery is a scheme which contains three elements: consideration, chance, and prize. As to consideration, while most states view consideration narrowly as a tangible asset, such as money, Florida views consideration broadly, as the conferring of any benefit.[15] Thus, even if players do not pay to participate in a game where they have a chance to win a prize, it may be an illegal lottery.

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. This lottery is known as the Florida Education Lotteries and directs a portion of the proceeds to the State Education Lotteries Trust Fund.[16]

To allow other activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable bingo, charitable drawings, and game promotions. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize. Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of ch. 496, F.S. Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. As they contain the three elements of a lottery: consideration, chance, and prize, they are generally prohibited by Florida law unless they meet a statutory exception.[17]

Pari-Mutuel Wagering, Cardrooms, and Slot Machines

Chapter 550, F.S., authorizes pari-mutuel wagering at licensed tracks and frontons and provides for state regulation. Pari-mutuel is defined as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes."[18] A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[19]

Chapter 849, F.S., authorizes cardrooms at pari-mutuel facilities, subject to certain restrictions.[20] An authorized game is defined as "a game or series of games of poker or dominoes which are played in a nonbanking manner."[21]

Slot machines have been generally prohibited in Florida since 1937.[22] Section 849.16, F.S., defines a slot machine as a machine or device that requires the insertion of a piece of money, coin, account number, code, or other object or information to operate and allows the user, whether by application of skill or by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, to receive money, credit, allowance, or thing of value, or secure additional chances or rights to use such machine, apparatus, or device. However, following a constitutional amendment in 2004,

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[14] Article X, s. 7, FLA. CONST. *But, see,* Article X, s. 15, FLA. CONST., authorizing lotteries operated by the state.
[15] *See Little River Theatre Corp. v. State ex rel. Hodge*, 135 Fla. 854 (1939).
[16] *See* FLA. LOTTERY, *Education*, http://www.flalottery.com/whereMoneyGoes (last visited Mar. 24, 2017).
[17] *See Little River Theatre Corp., supra* note 17, at 868.
[18] s. 550.002(22), F.S.
[19] *See* s. 550.1625(1), F.S., "...legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state."
[20] s. 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[21] S.849.086(2)(a), F.S.
[22] s. 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).

slot machines were introduced at certain pari-mutuel facilities in Broward and Miami-Dade Counties and are regulated under ch. 551, F.S.[23]

Gaming Compact

Chapter 285, F.S., ratified the gaming compact with the Seminole Tribe of Florida (2010 Compact). It provides that it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the compact.[24] The 2010 Compact provides for revenue sharing. For the exclusive authority to offer banked card games on tribal lands at five locations and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Seminole Tribe pays the State of Florida a share of "net win" (approximately $240 million per year). Section 285.710(1)(f), F.S., designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the "state compliance agency" having authority to carry out the state's oversight responsibilities under the 2010 Compact. The 2010 Compact took effect when published in the Federal Register on July 6, 2010, and lasts for 20 years, expiring July 31, 2030, unless renewed.

Notably, the 2010 Compact provides for a reduction in revenue sharing if "internet/online gaming (or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from a casino or other commercial gaming facility)" is offered in the state.

Legality of Certain Other Activities in Florida

In recent years, the advent of new technologies and new products in Florida led to questions about whether certain new activities were permissible activities or illegal gambling under Florida law.

In 2013, the Legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prize are prohibited slot machines.[25]

In 2015, the Legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida law and prevent the expansion of casino-style gambling. The Legislature clarified the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.[26]

Legality of Fantasy Contests in Florida

Currently, there is no constitutional, statutory or regulatory framework expressly allowing for fantasy contests to be conducted in the State of Florida. Moreover, Florida courts have not addressed whether Florida's constitutional and statutory prohibitions on gambling apply to fantasy contests.

Regardless of whether fantasy contests are games of skill or games of chance, they may be otherwise subject to the state's gambling laws and anti-bookmaking statute. Section 849.14, F.S., provides that a stake, bet, or wager of money or another thing of value placed "upon the result of any trial or contest of skill, speed, power, or endurance of human or beast" is unlawful. Receiving money or acting as the custodian or depositary of money as part of such a stake, bet, or wager is also unlawful.

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[23] *See* Article X, Section 23, FLA. CONST.; ch. 2010-29, L.O.F. and chapter 551, F.S.
[24] s. 285.710, F.S.
[25] FLA. HOUSE OF REPRESENTATIVES SELECT COMMITTEE ON GAMING, *Final Bill Analysis of 2013 CS/HB 155*, p. 1 (Apr. 19, 2013).
[26] s. 546.10, F.S.

Section 849.25, F.S., Florida's anti-bookmaking statute, defines bookmaking as "the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever." The statute includes factors that are to be considered evidence of bookmaking, including charging a percentage on accepted wagers, receiving more than five wagers in a day, and receiving over $500 in total wages in a single day or over $1500 in a single week.[27]

In 1991, the Attorney General of Florida issued a non-binding advisory legal opinion (AGO)[28] regarding whether participation in a fantasy sports league violated Florida's gambling laws. The AGO concluded that the operation of a fantasy league would violate s. 849.14, F.S. The AGO reasoned that since the fantasy sports league's entry fee was used to make up the prizes, it qualified as a "stake, bet, or wager" under Florida law.[29] The AGO stated that, "while the skill of the individual contestant picking the members of the fantasy team is involved, the prizes are paid to the contestants based upon the performance of the individual professional football players in actual games."[30]

In addition, fantasy contests may be subject to Florida's anti-lottery laws. Players in daily fantasy contests are competing for a distribution of a prize that may be made from a pool of funds that are made up of players' contributions. This type of game may be considered pool betting or pari-mutuel betting.

However, the 1991 AGO concluded that contests, in which the skill of the contestant predominates over the element of chance, such as in certain sports contests, are not prohibited lotteries. As an example, the AGO noted that golf and bowling tournaments are contests of skill but are not prohibited under Florida law. AGO further stated that "it might well be argued that skill is involved in the selection of a successful fantasy team by requiring knowledge of the varying abilities and skills of the professional football players who will be selected to make up the fantasy team."[31]

Fantasy Contests in the United States

The federal Unlawful Internet Gambling Enforcement Act of 2006[32] (UIGEA) prohibits the processing of certain online financial wagering to prevent payment systems from being used in illegal online gambling. UIGEA prohibits gambling businesses from knowingly accepting payments in connection with a "bet or wager" that involves the use of the Internet and that is unlawful under any federal or state law.

UIGEA expressly states that participation in fantasy or simulation sports contests is not included in the definition of "bet or wager"[33] when certain conditions are met. For purposes of UIGEA, participation in a fantasy or simulation sports contest is not a bet or wager when:

- Prizes and awards offered to winning participants are established and made known in advance of the game or contest and the value is not determined by the number of participants or amount of fees paid by the participants.
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals.
- Winning outcomes are not based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of an individual athlete in a single sporting event.

[27] s. 849.25(1)(b), F.S.
[28] 91-03 Fla. Op. Att'y Gen. (1991).
[29] *Creash v. State*, 131 Fla. 111, 118 (Fla. 1938).
[30] 91-03 Fla. Op. Att'y Gen. (1991).
[31] *Id.*
[32] 31 U.S.C. § 5361-5366 (2006).
[33] 31 U.S.C. § 5362(1) (2006).

UIGEA exempts fantasy and simulation sports contests from the application of UIGEA, but does not make such contests legal generally. UIGEA does not change or preempt any other federal or state law. As expressed in the Rule of Construction in UIGEA, "no provision of this subchapter shall be construed as altering, limiting, or extending any federal or state law or tribal-state compact prohibiting, permitting, or regulating gambling within the United States."[34] Therefore, any other state or federal law could apply.

The federal Professional and Amateur Sports Protection Act of 1992 (PAPSA) states that it is unlawful for a governmental entity or person to operate or promote any gambling that is based directly or indirectly on one or more competitive sports games or on the performance of an amateur or professional athlete in a competitive sports game.[35]

While federal law appears to not expressly prohibit them, the legality of daily fantasy contests under state law varies from state to state. Several states, including Arizona and Louisiana, have laws that have been interpreted as prohibiting fantasy contests in their jurisdictions.[36] For instance, in 2015, the Attorney General of Nevada opined that daily fantasy contests constitute sports pools under Nevada law.[37] Under the opinion, daily fantasy contest sites are required to apply to the Nevada Gaming Control Board for a license to operate a sports pool in the state. Conversely, many states have proposed or passed legislation to legalize and regulate fantasy contests.[38]

Effect of the bill:

The bill defines the term "fantasy contest" to mean a fantasy or simulated game or contest in which:

- The sponsor of the game or contest is not a participant in the game or contest.
- The value of all prizes and awards offered to winning participants are established and made known in advance of contest.
- Winning outcomes must reflect the relative knowledge and skill of the players and are determined by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events.
- Winning outcomes must not be based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of an individual athlete in a single sporting event.

Although this definition generally follows the exception provided in UIGEA, the requirement that the value of the prize not be determined by the number of participants in the contest or the amount of fees paid by the participants is not included. Also, the definition of "fantasy contest" does not limit contests to athletic contests or sports, which may leave open the possibility of legalizing other types of contests.

The bill defines the term "fantasy contest operator" to mean a person or entity that offers fantasy contests for a cash prize.

The bill provides that "fantasy contests" as defined in the bill is exempt from regulation under ch. 849, F.S., entitled "Gambling." Because the bill defines "fantasy contests" as only those operated by a sponsor who is not a participant in the contest, small groups of friends who traditionally organize to play a season-long fantasy contest may not be exempted from the prohibitions contained in ch. 849, F.S.

[34] 31 U.S.C. § 5361(b) (2006).
[35] 28 U.S.C. § 3702 (1992).
[36] *See* LEGAL SPORTS REPORT, http://www.legalsportsreport.com/dfs-bill-tracker/ (last visited Mar. 24, 2017).
[37] 2015-102 Nev. Op. Att'y Gen. 8 (2015).
[38] *See* LEGAL SPORTS REPORT, http://www.legalsportsreport.com/dfs-bill-tracker/ (last visited Mar. 24, 2017).

B. SECTION DIRECTORY:

Section 1: Specifies that fantasy contests are excluded from the statutory prohibitions on gambling set forth in ch. 849, F.S., and are exempt from regulation by the Department of Business and Professional Regulation.

Section 2: Provides for an effective date of July 1, 2017.

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 affect county or municipal governments.

2. Other:

   Indeterminate.

B. RULE-MAKING AUTHORITY:

There appears to be no rulemaking authority added or amended.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill specifies that daily fantasy contests are exempt from certain gambling statutes and are not subject to regulation by the Department of Business and Professional Regulation. However, it is unclear whether such contests may be subject to other restrictions or regulations.

Consumer protection concerns have been raised around the country regarding daily fantasy contests. Some states have proposed rules to provide consumer protections, including limiting each player to a deposit of a certain amount each month, requiring prominent disclaimers, requiring advertising indicating where participants experiencing addiction can get help, prohibiting daily fantasy contests based on the performance of high school and college athletes, and requiring participants to be at least 21 years old.[39] Further potential consumer protection concerns arise from disparities in skill level between participants in daily fantasy contests. One study indicates that professional, full-time fantasy contest participants may have a significant advantage over casual or recreational participants.[40]

The bill does not restrict a contest participant from filling his or her fantasy team with a majority of players from the same actual team, which could create an argument that the participant has created a team based on the current membership of an actual team and thus is seeking a winning outcome based indirectly on a sports game or performance, which may violate PAPSA.[41]

The bill states that one of the conditions required to meet the definition of the term "fantasy contest" is that the value of all prizes and awards offered to winning players must be established and made known in advance of the contest. This condition differs from similar language in UIGEA, which states that the value of such prizes is not determined by the number of participants in the contest or the amount of fees paid by the participants. If the bill language is intended to conform to UIGEA language, this could be amended to conform.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[39] BOSTON GLOBE, *Mass. AG proposes age limit for daily fantasy sports*, https://www.bostonglobe.com/business/2015/11/19/healey-proposes-fantasy-sports-regulations-amid-scrutiny/iCzChEn1pfAdfuKuNuqLtM/story.html (last visited Mar. 26, 2017).

[40] In one study, based on a portion of the 2015 baseball season, 91% of contest prizes were won by 1.3% of the participants. *See* McKinsey & Company, *For daily fantasy-sports operators, the curse of too much skill*, http://www.mckinsey.com/insights/media_entertainment/for_daily_fantasy_sports_operators_the_curse_of_too_much_skill (last visited Mar. 26, 2017). *See* DANIEL BARBARISI, DUELING WITH KINGS: HIGH STAKES, KILLER SHARKS, AND THE GET-RICH PROMISE OF DAILY FANTASY SPORTS 56-57 (2017).

[41] 28 U.S.C. § 3702 (1992).

A bill to be entitled

An act relating to fantasy contests and fantasy contest operators; providing definitions; providing that fantasy contests and fantasy contest operators are not subject to regulation by the Department of Business and Professional Regulation; providing that such contests conducted by such operators are exempt from specified provisions related to gambling; providing an effective date.

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

Section 1. Fantasy contests and fantasy contest operators.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Fantasy contest" includes any fantasy or simulated game or contest, in which:

1. The sponsor of the game or contest is not a participant in the game or contest;

2. The value of all prizes and awards offered to winning participants are established and made known to the participants in advance of the contest;

3. All winning outcomes reflect the relative knowledge and skill of the participants and shall be determined predominantly by accumulated statistical results of the performance of

individuals, including athletes in the case of sports events; and

4. No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams or solely on any single performance of an individual athlete or player in any single actual event.

(b) "Fantasy contest operator" means a person or entity that offers fantasy contests for a cash prize or award.

(2) EXEMPTION.—A fantasy contest conducted by a fantasy contest operator is not subject to regulation by the Department of Business and Professional Regulation and is not subject to s. 849.01, s. 849.08, s. 849.09, s. 849.11, s. 849.14, or s. 849.25.

Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 259 Martin County
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Magar
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Banner	Miller
2) Ways & Means Committee		Schmiege JAS	Langston
3) Government Accountability Committee			

SUMMARY ANALYSIS

HB 259 creates a municipality to be known as the Village of Indiantown in Martin County and sets out the Village's charter. The charter provides the following information, authority, powers, and duties of the Village:

- Corporate name; purpose of the charter; creation and establishment of the Village of Indiantown;
- Powers of the Village;
- A council-manager form of government;
- Village council, mayor, and vice mayor; powers and duties, composition of the council, eligibility, terms, compensation, council meetings, vacancies, forfeitures, judge of qualifications, and investigations;
- Administration by Village manager, provision for Village attorney, departments, personnel, planning;
- Ordinances and resolutions;
- Financial management, including budget administration and amendment; capital program; public records; annual audits; shortfalls;
- Nominations and qualifications of council members; nonpartisan elections; five at large council seats;
- Powers of initiative and referendum;
- Amendments to the charter; severability; and
- Referendum election; initial council election; transition provisions; eligibility for state-shared revenues; local revenue sources; local option gas tax revenues; contractual services and facilities, including existing solid waste contracts; municipal services district.

The initial Economic Impact Statement (EIS) filed on January 17, 2017, projected combined local and state revenues for Indiantown with no projected costs of funding the City government or impacts to Martin County. The revised EIS filed on February 13, 2017, identifies revenue increases to Indiantown, in addition to projected local and state revenues. The EIS also provides projected revenue decreases for Martin County and an estimated cost for the administration of the Village government and the Bridge Loan Payment. The proponents argue that existing funds are being redirected to the municipality, resulting in no additional costs to residents. However, based on all the information provided by the proponents, including no cost estimate for law enforcement services, thus requiring the assumption that the municipality must bear the full cost of law enforcement, an initial ad valorem taxation rate of 4.3228 mills appears to be required to be financially feasible.

This act shall take effect only upon its approval by a majority vote of those qualified electors residing within the corporate limits of the proposed Village of Indiantown, except for provisions regarding the referendum election, which will take effect upon becoming a law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

By adopting the statutory requirements in chapter 165, F.S., the Legislature carefully and clearly articulated the standards and minimum requirements for any community, no matter what its circumstances, to seek municipal incorporation. If a community meets the minimum factual conditions and submits a plan demonstrating a willingness to fund proposed government services in a manner that is financially responsible not only to the residents of the community but to neighboring governments and the state, the proposed municipal incorporation may be feasible.

Present Situation

Provisions of Law Controlling Municipal Incorporation

Constitutional Provisions

The Florida Constitution states municipalities[1] may be established or abolished and their charters amended pursuant to general or special law. Municipalities are constitutionally granted all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Additionally, municipalities are constitutionally authorized to exercise any power for municipal purposes except when expressly prohibited by general or special law.[2] The power to tax is granted only by general law.[3] The legislative body of a municipal government is constitutionally required to be elected.[4]

Municipal Home Rule Powers Act

The Municipal Home Rule Powers Act (Powers Act) [5] acknowledges the constitutional grant of municipal powers and authorizations. Nothing in the Powers Act may be construed to permit any change in a special law or municipal charter without approval by referendum[6] if the change affects any of the following:[7]

- The exercise of extraterritorial powers;
- An area that includes lands within and without a municipality;
- The creation or existence of a municipality;
- The terms of elected officers and their manner of election, except for the selection of election dates and qualifying periods for candidates and for changes in terms necessitated by change in election dates;
- The distribution of powers among elected officers;
- Matters prescribed by charter relating to appointive boards;
- Any change in form of government; or
- Any rights of municipal employees.

[1] Art. VIII, s. 2(a), Fla. Const. A municipality is a local government entity, located within a county that is created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. The term "municipality" can be used interchangeably with the terms "city," "town," and "village."
[2] Art. VIII, s. 2(b), Fla. Const.
[3] Art. VII, s. 9(a), Fla. Const.
[4] Art. VIII, s. 2(b), Fla. Const.
[5] Chapter 166, F.S.
[6] As provided in s. 166.031, F.S.
[7] Section 166.021(4), F.S.

Formation of Municipalities Act

Florida law governing the formation and dissolution of municipal governments is found in the Formation of Municipalities Act (Formation Act).[8] The stated purpose of the Formation Act is to provide standards, direction, and procedures for the incorporation, merger, and dissolution of municipalities so as to achieve the following:

- Orderly patterns of urban growth and land use;
- Adequate quality and quantity of local public services;
- Financial integrity of municipalities;
- The elimination or reduction of avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- Equity in the financing of municipal services.

Under the Formation Act, a municipal government may be established where no such government exists only if the Legislature adopts the municipal charter by special act after determining the appropriate standards have been met.[9]

Physical Requirements for Municipal Incorporation[10]

The area proposed for incorporation must meet the following conditions in order to be eligible for incorporation:

- Be compact, contiguous, and amenable to separate municipal government.
- Have a total population, as determined in the latest official state census, special census or estimate of population, of at least 1,500 persons in counties with a population of 75,000 or less, and of at least 5,000 persons in counties with a population of more than 75,000.
- Have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
- Have a minimum distance of at least two miles from the boundaries of an existing municipality within the county. Alternatively, it must have an extraordinary natural boundary that requires separate municipal governments.
- Have a proposed municipal charter that prescribes the form of government and clearly defines the responsibility for legislative and executive functions, and does not prohibit the legislative body from exercising its power to levy any tax authorized by the Florida Constitution or general law.
- Have a plan for incorporation honoring existing contracts for solid waste collection services in the affected areas for the shorter of five years or the remainder of the contract term.[11]

Procedural Requirements for Municipal Incorporation

Special Act

The Legislature has chosen to create the charter for a new municipality only by special act.[12] Municipal incorporations are initiated as local bills, a type of special act. A local bill is legislation relating to (or designed to operate only in) a specifically indicated part of the state or purporting to operate within classified territory when such classification is not permissible or legal in a general bill.[13] To incorporate

[8] Chapter 165, F.S.
[9] An exception to this principle is the home rule authority of Miami-Dade County, where the board of county commissioners has been granted the exclusive power to create municipalities within that county through the Florida Constitution. *See* s. 165.022, F.S., and Art. VIII, s. 6(e), Fla. Const. Adopted in 1957, the Miami-Dade County Home Rule Charter provides for the creation of new municipalities at Art. 6, s. 6.05.
[10] Section 165.061, F.S.
[11] In accordance with Art. I, s. 10, Fla. Const.
[12] Section 165.041(1)(a), F.S.
[13] *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla.1934).

a municipality, the special act must include a proposed municipal charter prescribing the form of government and clearly defining the legislative and executive functions of city government. The special act may not prohibit or limit tax levies otherwise authorized by law.[14]

Unless conditioned to become effective only upon approval by qualified electors, no special act may be passed without prior publication of intent to seek such enactment.[15] The notice of intent to file must be published in the manner provided by general law.[16] Because of the impact on local residents of creating a new form of local government, the Legislature generally requires a special act incorporating a municipality to be subject to a referendum. A bill proposing creation of a municipality will be reviewed based on the statutory standards for municipal incorporation.[17]

Local Bill Process

As a local bill, a proposed municipal incorporation also must meet the Local Bill Policy of the House, which provides that no local bill may be considered by the Local, Federal and Veterans Affairs Subcommittee – or other House committees or subcommittees – prior to the receipt of an original Economic Impact Statement and a Local Bill Certification Form.[18] The Economic Impact Statement should assess the cost of implementation, state who will bear such cost, and identify who will benefit from the passage of the special act. The Local Bill Certification Form certifies the purpose of the bill cannot be accomplished locally, a public hearing has been held, all statutory and constitutional requirements have been met, and a majority of the local legislative delegation[19] approves the bill.

Feasibility Study

A feasibility study and a local bill proposing the municipal government charter must be submitted for consideration of incorporation. The feasibility study is a survey of the proposed area to be incorporated. The purpose of the study is to enable the Legislature to determine whether (1) the area meets the statutory requirements for incorporation, and (2) incorporation is financially feasible. The feasibility study must be completed and submitted to the Legislature no later than the first Monday after September 1 of the year before the regular legislative session during which the municipal charter would be enacted.[20]

In 1999, the Legislature revised s.165.041, F.S., by adding new, detailed requirements for the preparation of the required feasibility study for any area requesting incorporation. Specifically, the study must include:

- The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
- The major reasons for proposing the boundary change.
- The following characteristics of the area:
    - A list of the current land use designations applied to the subject area in the county comprehensive plan.
    - A list of the current county zoning designations applied to the subject area.
    - A general statement of present land use characteristics of the area.
    - A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.

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[14] Section 165.061(1)(e)2., F.S.
[15] Art. III, s. 10, Fla. Const.
[16] Section 11.02, F.S., specifies the publication of notice must occur one time, at least 30 days prior to introduction of the local bill in the Legislature.
[17] Section 165.061, F.S.
[18] Florida House of Representatives, Local, Federal & Veterans Affairs Subcommittee, 2017-2018 Local Bill Policies and Procedures Manual.
[19] A legislative delegation is a group of legislators representing the same county.
[20] Section 165.041(1)(b), F.S. For any proposed incorporations to be considered during the 2017 Legislative Session, this deadline fell on September 5, 2016.

- A list of all public agencies, such as local governments, school districts, and special districts, whose current boundaries fall within the boundary of the territory proposed for the change or reorganization.
- A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each current service.
- A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.
- The names and addresses of three officers or persons submitting the proposal.
- Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:
    - Existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate.
    - A five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.
- Data and analysis to support the conclusion that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis.
- Evaluation of the alternatives available to the area to address its policy concerns.
- Evidence that the proposed municipality meets the standards for incorporation in s. 165.061, F.S.

In counties that have adopted a municipal overlay for municipal incorporation,[21] such information must also be submitted to the Legislature. This information should be used to evaluate the feasibility of a proposed municipal incorporation in the geographic area.

The Proposed Village of Indiantown[22]

Indiantown is a well-established community dating back to the early nineteenth century. Indiantown is located in an unincorporated part of western Martin County roughly 15 miles west of Stuart, 8 miles north of the Palm Beach County line, and bordered by the St. Lucie Canal. According to the 2010 U.S. Census, the population of this Census Designated Place was 6,083.

Industry and agriculture have played an important role in shaping Indiantown. They continue to be an important presence in the community, most notably the Florida Power and Light electric generating plant. Indiantown is also home to many former migrant workers. The area also hosts the world's first hybrid solar energy facility, an advanced fiber optic network, a marine industry, and Payson Park, a horse racing facility.

Redevelopment efforts in Indiantown have been ongoing, beginning with a 1997 study focused on the need and issues to expand Indiantown's middle class. In 2000, the Treasure Coast Regional Planning Council conducted a design workshop and issued a report related to the Booker Park area of Indiantown. Additionally, the Indiantown Economic Development Committee completed a survey and compiled a list of projects and issues important to the future planning of the community. Martin County has designated Indiantown as a Community Redevelopment Area (CRA)[23] and a Community Redevelopment Plan (CRP) is in place. The CRP is an important component of the county's "2020 Vision for a Sustainable Martin County," which encourages the creation of more livable, mixed use communities within the existing urban service districts.

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[21] Pursuant to s. 163.3217, F.S.

[22] Houston Cuozzo Group, Inc., *Indiantown Community Redevelopment Plan, Prepared for Martin County Community Redevelopment Agency and the Indiantown Neighborhood Advisory Committee, available at* https://www.martin.fl.us/sites/default/files/meta_page_files/CDD-CRA-Indiantown-CRA-Plan-05-2015.pdf.

[23] The entity is known as the Indiantown Community Development District.

Feasibility of the Proposed Village of Indiantown

This section examines whether the proposed village meets the statutory criteria for the form and structure of municipal government and demonstrates sufficient fiscal integrity for self-governance.

The proponents of municipal incorporation submitted their feasibility study addressing each element required by statute[24] in August 2016. Upon review by staff, the study was found to contain a number of deficiencies. Evaluations of the study were also requested from the Departments of Revenue (DOR)[25] and of Economic Opportunity (DEO)[26] and from the Office of Economic and Demographic Research (EDR).[27]

Correspondence between staff and the proponents began in September 2016 with a letter from staff outlining the deficiencies noted in the 2016 Study. Proponents provided a response to that letter in November 2016. The proponent's response also contained a revision to the area proposed for incorporation that removed a parcel from the proposed area.[28]

The proponents submitted an Economic Impact Statement (EIS) in January 2017. Upon review, staff noted this initial EIS was inconsistent with data provided in the 2016 Study. A response submitted by the proponents[29] indicated that the EIS was based on more recent data that was not available at the time the 2016 Study was completed. The EIS also accounted for the revision to the area proposed for incorporation.

The proponents submitted a revised feasibility study in February 2017.[30] Upon review, staff determined that several significant deficiencies remained, most specifically the financial feasibility of the proposed municipality when accounting for all necessary community services, including but not limited to, law enforcement. Correspondence between staff and the proponents regarding these issues occurred on February 15, March 6, March 10, and March 14, 2017.

A compilation of how each element is addressed in the 2016 Study, the Revised Study, the evaluations conducted by DOR, DEO and EDR, and subsequent correspondence with the proponents are included below.

Meeting the Statutory Criteria for Municipal Incorporation

Section 165.041(1)(b)1., F.S. – Location and Boundaries
The location of territory subject to boundary change and a map of the area which identifies the proposed change.

The 2016 Study provides a full legal description of the area proposed for incorporation, recited at lines 103-162 of the bill, together with boundary map. A copy of the general boundary map is attached to this analysis as Appendix B.

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[24] BJM Consulting, Inc., *Village of Indiantown Incorporation Feasibility Study.* (August 2016) (herein 2016 Study). *See also* ss. 165.041(1)(b) & 165.061(1), F.S.
[25] DOR Memorandum on Proposed Incorporation – Village of Indiantown (12/2/2016) (herein DOR 2016 Review)
[26] DEO, Review of Proposed Village of Indiantown Municipal Incorporation (12/2/2016) (herein DEO 2016 Review)
[27] Office of Economic and Demographic Research, Letter to Local and Federal Affairs Committee (12/5/2016) (herein EDR 2016 Review)
[28] The response submitted by the proponents indicated the area known as Little Ranch had been removed, resulting in a decrease to taxable value and reducing the proposed population from 5,717 to 5,457. The response did not indicate any revision to the proposed acreage being incorporated. A revised map was provided. The November email to which the response was attached stated a revised feasibility study would be submitted for review by staff and reviewing agencies. A revised feasibility study finally was submitted on February 13, 2017.
[29] The February 2017 letter response submitted by the proponents reaffirmed the intent to submit a revised feasibility study.
[30] BJM Consulting, Inc., *Village of Indiantown Incorporation Feasibility Study* (February 2017) (herein Revised Study).

DEO and EDR concluded the 2016 Study adequately addressed this requirement and DOR had no comment.

A revised map of the area proposed for incorporation was provided reflecting the removal of the area known as Little Ranch by the proponents in November 2016.

Section 165.041(1)(b)2., F.S. – Major Reasons for Boundary Change
The major reasons for proposing the boundary change.

The 2016 Study states the area seeks greater control to enhance the residential sector by expanding housing options, enhancing economic development opportunities and building a community centered plan to address future needs of the area residents.

DEO concluded the 2016 Study adequately addressed this requirement, EDR found no significant issue, and DOR had no comment.

Section 165.041(1)(b)3.a.-d., F.S. – Land Use, Zoning Designations

a. A list of the current land use designations applied to the subject area in the county comprehensive plan.
b. A list of the current county zoning designations applied to the subject area.
c. A general statement of present land use characteristics of the area.
d. A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.

The 2016 Study indicates the area has land designated as Industrial, Commercial, Agricultural, Residential and Utility. The current zoning map included as Exhibit 5 of the Study identifies zoning categories (i.e., A-2, AG-20A, etc), however no definitions of these categories is included. The Study also indicates that as of July 31, 2016, no new development is planned in the proposed area of incorporation.

DEO concluded that a general statement of present land use characteristics was adequately included but noted the following deficiencies for each of the other requirements of this section:

- The maps and information regarding the current land use designations were presented on two black and white maps with illegible text. Furthermore, the total land area in the future land use map is 8,830.10 acres, as compared to 9,397.50 acres identified in the 2016 Study. There is no explanation of this discrepancy.

- The future land use and current zoning maps include an abbreviated list of 15 land use designations and 36 zoning categories, respectively. Neither map provides explanations or descriptions of these abbreviations.

- Despite the projection of future growth in the five year revenue and expense forecast, DEO indicated no confirmation of plans for new development planning according to the Martin County Future Land Use Map. There is no explanation of this inconsistency in the 2016 Study.

EDR deferred to DEO's evaluation and DOR had no comment.

Section 165.041(1)(b)4., F.S. – Public Entities Currently Within the Incorporation Area
A list of all public agencies, such as local governments, school districts, and special districts, whose current boundary falls within the boundary of the territory proposed for the change or reorganization.

The 2016 Study discusses county government entities, courts with jurisdiction over the area proposed for incorporation in Martin County, the Martin County School District, the Indiantown Community

Development District and the Martin Soil and Water Conservation District. The study indicates no initial impact on these districts due to incorporation, with the exception of the Indiantown Community Development District which could come under the control of the new town if agreed to by the new Village and County.

DEO indicated about the Study's indication that the Martin County Community Redevelopment Agency (CRA) would remain under the direction of the County until a decision is made by the new municipal government to change it by negotiating to dissolve or assume authority. In follow-up correspondence, the proponents clarified that the Study intended to reference the Indiantown Community Development District. As a result, DEO's review was based on inaccurate information as presented in the 2016 Study.

EDR concluded the list in the 2016 Study and correspondence appeared complete and adequately addressed this requirement. DOR had no comment.

Section 165.041(1)(b)5., F.S. – Current Services and Costs

A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each current service.

The 2016 Study indicates that Martin County is currently providing the maintenance of right-of-ways, parks, all development services, code enforcement, and other general governmental services to Indiantown. Water and sewer services are being provided by the Indiantown Company, Inc., transportation by the Martin County MPO, fire protection by the Martin County Fire & Rescue through a MSTU, law enforcement by the Martin County Sheriff's Department, and emergency medical services by Martin County EMS. Private sector companies provide power (FPL), phone (ITS Telecommunication Systems), solid waste hauling and disposal (Waste Management), and natural gas (FPUC).

The 2016 Study provides the following cost data (based on the projection for FY 2019 – the village's first full year of operation):

- Fire - $1,654,450
- Parks and Recreation - $110,200
- Stormwater - $85,793
- Roads - $218,490
- Local Government Administration - $1,230,181

DEO and EDR concluded the 2016 Study and subsequent correspondence adequately addressed this requirement and DOR had no comment.

In November 2016 correspondence, the proponents provide revised annual cost data, as follows:

- Fire - $1,579,208
- Parks and Recreation - $105,188
- Stormwater - $177,344
- Roads - $208,253
- Local Government Administration - $1,230,181

The proponents indicate that the remaining services, including law enforcement, public works, street lighting, library and cultural facilities, will continue to be provided by Martin County through the county's general fund budget. The citizens of the Village will continue to pay the ad valorem taxes and county fees to Martin County that currently fund these services.

The Revised Study provides updated cost data based on the Martin County FY 2017[31] budget projection for FY 2019 – the village's first full year of operation:

- Fire - $1,378,080
- Parks and Recreation - $91,792
- Stormwater - $154,757
- Roads - $208,553
- Local Government Administration - $1,230,181

Section 165.041(1)(b)6., F.S. – Proposed Services and Costs
A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.

The following services are proposed to be provided within the proposed incorporation area (with estimated costs):

- General Government Administration: $1,230,181
- Interlocal agreement with Martin County (cost includes a 4% administrative fee):
    - Fire: $1,654,450
    - Parks and Recreation: $110,200
    - Stormwater: $85,793
    - Roads: $218,490
- Public Safety – Martin County Sheriff's office will continue to provide these services (no estimated cost component was provided)

DEO and EDR expressed concern that although the 2016 Study and subsequent correspondence states that the majority of current services would continue to be provided by the current providers, there is no documentation from the Martin County Board of County Commissioners, the Martin County Sheriff's Office, and other service providers confirming that current services would continue to be provided to the residents of Indiantown after municipal incorporation. Furthermore, DEO notes that the Study fails to discuss estimated costs for each current service.

DOR had no comment.

In the November 2016 response, the proponents indicated that when preparing the 2016 Study, they had the Martin County Administrator review the proposed methodology for the provision of services being transitioned from being provided by the county via the MSTUs to an interlocal agreement between the proposed Village and the county. The methodology used for determining the cost for each service is based on present levels of spending county-wide being shared on a per capita basis, plus a 4 percent administrative fee. As a result, the proposed cost of services are only slightly modified from that provided in the 2016 Study, to represent more current data available in the Martin County FY 2017 budget.

The proponents contend that the Martin County Sheriff is constitutionally required to provide the present level of service to the village following incorporation.[32] Furthermore, the proponents contend that the since the residents of the newly incorporated Village will continue to pay Martin County ad valorem millage, the residents are providing the necessary financial support to the county for these services. Consequently, the feasibility study provided no estimate for municipality costs of law enforcement.

The Revised Study reiterates that the Village would not be the provider of services, but rather would establish levels of service, prioritize capital and maintenance projects, and be a resource for all

[31] The Martin County FY 2017 budget was not yet available at the time of the 2016 Study.
[32] This statement does not appear to be supported by language of the Florida Constitution. *See* art. VIII, s. 1(d), Fla. Const. (providing that each county shall have a sheriff).

community groups.[33] Further clarified is the intent that there will be no change in cost for governmental and public utility services to the residents of the Village if it were to incorporate.

The following estimated costs for services are provided:

- General Government Administration: $1,230,181
- Interlocal agreement with Martin County (cost includes a 4% administrative fee):
  - Fire: $1,378,080
  - Parks and Recreation: $91,972
  - Stormwater: $154,757
  - Roads: $208,553
- Public Works: $181,986
- Street Lighting: $23,300
- Library and Cultural: $13,273
- Public Safety – Martin County Sheriff's office will continue to provide these services ($5,151,810)

The Revised Study further contends that based on the proposed estimated costs, Indiantown will continue to be a donor area for services that are funded by ad valorem taxes (Sheriff, Public Works, Street Lighting, Library and Cultural) due to their strong tax base per capita. Additionally, costs for services funded on a per capita basis (Fire, Parks and Recreation, Stormwater, and Roads) will decrease for the citizens of Indiantown.

Subsequent correspondence between staff and the proponents illustrated the proponents' unchanged reliance on the underlying premise that Martin County will be expected to continue providing current services, particularly law enforcement, either based on the calculation methodology presented by the proponents or due to the continued payment of county taxes by the residents in the proposed municipality.

Section 165.041(1)(b)7., F.S. – Names of 3 Persons Submitting the Proposal
The names and addresses of three officers or persons submitting the proposal.

The 2016 Study provides full information for the three officers or persons submitting the proposal.

DEO and EDR concluded the list in the 2016 Study appeared complete and adequately addressed this requirement, and DOR had no comment.

Section 165.041(1)(b)8.a. & 8.b., F.S. – Fiscal Capacity and Organizational Plan
Evidence of fiscal capacity and an organizational plan as it relates to the area seeking incorporation

a. Existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate.

b. A five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.

The 2016 Study provides the following estimates of annual revenues projected to begin in FY 2018-2019 except as otherwise noted:

- Ad Valorem Taxes (continuation of aggregate 3.1801 mills currently imposed by several county MSTUs within the area, which MSTUs are projected not to continue after incorporation): $6,056,857
- Franchise Fees/Communication Services Tax: $579,156
- State Revenue Sharing: $113,280
- Local Government Half-Cent Sales Tax: $598,065

[33] Revised Study at 14.

- Business Tax Receipts: $25,000
- Investment Income: $25,000

Projections provided in the 2016 Study estimate revenues to exceed expenses each year for the first 5 years after incorporation, yielding a reserve of $713,000 in year 1, increasing to $4 million annually, thereafter. However, revenue and expenditure projections do not include proposed staffing or building acquisition or construction. Additionally, the FPL coal-fired plant is scheduled to close, resulting in a depreciation of the value of the property. According to correspondence received on 11/16/2016, the Property Appraiser has been depreciating the property of the power plant to prevent a large drop in revenue during a single year and the plant is presently valued as a $63 million asset.

DEO concluded the 2016 Study did not adequately address projected costs for services being provided or debt issuance and building acquisition/construction as required.

The Revised Study provides updated estimates of annual revenues based on revenue projections from the Martin County Fiscal Year 2017 budget. The ad valorem tax revenue is adjusted only for the removal of the acreage for Little Ranch from the area proposed for incorporation. The revised projections are as follows:

- Ad Valorem Taxes (3.1529 mills as adopted in the Martin County FY 2017 budget)[34]: $5,983,392
- Franchise Fees/Communication Services Tax: $444,835
- State Revenue Sharing: $88,762
- Local Government Half-Cent Sales Tax: $561,874
- Business Tax Receipts: $25,000
- Investment Income: $25,000

EDR deferred to DOR to comment on the projections related to revenue sharing programs but noted the following comments regarding other components of this requirement:

- **Communication Services Tax (CST) and Franchise Fee** revenue of $579,156 estimated in the Study may be overstated. An EDR projection, based on FY 2016-17 CST estimates for Martin County Government and official 2016 Florida population estimates for unincorporated Martin County, estimates revenue of $444,801, which is $134,355 less than the Study
- **Local Business Tax and Investment Income** projections lack an accompanying explanation of how the amounts were derived.
- **Ad Valorem Property Tax** millage rate stated in the Study as 3.1801 may be outdated. According to the most recently published Martin County FY17 Adopted Budget Summary, the proposed total millage rate increased to 3.2672, resulting in an increase $165,892 in revenues as compared to the Study.
- **Potential Additional Revenues** were discussed, but not included, in the Study. Most notably are user fees and revenues associated with permits. Although it appears that Indiantown will be contracting with Martin County for continued services typically paid for by these fees, revenues are not reflected in the five-year operational plan even though the plan reflects payments for contracted services.
- **Population growth estimates** seem too optimistic based on recent annual population estimates of unincorporated Martin County for the five-year period between 2011 and 2016.
- **Property Tax Base** projected annual increase of 3 percent is unsubstantiated in the Study, however, compound annual growth rates (CAGR) for the area support the projection.
- **Projected revenue growth** of 3 percent annually is unsubstantiated in the Study and based on the CAGR, EDR concluded that the Study's estimate might be too optimistic.

[34] Page 20 of the Revised Study indicates a millage rate of 3.1801 mills yielding $5,983,392, however, pages 39 and the charts on pages 42-44 indicate the same revenue generated by a revised millage of 3.1529 mills. Staff confirmed that $5,983,392 is the projected revenue based on a millage rate of 3.1529 mills and that the Martin County FY 2017 budget provides for a proposed millage rate of 3.1529 mills.

- **Operating Costs** associated with the new local government are intended to be covered by the redirection of existing revenues and a Bridge Loan. The five-year operational plan identifies bridge loan proceeds of $1,000,000 in FY 2018 and repayments in each of the subsequent five years, however, there is no discussion of how the loan payments are structured.
- **Estimated expenditures** are difficult to verify and validate due to the lack of explanation regarding the payments pursuant to an interlocal agreement with the county for services. Furthermore, there is no documentation from the county indicating these services will be provided for the amounts indicated.
- **Projected growth of expenditures and most revenues** is estimated at 3 percent annually. The Study does not provide documentation or explanation to substantiate the estimate presented. A comparison to CAGR data for statewide municipal government revenues and expenditures between FY 2003-04 and 2013-14 suggests the Study's assumption is reasonable.
- In light of the lack of documentation and explanation of expense estimates and revenue calculations, EDR concluded that it is difficult to assess the validity of the five-year projections of revenues and expenses and the projected surpluses.

The Revised Study provides for updated projections, based on the Martin County FY 2017 budget, for the CST and Franchise Fees of $444,835 and Ad Valorem Property Tax based on the adopted millage rate of 3.1529. Additionally, the Revised Study states the Village will take a bridge loan at 3 percent APR and with a five year repayment schedule in order to fund initial expenses for the first year of the new municipality.

The Revised Study states that estimated expenditures are based on the per capita expenses for each area funded by MSTUs, multiplied by the population of the area proposed for incorporation. A 4-percent administrative fee was then added, resulting in the total projected cost. The proponents indicate there was communication with the County Administrator regarding the methodology and proposed estimates for the cost of the MSTU services. Additionally, the Revised Study contends that, based on experiences of other proposed incorporations, County staff will not negotiate letters of intent or memoranda of understanding with a group contemplating incorporation and then renegotiate the same document with the newly formed body of elected officials after a successful incorporation effort.

The Revised Study states that the population growth estimates used in the 2016 Study are based on data from Martin County indicating an annual population increase of 2 percent over the last 5 years.

DOR extensively analyzed the fiscal capacity of the proposed Village. The initial response focused on potential conflicts between the initial dates of eligibility for state revenue sharing and other tax distributions and when DOR could actually transmit such funds to the proposed Village.[35] DOR also provided a table of estimated revenue sharing distributions to which the Village would be entitled upon meeting (or waiving) the requirements of s. 218.23, F.S., as well as the impact of these distributions on the revenues of Martin County, City of Stuart and the towns of Jupiter Island, Ocean Breeze, and Sewall's Point.[36]

Revenue Sharing

To be eligible for revenue sharing, a municipality not only must exist but must have elected and seated its legislative body.[37] As a unit of local government, the municipality also must comply with the requirements of s. 218.23, F.S., including reporting its finances for its most recently completed fiscal

[35] DOR 2016 Review, p. 2-4.
[36] A copy of the table is attached to this analysis as Appendix C. DOR 2016 Review, p. 5.
[37] Section 218.21(3), F.S.

year[38] and either levied ad valorem taxes of at least 3 mills or collected revenue from specified other sources equivalent to what would be raised by such an ad valorem assessment.[39]

DOR noted the bill provides for the Village to be eligible for revenue sharing beginning January 1, 2018, and waives the requirements of s. 218.23(1), F.S., through September 30, 2021. The bill waives the financial reporting and annual audit of Village financial accounts through fiscal year 2020-2021. The bill also allows ad valorem taxation levied by special districts to be used toward the 3 mill requirement for an indefinite period of time.

Half-Cent Sales Tax

A newly-incorporated municipality not only must meet the statutory requirements for revenue sharing to participate in the local government half-cent sales tax distribution but also all applicable criteria for incorporation under s. 165.061, F.S.[40] Section 165.061(1)(c), F.S., imposes the condition that the new municipality must have an average population density of at least 1.5 persons per acre, unless extraordinary conditions exist. Although the proposed Village does not meet the minimum levels for population density,[41] DOR interprets the waivers of these requirements in the bill as meeting the criteria for the Village to receive this distribution.

Gas Tax Revenues

A newly-created municipality entitled to receive distributions under ch. 218, Parts II (Revenue Sharing) and VI (Half-Cent Sales Tax), F.S., is entitled to receive distributions of certain gas taxes if levied by the county.[42] These distributions cannot begin until the new municipality's first full fiscal year.[43] As stated, Indiantown is eligible for revenue sharing and the half-cent sales tax, and is therefore entitled to receive gas tax revenues from Martin County.

Martin County imposes local option gas taxes[44] which the Village would be entitled to share. The 2016 Study states revenue from gas taxes is not estimated because the intent of the Village would be for the County to retain all such funds and continue to perform all road maintenance and repair. The bill indicates revenues will be distributed in accordance with general law or an interlocal agreement with the County. However, DOR notes that such agreements cannot be entered prior to an election of the government body and prior to the first Village Council meeting. DOR also notes that statute requires the interlocal agreement to be executed prior to June 1 and a certified copy provided by July 1, to become effective at the beginning of the next local fiscal year, which would be October 1.

Local Communications Services Tax

Counties and municipalities by ordinance may levy a tax on communication services[45] which applies to taxable services after January 1 of a given year.[46] A municipality adopting, repealing, or changing such a tax must notify DOR by September 1 preceding the January 1 in which the change would go into effect.[47] Assuming that the Village elects its governing body, holds its first Village Council meeting,

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[38] Section 218.23(1)(a), F.S. This report is submitted to the Dept. of Financial Services. S. 218.32, F.S.
[39] Section 218.23(1)(c), F.S.
[40] Section 218.63(1), F.S.
[41] Section 165.061(1)(c), F.S., requires a minimum population density of 1.5 person/acre.
[42] Section 336.025(4)(b), F.S.
[43] *Id.*
[44] Martin County Code of Ordinances, Ch. 71, Art. 5. *available at* https://www.municode.com/library/fl/martin_county/codes/code_of_ordinances?nodeId=COOR_CH71FITA_ART5LOOPGATA (accessed January 31, 2017).
[45] Section 202.19(1), F.S. "Communication services" are defined by s. 202.11(1), F.S., with a number of exclusions such as one for internet access, electronic mail, or similar online computer services. S. 202.11(1)(h), F.S.
[46] Section 202.21, F.S.
[47] *Id.*

adopts a local communications service tax rate, updates the Department of Revenue's address database and notifies the Department of Revenue of its own municipal rate by September 1, 2018, the earliest that the Village's local communications services tax could be imposed would be effective January 1, 2019. The bill proposes continuing the local communications services tax rate imposed by Martin County through June 1, 2018. As a result, there will be a gap from June 1, 2018 through December 31, 2018, when the Village will not receive distributions of local communications services tax collections per the Proposed Charter.[48]

DOR further noted the bill provides for the present tax imposed by Martin County to be shared with the Village in proportion of the projected population of the Village to the population of the unincorporated portion of the county before the incorporation took effect. For such an arrangement the county and Village must update data on service addresses with DOR by September 1, 2018.[49]

Section 165.041(1)(b)9, F.S. – Data and Analysis Showing Incorporation is Necessary and Feasible
Data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis.

The 2016 Study and November 2016 letter responding to the initial staff review bases the analysis and evidence of financial feasibility on the redirection of existing revenues derived from assessments levied by the county for the fire/rescue, parks and recreation, stormwater, and roads. The Study indicates that law enforcement services will continue to be provided by the County. With respect to cost, the Study assumes present spending levels county-wide being shared on a per capita basis plus a 4-percent administrative fee for the interlocal agreement and indicated that the Martin County Administrator agreed with the methodology.

The Study also indicates the estimated population of the proposed area of incorporation is 5,717 people, which was later revised to 5,457 due to the removal of a small residential area known as Little Ranch.[50] Total population, including seasonal residents, is estimated to approach 9,000 people. The growth in population is projected to increase at an annual rate of 2-percent, reaching 6,200 by Fiscal Year 2022, with a service population of 10,000.

The Study provides for a millage rate of 3.1801 yielding a projected total village budget for Fiscal Year 2019 (the first full year of operation) of $7,405,173. For comparison, the following are the millage rates and general fund expenditures (for Fiscal Year 2015-2016) for similarly-sized municipalities in nearby counties:

	Pahokee	Tequesta	Fellsmere	South Bay
Millage Rate	6.5419	6.2920	5.2756	6.3089
Expenditures	$3,740,556	$11,243,500	$2,831,610	$2,139,289

DEO stated that the Study provided only minimal discussion for the methodologies regarding the 2 percent annual increase in population and the 3 percent annual increase in expenses and revenues. Coupled with the reliance on external agencies to provide essential services, DEO expressed concern as to the financial feasibility of the proposed incorporation.

EDR assumes that the 2016 Study's SWOT analysis reflects the views of incorporation proponents residing within the Indiantown community and the collective conclusion that incorporation is needed and necessary. However, EDR expresses concern regarding the financial feasibility of the proposed municipality.

[48] As noted in the February 15, 2017 letter from Subcommittee staff, the proponents agreed to revise the timing for collecting the CST to January 1, 2019.
[49] DOR 2016 Review, p. 3-4.
[50] The total acreage of the proposed area of incorporation was not revised to remove the Little Ranch area.

DOR had no comment.

The Revised Study provides for a millage rate of 3.1529, as is consistent with the Martin County FY 2017 Budget and revises the estimated revenues accordingly.

The Revised Study maintains the position that the Village would not be the provider of services, and as a result, there will be no change in cost to the residents of Indiantown. The Revised Study provides the following comparison of the estimated cost of government services provided by the county within the Village of Indiantown if they remained unincorporated versus incorporating:

	Unincorporated Martin County	Village of Indiantown
Sheriff	$ 5,151,810	$5,151,810
Public Works	$ 181,083	$ 181,986
Street Lighting	$ 23,200	$ 23,300
Library and Cultural	$ 13,273	$ 13,273
Fire	$ 4,794,267	$1,378,080
Parks & Rec	$ 282,384	$ 91,972
Stormwater	$ 506,128	$ 154,757
Roads	$ 617,525	$ 208,553
Local Gov't Cost	$ -	$1,230,181
Total	**$ 11,569,670**	**$8,433,912**

In this scenario, the proponents argue that Indiantown will continue to be a donor area for services provided by ad valorem taxes (Sheriff, Public Works, Street Lighting, Library and Cultural) due to their strong tax base per capita and that other areas funded on a per capita basis would decrease (Fire, Parks and Recreation, Stormwater, and Roads).

Both the 2016 Study and the Revised Study maintain that the financial feasibility of the proposed municipality is based on the redirection of existing revenues derived from assessments levied by the county for the fire/rescue, parks and recreation, stormwater, and roads. Furthermore, the proponents maintain the position that law enforcement services will continue to be provided by the County despite the loss of revenue to the county as a result of the incorporation.

In a March 2017 response to correspondence from staff addressing the ongoing concern regarding the estimated costs for services, particularly related to law enforcement, the proponents refuted the cost estimate of $5,151,810 identified by staff (as provided in the Revised Study) and subsequently provided a revised cost estimate based on a per capita methodology. The detail provided by the proponents was not sufficient for staff to determine if the outstanding concerns regarding financial feasibility were resolved.

Using the Martin County FY 2017 adopted budget,[51] official 2016 Florida population estimates,[52] and the projected population as provided in the Revised Study, staff employed a per-capita cost methodology to generate a cost estimate for Sheriff/law enforcement services. The cost for law

[51] Martin County Board of County Commissioners, *FY 2017 Adopted Budget, available at* https://www.martin.fl.us/sites/default/files/meta_page_files/martin_county_fy17_adopted_budget_book.pdf (accessed on 3/7/2017).
[52] Office of Economic and Demographic Research, Population and Demographic Data, *Florida Population Estimates for Counties and Municipalities: April 1, 2016, available at* http://edr.state.fl.us/Content/population-demographics/data/2016_Pop_Estimates.pdf (accessed on 3/7/2017).

enforcement services[53] only is approximately $1,516,829. All Sheriff's Office services, which includes law enforcement, corrections,[54] and judicial[55] has an estimated cost of $2,220,227.

The cost of providing law enforcement services to the proposed municipality would be subject to an interlocal agreement between the municipality and the county. These cost projections represent the upper bound for the provision of law enforcement services. The final value would be determined by interlocal agreement.

Section 165.041(1)(b)10. – Evaluation of Alternatives to Incorporation
Evaluation of the alternatives available to the area to address its policy concerns.

The 2016 Study does not identify the evaluation of alternatives to incorporation but rather indicates that Indiantown is an inland community with very different needs than the rest of the populated areas of coastal Martin County. The adoption of a dependent special district[56] or planning overlay district, which would continue to be governed by the County Commission and not Indiantown elected officials, would not provide the same degree of local control over fiscal and planning policies as municipal incorporation. An independent special district, although governed by a separate board directly elected by the residents, would not have the same general government powers as a municipality.[57]

DEO found the 2016 Study does not include an evaluation of the alternatives to municipal incorporation and therefore does not meet this requirement. EDR took no position, stating this was a determination subject to the opinion of the reader. DOR took no position.

Section 165.041(1)(b)11., F.S. – Evidence the Proposed Municipality Meets the Requirements for Incorporation under s. 165.061(1), F.S.
Section 165.061(1)(a), F.S. – Compact, Contiguous, Amenable to Municipal Gov't.
New municipality is compact and contiguous and amenable to separate municipal government.

The 2016 Study includes a map identifying the area proposed for incorporation as contiguous and compact, with no outlying enclaves.

DEO and EDR concurred that the area proposed for incorporation met this requirement. DOR took no position.

Section 165.061(1)(b), F.S. – Minimum Population
New municipality has a total population, as determined in the latest official state census, special census, or estimate of population, in the area proposed to be incorporated of at least 1,500 persons in counties with a population of 75,000 or less, and of at least 5,000 population in counties with a population of more than 75,000.

The 2016 Study identifies a population of 5,717 for the proposed area for municipal incorporation. As of the 2010 U.S. Census, Martin County had a population of 146,318.

DEO, EDR, and DOR concur that the proposed Village meets this requirement.

In a letter dated November 2016, the proponents indicate that an amendment has been made to the original area proposed for incorporation by removing the area known as Little Ranch. As a result, the estimated population has decreased to 5,457. The Revised Study, and all subsequent

[53] *FY 2017 Adopted Budget* at R-13. Law enforcement services include administration, road patrol, criminal investigation, field support and directed operations.
[54] *FY 2017 Adopted Budget* at R-14. Corrections includes administration, facility operations, and support.
[55] *FY 2017 Adopted Budget* at R-15. Judicial includes bailiffs and/or security for all courtrooms and specified official executive meetings with Martin County.
[56] *See* s. 189.012(2), F.S.
[57] *See* s. 189.012(3), (6), F.S.

correspondence, reflects this change. The proposed Village continues to meet the requirement of this section.

Section 165.061(1)(c), F.S. – Minimum Population Density
New municipality has an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.

Barring extraordinary circumstances, a proposed municipality must have an average population density of 1.5 persons/acre. As currently presented, DEO and EDR concur the proposed area does not meet the population density requirement. A waiver of the statute will be required in order for the municipality to receive certain half-cent sales tax distributions, as explained above. DOR had no comment.

The 2016 Study originally indicated a population of 5,717 for the 9,397.50 acres proposed for municipal incorporation, resulting in a population density of 0.61 persons/acre. The population was later revised to 5,457 due to the removal of an area known as Little Ranch from the area proposed for incorporation. The Study does not indicate any revision to the acreage of the area proposed for municipal incorporation. Therefore, the revised population density is 0.58 persons/acre, still below the minimum statutory requirement. The Study requests a waiver of this statutory requirement and provides the following evidence of support:

1. 4,335 acres of the proposed area of incorporation are industrial and utility land and "provide a good tax base and job opportunities for the community." The 2016 Study suggests removing this non-residential acreage from the population density calculation.
2. The approved Indiantown DRI includes entitlements in place for 1,600 new residential units. Based on the Martin County average of 2.3 persons per household, this development is estimated to add 3,680 new people to the area proposed for municipal incorporation, for a total population of 9,137.

The Study argues that the inclusion of 3,680 new people expected due to future development coupled with the exclusion of the 4,335 acres of non-residential land located in the area of proposed municipal incorporation would yield a revised population density of 1.80 persons/acre, meeting the statutory minimum of 1.5 persons/acre.

The Revised Study provides an amended population density as a result of removing the acreage associated with the Little Ranch area. Using the revised acreage of 8,632.91, the population density is 0.63 persons/acre, still below the minimum statutory requirement. The Revised Study maintains the request for a waiver of this statutory requirement, as well as the evidence of support presented in the 2016 Study. The inclusion of 3,680 new people[58] expected due to future development coupled with the exclusion of the 4,335 acres of non-residential land located in the area of proposed municipal incorporation would yield a revised population density of 2.13 persons/acre, meeting the statutory minimum of 1.5 persons/acre. Current law does not provide for any exceptions to the population density requirement.

Section 165.061(1)(d), F.S. – Minimum Distance from Existing Municipalities
New municipality has a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least two miles or has an extraordinary natural boundary which requires separate municipal government.

The 2016 Study indicates that the area is not within two miles of any existing municipality.

[58] Page 13 of the Revised Study indicates the total population, after accounting for the projected increase of 3,680, is 9,317, which results in a population density of 1.03 persons/acre. The population figure was transposed and should read 9,137, which results in a population density of 1.06 persons/acre.

DEO indicated that the nearest municipalities are Stuart (25 miles), Okeechobee (27 miles), and Pahokee (26.7 miles) and therefore concurred that the proposed area meets this requirement. EDR also concurred and DOR had no comment.

Section 165.061(1)(e)1. & (e)2. – Proposed Municipal Charter

1. ***Proposed charter prescribes the form of government and clearly defines the responsibility for legislative and executive functions.***
2. ***Proposed charter does NOT prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law.***

The 2016 Study includes the proposed charter, which is now set out in the bill. Neither the 2016 Study nor the bill prohibits the Village council from levying any authorized tax. The proposed charter established by the bill complies with this requirement.

DEO concluded the proposed charter both prescribed the form of government and did not prohibit the Village council from exercising its power to levy any tax authorized by the Florida Constitution or general law. EDR deferred to DEO and DOR; DOR took no position.

Section 165.061(1)(f), F.S. – Solid Waste Contracts
Per s. 10, Art. I, Fla. Const., plan honors existing solid-waste contracts in the affected geographic area subject to incorporation. (May provide for existing contracts for solid-waste-collection services to be honored only for five years or the remainder of the contract term, whichever is less, and may require that a copy of the pertinent portion of the contract or other written evidence of the duration of the contract, excluding any automatic renewals or evergreen provisions, be provided to the municipality within a reasonable time after a written request to do so.)

The 2016 Study indicates that the proposed Village will continue to honor and rely upon the County's present contract for solid-waste services and the bill takes no action to impair such contracts.

EDR and DEO concluded that the 2016 Study adequately address this requirement. DOR had no comment.

Section 165.041(1)(c), F.S. – Information on County Municipal Overlay
Incorporates information on county's municipal overlay adopted per s. 163.3217, F.S.

Martin County does not have a municipal overlay for the Indiantown area.

Ability of Proposed City to Meet Annual Financial Reporting Requirements

As a local government entity, the Village will be required to file with the Dept. of Financial Services a copy of its annual financial report for the previous fiscal year.[59] If the Village's total revenues, or total expenditures and expenses, exceed $250,000, the Village must have an annual financial audit by an independent certified public accountant.[60]

The proponents were asked to provide information on the proposed Village's ability to meet its annual financial reporting obligations. The proponents state sufficient funds are included within the general administrative and finance expenditures (amount of $35,000) to pay for the expenses necessary to prepare and file the annual financial report.[61]

Effect of Proposed Changes

[59] Section 218.32(1)(a), F.S.
[60] Section 218.39(1), F.S.
[61] 2016 Study, p. 32

The bill creates the Village of Indiantown in a previously unincorporated area of Martin County, Florida, and provides a charter structuring the village government, providing powers and authority, and providing for a transition to the fully-functioning village government.

The charter provides for a council-manager form of government, with 5 village council members serving 4 year terms, elected in non-partisan elections. After each election the council will select two of their members to serve 2 year terms as mayor and vice-mayor, respectively. Council members are elected to 5 at large seats.

The council is the sole judge of the qualifications of the members, including forfeiture of office. Procedures are provided for determining and filling vacancies on the council. Council members are entitled to reimbursement as provided in general law for travel and per diem expenses. No compensation is established initially but the council is authorized to provide for compensation of its members; however, no such compensation may take effect until after the expiration of the terms of members elected at the next regular election.

The council will employ a village manager, who serves as the chief administrative officer of the Village at the pleasure of the council. The village manager acts under the supervision of the council. The administrative section of the charter also provides for the office and duties of the village attorney, authorizes expenditures of Village funds only on due appropriation, and authorizes the council to create or terminate boards and agencies.

The legislative power of the Village is vested in the council. The village council is to conduct regular public meetings on due notice. Special meetings may be conducted on the call of the mayor or a majority of council members. The council exercises this authority through the adoption of ordinances and resolutions.

The charter provides for a fiscal year of October 1 – September 30. Under the Village budget process, a minimum of 2 public hearings on the budget must be held before the council may adopt it. The Village is authorized to issue bonds and revenue bonds, and is required to perform an annual independent audit of all financial accounts.

The charter provides for a referendum to create the Village to be held on November 7, 2017. If approved, the Village is created and incorporated effective December 31, 2017. The charter provides for the first regular election of council members to take place no later than March 13, 2018 and ten weeks prior to the general election on each even-numbered year thereafter. The three council members with the highest number of votes will serve 4 year terms ending in August 2022. The two remaining council members will serve 2 year terms ending in August 2020. Beginning with the election of council members in 2020, village council members will be elected to full 4 year terms.

The bill provides the following waivers of general law necessary to complete the incorporation and for the operation of this Village:

- Waives the requirements of s. 218.23(1), F.S., relating to ad valorem taxation, allowing millage levied by special districts to satisfy the 3 mill requirement for an indefinite period of time. The funds levied and collected by the special districts are not turned over to the proposed Village.
- Waives the requirements of s. 218.23(1), F.S., for the purpose of auditing and financial reporting through the end of the village fiscal year 2018-2019.[62]
- Waives the minimum population density requirement of s. 165.061(1)(c), F.S., to protect the character, natural resources, and quality of life of the Village.

[62] As noted in the February 15, 2017 letter from Subcommittee staff, the proponents agreed to shorten the time period for the waiver of financial reporting until FY 2019-2020.

The bill will result in new distributions of communications services tax, revenue sharing, local option gas tax, and half-cent sales tax funds to the new Village, reducing certain amounts currently distributed to Martin County and the cities of Jupiter Island, Ocean Breeze, Sewall's Point, and Stuart. The bill allows the millage levied by special districts to be used to satisfy the 3 mill requirement for an indefinite period of time but does not provide for those funds collected to be turned over to the proposed Village. The Florida Constitution authorizes municipalities to levy ad valorem taxes up to 10 mills. The Florida Constitution and general law will control the village's ability to levy ad valorem taxes. The Village plans to impose ad valorem taxes consistent with the current rates levied by Martin County to fund operations. The 2016 Study relies on the continuation of services via interlocal agreements with the County to result in the redirection of existing revenues rather than the need to impose additional tax revenues to support the financial viability of the proposed village. This intent was reaffirmed in the Revised Study and Economic Impact Statement and has continued to be reaffirmed in all subsequent correspondence.

The Revised Study provides a projected revenue decrease to Martin County for FY 2019 of $1,095,099 in General Fund revenue and $4,150,210 in Special Revenue Fund revenue as a result of the incorporation of Indiantown. Given that the underlying principle of the proposed municipal incorporation appears to be that residents in the affected area will continue to receive full county services without paying any additional taxes, the municipality is projected to accrue significant reserves based on statutorily-required distribution formulas, and the other residents/property owners in the County, other municipalities and the State (because of the statewide distribution calculations) will receive lower amounts of revenue sharing funds in order to support the proposed municipality. The Revised Study does not provide replacement revenues for the expected law enforcement services but offers the following options for the County to manage this revenue loss:

- Find more efficiencies in present expenditures.
- Reduce County services.
- Increase taxes/fees, or create new fees.

Based on all the information provided by the 2016 Study, the Revised Study, supplemental correspondence, and the initial and subsequent EIS (including no cost estimate for law enforcement services, thus requiring the assumption that the new municipality must bear the full cost of its law enforcement services), an initial ad valorem taxation rate of 4.3228 mills appears to be required for the new municipality to be financially feasible. This projection is based on data provided by the proponents for Indiantown, in conjunction with the additional estimates calculated by staff, including the provisions for municipal services as described in the Revised Study. Ultimately, the actual cost for law enforcement services in Indiantown will be decided in the interlocal agreement between Martin County and Indiantown.

B. SECTION DIRECTORY:

Section 1. Creates the Village of Indiantown, provides the charter for the Village, and provides for approval for creation in a referendum election on November 7, 2017, and if approved, effective December 31, 2017.

Section 2. Provides for the broad municipal powers of the village and establishes a council-manager form of government.
(1) Creates the 5 member village council, which exercises all charter powers of the Village.
(2) Requires the village council to appoint a village manager to be the chief administrative officer, serving at the pleasure of the council.

Section 3. Provides for the physical boundaries of the Village.

Section 4. Provides for the powers and duties of the Village council.
(1) Divides council into 5 at large seats.

(2) States the qualifications necessary to run for a council seat.
(3) Provides 4 year terms for village council members.
(4) Requires the village council, at the first regular meeting after each election, to choose one of the council members to serve as mayor. Provides duties of the mayor.
(5) Requires the village council, at the first regular meeting after each election, to choose one of the council members to serve as vice-mayor. Provides vice-mayor shall serve as acting mayor in absence of mayor.
(6) Authorizes council to provide for compensation of members but such compensation does not go into effect until after the next regular election.
(7) Authorizes the council to hold regular meetings that are public meetings and provisions for the call of special meetings.
(8) Provides a majority of council members is a quorum.
(9) Prohibits council members from interfering with Village employees in the course of their duties or removing any employee, with the exception of the village manager and village attorney.
(10) Prohibits elected Village officials from being employed by the Village for at least 1 year after vacating office.
(11) Describes the circumstances under which vacancies may arise in the office of mayor, vice-mayor, or village council member, including forfeiture of office.

Section 5. Provides for a village manager and village attorney.

Section 6. Authorizes the village council to establish, modify or terminate departments, boards or agencies as necessary; establish a personnel system; and provides for comprehensive planning and zoning as necessary.

Section 7. Provides for the financial management of the Village.
(1) Sets the village fiscal year as 10/1 – 9/30.
(2) Provides for adopting annual Village budget after at least 2 public hearings. The resolution adopting the budget shall also act as appropriation of the necessary amounts.
(3) Budgeted expenditures cannot exceed budgeted revenues.
(4) Provides authority and restrictions on supplemental budgeting of revenue surpluses, actions necessary to revise budget in the event of revenue shortfalls. Prohibits reduction in amounts appropriated for debt service.
(5) Authorizes village council to issue bonds subject to all legal requirements.
(6) Authorizes issuing revenue bonds as provided in law.
(7) Requires independent annual audit of all Village accounts.
(8) Prohibits the state from being liable for any financial shortfalls of the Village.

Section 8. Provides authority and requirements for all elections under the charter.
(1) Defines Village electors as resident of the Village.
(2) Requires all elections for village council to be nonpartisan.
(3) Sets the dates for elections. The first regular election to be held March 13, 2018. Thereafter, elections will be held ten weeks prior to the date of the general election on each even numbered year.
(4) Creates the Village canvassing board.
(5) Provides requirements and procedures for general elections. Provides for recall of council members by general law.

Section 9. Reserves the powers of initiative and referendum for the qualified registered voters of the village.

Section 10. Provides general provisions and authority.

(1) Provides for a code of ethics for all officers and employees of the village.
(2) Authorizes charter amendments as provided by law.
(3) Provides for severability of any charter provision held invalid by the courts.

Section 11. Creates the transition schedule to implement the charter after the Village is created.
(1) Provides for the referendum on creating the Village to be held on November 7, 2017 Provides the ballot question.
(2) Provides for initial special election of council members. Provides for qualifications of candidates in the special election. Provides procedures for the election. Provides for terms of initial election and timing of subsequent general elections.
(3) Authorizes the village council to borrow money for first year expenses of government.
(4) Provides for all codes, ordinances, and resolutions of Martin County applicable to the Village to continue in effect as municipal codes, etc. until otherwise modified or replaced by the Village council.
(5) Provides for continuation of county ordinances, rules, regulations, as municipal ordinances, rules, and regulations until revised or rescinded by Village council.
(6) Provides for continuation of county comprehensive plan and land use ordinances as the Village's transitional plan and ordinances. Requires all planning functions, duties, and authority to be vested in the Village council. Limits amendments, revisions, rescinding provisions of county comprehensive plan applicable to Village.
(7) Provides Village is entitled to participate in state revenue sharing beginning on April 1, 2018. Provides for information on population estimates.
(8) Waives the requirements of s. 218.23(1), F.S., for purpose of conducting audits and financial reporting through Village fiscal year 2018-2019.
(9) Authorizes the millage levied by special districts, pursuant to s. 218.23(1) related to ad valorem taxation, to be used for an indefinite period of time for purposes of calculating state revenue sharing for the Village.
(10) Provides for revenues under Martin County communication services tax to be shared with Village on a proportionate basis through January 1, 2019.
(11) Provides Village is entitled to receive local option gas tax revenues beginning October 1, 2018.
(12) Provides that contracts currently in existence for services and facilities may remain in effect until the council establishes independent services. Provides that solid waste contracts continue to be honored as required by s. 165.061(1)(f), F.S.
(13) Provides that portion of the Martin County Fire Rescue Municipal Service Taxing Unit within the boundaries of the Village shall continue until Village adopts a contrary ordinance.
(14) Provides Martin County Sheriff's Office will continue providing law enforcement services until Village adopts a contrary ordinance.
(15) Directs the Village, upon incorporation, to adopt ordinances and enter into local agreements with the county to address funding and taxation issue associated with the portion of the Martin County Community Redevelopment Agency that exists within the boundaries of the village.

Section 12. Finds requirements for incorporation have been met except for the minimum population density requirement of s. 165.061(1)(c), F.S.

Section 13. Provides act takes effect upon approval by majority of qualified electors voting in a referendum. Provides section 11, subsection (1), and section 13 take effect upon act becoming law. The bill provides for a referendum election to be held on November 7, 2017.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN?
WHERE?

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

IF YES, WHEN? November 7, 2017

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:
None.

B. RULE-MAKING AUTHORITY:
The bill neither provides rulemaking authority nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute (CS). The amendment:

- Clarifies procedures relating to the call of the referendum;
- Requires the referendum election be held on November 7, 2017;
- Clarifies that the first regular election of council members shall be held on March 13, 2018, and ten weeks prior to the general election on even-numbered years thereafter;
- Revises the qualifying period for council elections;
- Establishes the first council meeting to take place March 21, 2018, or the following Tuesday, if the election results have not yet been certified;
- Provides procedures for the selection of the council mayor;
- Revises the date in which the Village is entitled to participate in state revenue sharing from January 1, 2018 to April 1, 2018;
- Waives the requirements for conducting audits and financial reporting through Village fiscal year 2018-2019; and
- Requires the local communications services tax rate imposed by Martin County continue through January 1, 2019.

This analysis is drafted to the bill as amended by the Local, Federal & Veterans Affairs Subcommittee.

APPENDIX A
MATERIALS RECEIVED

Document	Date	Author
Village of Indiantown Incorporation Feasibility Study	8/2016	Joseph Mazurkuewicz, Jr. BJM Consulting, Inc.
Re: Indiantown Municipal Incorporation Feasibility Study Review	9/27/2016	Local & Federal Affairs Committee
Re: Indiantown Responses to September 27, 2016 Letter and Revised Map	11/16/2016	Joseph Mazurkuewicz, Jr. BJM Consulting, Inc.
Review of Proposed Village of Indiantown Municipal Incorporation	12/2/2016	Dept. of Economic Opportunity
Memorandum: Proposed Incorporation – Village of Indiantown, Martin County	12/5/2016	Department of Revenue
Response to Request for Evaluation of Village of Indiantown Incorporation Feasibility Study	12/5/2016	Office of Economic and Demographic Research
Economic Impact Statement	1/17/2017	Joseph Mazurkuewicz, Jr. BJM Consulting, Inc.
Memorandum: Indiantown Economic Impact Statement	1/25/2017	Local, Federal and Veterans Affairs Subcommittee
Re: Indiantown Responses to the Jan 25, 2017 Memo from Tracy Banner	2/1/2017	Joseph Mazurkuewicz, Jr. BJM Consulting, Inc.
Village of Indiantown Incorporation Revised Feasibility Study	2/13/2017	Joseph Mazurkuewicz, Jr. BJM Consulting, Inc.
Revised Economic Impact Statement	2/13/2017	Joseph Mazurkuewicz, Jr. BJM Consulting, Inc.
Re: HB 259 – Proposed Municipal Incorporation of Indiantown; HB 261 – Proposed Municipal Incorporation of Hobe Sound	2/15/2017	Local, Federal and Veterans Affairs Subcommittee
Re: Indiantown/Hobe Sound Responses to the February 15, 2017 Memo	3/6/2017	Joseph Mazurkuewicz, Jr. BJM Consulting, Inc.
Re: HB 259 – Proposed Municipal Incorporation of Indiantown; HB 261 – Proposed Municipal Incorporation of Hobe Sound	3/10/2017	Local, Federal and Veterans Affairs Subcommittee
RE: Hobe Sound Responses to the March 10, 2017 Memo from Eric Miller	3/14/2017	Local, Federal and Veterans Affairs Subcommittee

APPENDIX B
MAP OF PROPOSED AREA OF INCORPORATION

LEGAL DESCRIPTION FOR INDIANTOWN, FLORIDA

Being:

The eastern 1,053 feet of the South ½ of the South ½ of the Southeast ¼ Section 19, T 39 S, R 38 E; and
The South ½ of Section 20, T 39 S, R 38 E; and
The South ½ of Section 21, T 39 S, R 38 E, Lying South of State Road 710; and
That part of Section 22, T 39 S, R 38 E, Lying South of State Road 710, and
The South ½ of Section 25, T 39 S, R 38 E, Less the Western 1,320 feet; and
The Southwest ¼ of Section 26, T 39, R 38 E; and
All of Section 27, T 39 S, R 38 E, Lying South of State Road 710; and
The Northern 3.685' of Section 28, T 39 S, R 38 E; and
The Northern 3.685' of Section 29, T 39 S, R 38 E; and
The upland portion of Northern 3,685' of the East ½ of Section 30, T 39 S, R 38 E; and
All of Section 34, T 39 S, R 38 E, Less the Southwestern ¼ of the Southwestern ¼; and
That part of Section 35, T 39 S, R 38 E, Lying South of State Road 710; and
All of Section 36, T 39 S, R 38 E, Except that portion of the Western ¼ that lies North of State Road 710, and
All of Sections 31, 32 and 33 of T 39 S, R 39 E; and
That portion of Section 1, T 40 S, R 38 E, Lying North of Farm Road; and
That Portion of Eastern ¼ of Section 1, T 40 S, R 38 E, Lying South of Farm Road; and
The Eastern 3,000 feet of that Portion of Section 12, T 40 S, R 38 E, Lying North of the St. Lucie Canal ROW, Less the Western 3,152' of the Northern ¼ of Section 12, T 39 S, R 38 E; and
Those Parts of Sections 4, 7, 8 and 9, T 40 S, R 39 E, Lying North of the St. Lucie Canal; and
All of Sections 5 and 6, T 40 S, R 39 E; and
That Portion of Section 8, T 40 S, R 39 E, Lying South of the St. Lucie Canal and North of State Road 710; and
That Portion of Section 9, T 40 S, R 39 E, Lying South of the St. Lucie Canal, North of State Road 710, and West of the State Road 76/State Road 710 Connector.

All Lying in Martin County, Florida, being approximately 9,035.73 acres

SKETCH & DESCRIPTION
PROPOSED BOUNDARY

Incorporation Feasibility Study
Indiantown, Florida
October 19, 2016

Legend

- Little Ranches (Removed from Bndry)
- Township and Range
- Sections
- Incorporation Limits (10-19-16)
- Parcel Boundaries (Martin PAO)

Note
This exhibit was prepared utilizing public data sources including the Florida Geographic Data Library, US Census Data and the Martin County Property Appraiser Data and is the work product of the Town Incorporation Work Group. This exhibit is intended for general information only. any use of this exhibit without authorization of the Work Group is prohibited.

Community Work Group
For:
INDIANTOWN INDEPENDENCE
EXHIBIT 1A

APPENDIX C
DEPARTMENT OF REVENUE INCORPORATION OF INDIANTOWN REVENUE SHARING ESTIMATES

Any projections of state shared revenues beyond the current state fiscal year (2015-2016), are based on assumptions or projections independent of the Department of Revenue.

Incorporation of Indiantown Revenue Sharing Estimates (Subject to meeting requirements of 218.23, F.S.)
State Fiscal Year - 2016-2017 (Annual Estimates)

	4/1/2015 Revenue Sharing Population			Estimated 2016-2017 1/2 Cent Distributions			Estimated 2016-17 Discretionary Surtax 1%		
Martin	Before Incorporation*	After Incorporation	Diff.	Before Incorporation*	After Incorporation	Diff.	Before Incorporation*	After Incorporation	Diff.
County's Share				$15,477,557	$14,915,964	($561,593)	$23,169,584	$22,328,890	($840,694)
Unincorporated	129,131	123,414	-5,717						
Jupiter Island	810	810	0	$88,417	$86,369	($2,048)	$132,358	$129,293	($3,065)
Ocean Breeze Pa	95	95		$10,370	$10,130	($240)	$15,523	$15,164	($359)
Sewall's Point	2,000	2,000		$218,313	$213,258	($5,055)	$326,810	$319,243	($7,567)
Stuart	16,087	16,087		$1,756,001	$1,715,339	($40,662)	$2,628,697	$2,567,828	($60,869)
Indiantown	0	5,717	5,717	$0	$609,598	$609,598	$0	$912,555	$912,555
Totals	148,123	148,123	0	$17,550,658	$17,550,658	$0	$26,272,972	$26,272,972	$0

	Estimated 2016-17 Municipal Revenue Sharing			Estimated 2016-17 County Revenue Sharing			Total of Revenue Sources Estimated 2016-17		
Martin	Before Incorporation*	After Incorporation	Diff.	Before Incorporation*	After Incorporation	Diff.	Before Incorporation	After Incorporation	Diff.
County's Share	n/a	n/a	n/a	$4,284,407	$4,202,618	($81,789)	$19,761,964	$19,118,582	($643,382)
Unincorporated									
Jupiter Island	$23,170	$23,164	($6)	n/a	n/a	n/a	$111,587	$109,533	($2,054)
Ocean Breeze Pa	$18,028	$18,028	$0				$28,398	$28,158	($240)
Sewall's Point	$63,221	$63,221	$0				$281,534	$276,479	($5,055)
Stuart	$635,806	$635,806	$0				$2,391,807	$2,351,145	($40,662)
Indiantown	$0	$92,991	$92,991				$0	$702,589	$702,589
Totals	$740,224	$833,210	$92,985	$4,284,407	$4,202,618	($81,789)	$22,575,289	$22,586,486	$11,196

Assumptions provided by Feasibility Study	Indiantown
population =	5,717
taxable value =	2,004,854,945

* Source: Local Government Information Handbook 2016

A bill to be entitled

An act relating to Martin County; creating the Village of Indiantown; providing a charter; providing legislative intent; providing for a council-manager form of government; providing boundaries; providing municipal powers; providing for a village council and composition thereof; providing for eligibility, terms, duties, compensation, and reimbursement of expenses of council members; providing for a mayor and vice mayor; providing scheduling requirements of council meetings; prohibiting interference with village employees; providing for filling of vacancies and forfeiture of office; providing for the appointment of a village manager and village attorney and the qualifications, removal, powers, and duties thereof; providing for the establishment of village departments, agencies, personnel, and boards; providing for an annual independent audit; providing that the state is not liable for financial shortfalls of the village; providing for nonpartisan elections and matters relating thereto; providing for the recall of council members; providing for initiative and referenda; providing for a code of ethics; providing for future amendments to the charter; providing for severability; providing a village transition schedule and procedures

for the first election; providing for first-year expenses; providing for adoption of comprehensive plans and land development regulations; providing for accelerated entitlement to state-shared revenues; providing for entitlement to all local revenue sources allowed by general law; providing for the sharing of communications services tax revenues; providing for receipt and distribution of local option gas tax revenues; providing for waiver of specified eligibility provisions; requiring a referendum; providing effective dates.

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

Section 1. Corporate name; purpose of the charter; creation and establishment of the Village of Indiantown.—

(1) CORPORATE NAME.—The municipality hereby established shall be known as the Village of Indiantown ("village").

(2) PURPOSE OF THE CHARTER.—This act, together with any future amendments thereto, may be known as the Charter of the Village of Indiantown ("charter").

(a) It is in the best interests of the public health, safety, and welfare of the residents of the Indiantown area to form a separate municipality for the Indiantown area with all

the powers and authority necessary to provide adequate and efficient municipal services to its residents.

(b) It is intended that this charter and the incorporation of the Indiantown area will serve to preserve and protect the character, natural resources, and quality of life of the community.

(c) It is the intent of this charter and the incorporation of the village to secure the benefits of self-determination and affirm the values of representative democracy, citizen participation, strong community leadership, professional management, and regional cooperation.

(d) It is the intent of this charter and the incorporation of the village to maintain a financially secure and sustainable municipal government and to responsibly manage the village's debt obligations without causing the state to incur any liability.

(3) CREATION AND ESTABLISHMENT OF THE VILLAGE OF INDIANTOWN.—

(a) This act shall take effect upon approval by a majority vote of those qualified electors residing within the corporate limits of the proposed village as described in section 3 voting in a referendum election to be called by the Board of County Commissioners of Martin County in conjunction with the Supervisor of Elections of Martin County to be held November 7,

2017, in accordance with the provisions of law relating to elections currently in force.

(b) For the purpose of compliance with s. 200.066, Florida Statutes, relating to assessment and collection of ad valorem taxes, the Village of Indiantown is created and established effective December 31, 2017.

Section 2. Powers of village; form of government.—

(1) POWERS OF THE VILLAGE.—The village shall have all available governmental, corporate, and proprietary powers of a municipality under the State Constitution and laws of this state as fully and completely as though such powers were specifically enumerated in this charter, and may exercise them, except where prohibited by law. Through the adoption of this charter, it is the intent of the electors of the village that the municipal government established in this section shall have the broadest exercise of home rule powers permitted under the State Constitution and laws of the state.

(2) CONSTRUCTION.—The powers of the village under this charter shall be construed liberally in favor of the village, and the specific mention of particular powers in the charter shall not be construed as limiting the general powers granted in this charter in any way.

(3) FORM OF GOVERNMENT.—The village shall be a council-manager form of government, with the council to consist of five village council ("council") members elected by the village at

large. The council shall constitute the governing body of the village, with the duties and responsibilities hereinafter provided. The council shall appoint a village manager to be the chief administrative officer of the village who shall serve at the pleasure of the council.

Section 3. Corporate boundaries.—The territorial boundaries of the Village of Indiantown upon the date of incorporation shall be as follows:

The eastern 1,053 feet of the South 1/2 of the South 1/2 of the Southeast 1/4 Section 19, T 39 S, R 38 E; and

The South 1/2 of Section 20, T 39 5, R 38 E; and

The South 1/2 of Section 21,T 39 5, R 38 E, Lying South of State Road 710; and That part of Section 22, T 39 5, R 38 E, Lying South of State Road 710, and The South 1/2 of Section 25, T 39 S, R 38 E, Less the Western 1,320 feet; and The Southwest 1/4 of Section 26, T 39, R 38 E; and
All of Section 27, T 39 S, R 38 E, Lying South of State Road 710; and
The Northern 3,685' of Section 28, T 39 S, R 38 E; and

The Northern 3,685' of Section 29, T 39 S, R 38 E; and

The upland portion of Northern 3,685' of the East 1/2 of Section 30, T 39 S, R 38 E; and All of Section 34, T 39 5, R 38 E, Less the Southwestern 1/2 of the Southwestern X; and That part of Section 35, T 39 S, R 38 E, Lying South of State Road 710; and

All of Section 36, T 39 5, R 38 E, Except that portion of the Western 14 that lies North of State Road 710; and

All of Sections 31, 32 and 33 of T 39 S, R 39 E; and

That portion of Section 1, T 39 S, R 38 E, Lying North of Farm Road; and

That Portion of Eastern 14 of Section 1,T 39 S, R 38 E, Lying South of Farm Road; and

The Eastern 3,000 feet of that Portion of Section 12, T 39 5, R 38 E, Lying North of the St. Lucie Canal ROW, Less the Western 3,152' of the Northern X of Section 12, T 39 S, R 38 E; and

Those Parts of Sections 4, 7, 8 and 9, T 40 S, R 39 E, Lying North of the St. Lucie Canal; and
All of Sections 5 and 6, T 40 5, R 39 E; and

That Portion of Section 8, T 40 S, R 39 E, Lying South of the St. Lucie Canal and North of State Road 710; and

That Portion of Section 9, T 40 5, R 39 E, Lying South of the St. Lucie Canal, North of State Road 710, and West of the State Road 76/State Road 710 Connector.

All Lying in Martin County, Florida, being approximately 9,397 .5 acres.

Section 4. Village council.—

(1) GENERAL POWERS AND DUTIES.—All powers of the village shall be vested in the village council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations permitted by or imposed on the village by law.

(2) COMPOSITION; ELIGIBILITY; TERMS.—

(a) Composition.—There shall be a village council composed of five council members. Each council member shall be elected by the voters of the village at large.

(b) Eligibility.—

1. Each candidate for village council shall be a qualified elector of the village.

2. Each candidate for council shall have been a resident of the village for at least 1 year before qualifying for office.

3. Each council member must reside in the village for the duration of his or her term.

4. The term of office for each council member shall be 4 years.

(c) Seats.—The village council shall be divided into five separate council seats to be designated as seats 1, 2, 3, 4, and 5, to be voted on a villagewide basis, with each qualified elector entitled to vote for one candidate for one seat.

(3) MAYOR; VICE MAYOR.—

(a) Mayor.—At the first regularly scheduled meeting after the village's first election and each regular election thereafter and after receiving the certified results of the election, the council, by a majority vote, shall select from its membership a mayor. Each year in which a regular election is not scheduled, the council, by the second regular meeting after September 1, shall by majority vote select from its membership a mayor. The mayor shall serve as chairperson during the meetings

of the council and shall serve as the head of municipal government for the purpose of execution of legal documents as required by ordinance. The mayor shall also serve as the ceremonial head of the village.

(b) Vice mayor.—A vice mayor shall be selected in the same manner as the mayor as provided in paragraph (a). The vice mayor shall serve as mayor during the absence or disability of the mayor and, if a vacancy of the mayor occurs, shall become interim mayor until a mayor is selected as described in paragraph (a).

(4) COMPENSATION.—An ordinance increasing or decreasing compensation of the council may be adopted at any time upon the affirmative vote of four members of the council; however, if the council takes action to change the level of compensation, the salary of council members shall not be adjusted until after the first day after the next regular municipal election. The council may provide for reimbursement of actual expenses incurred by its members, including the mayor, while performing their official duties.

(5) COUNCIL MEETINGS.—

(a) The council shall hold meetings in accordance with a duly adopted ordinance or resolution. Special meetings may be held at the call of the mayor or a majority of the council members. At least a 24-hour notice shall be provided to each council member and the public for special meetings, unless there

is an immediate threat to the public safety. Except as authorized by law, all meetings shall be open to the public.

(b) Three members of the village council shall constitute a quorum for the conduct of business unless otherwise provided herein. Unless a quorum is present, no action may be taken except to adjourn. In order to approve any action or adopt any ordinance or resolution there must be at least three affirmative votes for the action, unless otherwise provided herein.

(6) PROHIBITIONS.—

(a) Neither the council, nor any individual member of the council, shall in any manner attempt to dictate the employment or removal of any employee other than the village manager and village attorney. The council is free to make inquiries of village employees, but no individual member of the council shall give orders to any officer or employee of the village. Recommendations for improvements in village government operations shall come through the village manager, but each member of the council shall be free to discuss or recommend improvements to the village manager, and the council is free to direct the village manager to implement specific recommendations for improvement in village government operations.

(b) No present or former elected village official shall hold any compensated appointive office or employment with the village until 1 year after leaving office.

(7) VACANCIES; FORFEITURE OF OFFICE; FILLING OF VACANCIES.—

(a) Vacancies.—A vacancy in the office of a member of the council, mayor, or vice mayor shall occur upon the incumbent's death, inability to fulfill the duties of the office, relocation of residence outside the village, resignation, appointment to another public office, judicially determined incompetence, or removal or forfeiture of office as described in this subsection.

(b) Forfeiture of office.—

1. A member of the council may forfeit the office if the member:

a. Lacks at any time during the term of office any qualification for the office prescribed by this charter or by law;

b. Violates any express prohibition of this charter;

c. Is convicted of a felony or criminal misdemeanor, which felony or misdemeanor involves the office of village council;

d. Is found to have violated any standard of conduct or code of ethics established by law for public officials or has been suspended from office by the Governor, unless subsequently reinstated as provided by law; or

e. Misses three consecutive regularly scheduled council meetings, unless excused by the council.

If any of these events should occur, a hearing shall automatically be conducted at the next regularly scheduled council meeting, and the member may be declared to have forfeited office by majority vote of the council.

2. The council shall be the sole judge of the qualifications of its members and shall hear all questions relating to forfeiture of a council member's office, including whether good cause for absence has been or may be established. The council shall have the power to set additional written standards of conduct for its members beyond those specified in this charter and may provide for such penalties as it deems appropriate, including forfeiture of office. In order to exercise these powers, the council shall have power to subpoena witnesses, administer oaths, and require the production of evidence.

(c) Filling of vacancies.—

1. A vacancy on the council shall be filled by a majority vote of the remaining members of the council for the period of time until the next election, when a council member shall be elected for the remainder of the term vacated. If more than 6 months remain in the unexpired term and a majority of the remaining council members cannot reach a decision within 60 days after a vacancy occurs, the vacancy shall be filled by a special election.

2. In the event that all of the council members are removed by death, disability, recall, forfeiture of office, or resignation, the Governor shall appoint interim council members who shall call a special election at least 30 days, but no more than 60 days, after such appointment. Such election shall be held in the same manner as the initial elections under this charter. However, if there are fewer than 6 months remaining in any unexpired terms, the interim council appointed by the Governor shall serve out the unexpired terms. Appointees must meet all requirements for candidates as provided in this charter.

3. The burden of establishing good cause for absences shall be on the council member in question; however, any council member may, at any time during a duly held meeting, move to establish good cause for his or her absence. A council member whose qualifications are in question or who is otherwise subject to forfeiture of his or her office shall not vote on such matters.

Section 5. Administration.—

(1) VILLAGE MANAGER.—

(a) The council shall appoint a village manager, or a management firm to fulfill the duties of a village manager, who shall serve at the pleasure of the council. The qualifications of the village manager or firm may be established by ordinance.

(b) The village manager or firm may be removed by a majority vote of the council.

(c) During the absence or disability of the village manager, the village council may by resolution designate a properly qualified person to temporarily execute the functions of the village manager. Such person shall have the same powers and duties as the village manager and may be removed by the village council at any time upon a majority vote of the council.

(d) The village manager or firm shall:

1. Appoint, hire, suspend, demote, or dismiss any village employee under the village manager's jurisdiction in accordance with law, and may authorize any department head to exercise these powers with respect to subordinates in that department.

2. Direct and supervise the administration of all departments of the village except the office of the village attorney.

(2) VILLAGE ATTORNEY.—There shall be a village attorney who shall be a member of The Florida Bar in good standing, be appointed by the council, and serve as the chief legal advisor to the council and village administrators, departments, and agencies. The council may remove the village attorney for any reason by a majority vote of its members.

Section 6. Departments; personnel; planning.—

(1) DEPARTMENTS; BOARDS; AGENCIES.—The council may establish, modify, or terminate such departments, boards, or

agencies as it determines necessary for the efficient administrative operation of the village. Such departments, boards, or agencies shall be determined by ordinance.

(2) PERSONNEL.—Consistent with all applicable state and federal laws, the council shall provide by ordinance for the establishment, regulation, and maintenance of a system governing personnel policies necessary for the effective administration of employees of the village's departments, boards, and agencies.

(3) PLANNING.—Consistent with all applicable state and federal laws with respect to land use, development, and environmental protection, the village shall:

(a) Designate an employee, agency, or agencies to execute the planning functions with such decision making responsibilities as may be specified by ordinance or general law.

(b) Adopt a comprehensive plan and ensure that zoning and other land use control ordinances are consistent with the plan, all in accordance with general law. The Martin County Comprehensive Plan, as it exists on the day that the village commences corporate existence, shall serve as the initial comprehensive plan of the village until the village adopts its own comprehensive plan pursuant to chapter 163, Florida Statutes.

(c) Adopt zoning and development regulations, to be specified by ordinance, to implement the plan.

Section 7. Financial management.—

(1) FISCAL YEAR.—The fiscal year of the village shall begin on the first day of October and end on the last day of September of each year.

(2) EXPENDITURE OF VILLAGE FUNDS.—No village funds shall be expended except pursuant to a duly approved appropriations or for the payment of bonds, notes, or other indebtedness duly authorized by the council and only from such funds so authorized.

(3) BUDGET ADOPTION.—The council shall adopt a budget in accordance with applicable general law, after a minimum of two public hearings on the proposed budget. A resolution adopting the annual budget shall constitute appropriation of the amounts specified therein as expenditures from funds indicated.

(4) EXPENDITURES.—The budget shall not provide for expenditures in an amount greater than the revenues budgeted.

(5) APPROPRIATIONS.—

(a) If, during the fiscal year, revenues in excess of such revenues estimated in the budget are available for appropriation, the council by resolution may make supplemental appropriations for the year in an amount not to exceed such excess.

(b) If, at any time during the fiscal year, it appears probable to the village manager that the revenues available will be insufficient to meet the amount appropriated, the village

manager shall report to the council without delay, indicating the estimated amount of the deficiency, any remedial action taken, and recommendations as to any other steps that should be taken. The council shall then take such further action as it deems necessary to prevent or minimize any deficiency and, for that purpose, the council may by resolution reduce one or more appropriations accordingly.

(c) No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated, or by more than the unencumbered balance thereof. Notwithstanding any other provision of law, the supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

(6) BONDS; INDEBTEDNESS.—

(a) Subject to the referendum requirements of the State Constitution, if applicable, the village may from time to time borrow money and issue bonds or other obligations or evidence of indebtedness (collectively, "bonds") of any type or character for any of the purposes for which the village is not or hereafter authorized by law to borrow money, including to finance the cost of any capital or other project and to refund any and all previous issues of bonds at or before maturity. Such bonds may be issued pursuant to one or more resolutions adopted by a majority of the council.

(b) The village may assume all outstanding indebtedness related to facilities that it acquires from other units of local government and be liable for payment of such indebtedness in accordance with its terms.

(7) REVENUE BONDS.—Revenue bonds may be issued by the village as authorized by law.

(8) ANNUAL AUDIT.—The council shall provide for an independent annual financial audit of all village accounts and may provide for more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or a firm of such accountants who have no personal interest, directly or indirectly, in the fiscal affairs of the village government or in any of its officers.

(9) SHORTFALLS.—The state is not liable for financial shortfalls of the village.

Section 8. Nominations and elections.—

(1) NONPARTISAN ELECTIONS; ELECTORS; QUALIFYING.—

(a) Nonpartisan elections.—All elections shall be conducted on a nonpartisan basis without designation of political party affiliation.

(b) Electors.—Any person who is a resident of the village, who has qualified as an elector of this state, and who registers as prescribed by law shall be an elector of the village.

(c) Qualifying.—

1. Each candidate for village council shall be a qualified elector of the village and must reside in the village for at least 1 year before the beginning of the qualifying period for the office sought.

2. Any elector of the village who wishes to become a candidate for village council shall qualify with the Supervisor of Elections of Martin County for the initial election; thereafter, candidates shall qualify with the official designated by village resolution or general law by providing proof of voter registration, current address, and 1 year of residency in the village unless the village council, by resolution, provides that the Supervisor of Elections of Martin County conduct the candidate qualification process.

3. The qualifying period for candidates for village council shall be the same as provided by the Supervisor of Elections of Martin County or as otherwise provided by ordinance.

(2) ELECTIONS.—

(a) Adoption of Florida Election Code.—All elections required under any article or section of this charter shall be conducted in accordance with the Florida Election Code, chapters 97-106, Florida Statutes, except as otherwise provided in this charter. The council, by ordinance, may adopt such election procedures as are necessary and as provided by the Florida Election Code, chapters 97-106, Florida Statutes.

(b) At large elections.—

1. The first regular election of council members shall be held March 13, 2018, and thereafter will be 10 weeks before the date of the general election on each even-numbered year, unless this date is required to be changed to a date concurrent with any countywide or statewide election.

2. The candidates receiving the highest number of votes in the village at-large election shall be elected.

3. The term of office for an elected council member shall begin immediately after official certification of the results of the election and shall expire upon the assumption of office by his or her successor.

4. No election for a council member seat shall be required if there is only one duly qualified candidate for the council member seat.

(c) Village canvassing board.—The canvassing board shall be composed of three members appointed by the village council by resolution. No member of the village canvassing board shall be an active participant in the village election for which he or she is canvassing as the term "active participant" is interpreted by the Division of Elections. Should a vacancy occur on the canvassing board, the village council shall appoint a replacement member by resolution. The village canvassing board shall canvass the election consistent with the requirements of Florida law and consistent with and pursuant to any agreement

between the village and the Martin County Supervisor of Elections. The canvassing board shall certify the results of the election upon receipt of the certification from the supervisor of elections. However, the village council may, by resolution, delegate the election canvassing responsibilities for village elections to the county canvassing board.

(3) RECALL.—The qualified voters of the village shall have the power to remove from office any elected official of the village in accordance with state law.

Section 9. Initiative and referendum.—The powers of initiative and referendum are reserved to the qualified registered voters of the village. The election laws of the state shall govern the exercise of the powers of initiative and referendum under this charter.

Section 10. General provisions.—

(1) CODE OF ETHICS.—It is essential to the proper conduct and operation of the village that the officers and employees of the village be independent and impartial and for their offices not to be used for private gain other than the remuneration provided by law or by ordinances. It is declared to be the policy of the village that its officers and employees are agents of the people and hold their positions for the benefit of the public. Therefore, all village officers and employees shall adhere to the standards of conduct as provided in part III of chapter 112, Florida Statutes.

(2) AMENDMENTS TO CHARTER.—This charter may be amended in accordance with the provisions for charter amendments as specified in the Municipal Home Rules Powers Act, chapter 166, Florida Statutes, or as otherwise may be provided by general law.

(3) SEVERABILITY.—If any provision of this charter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this charter which can be given effect without the invalid provisions or application, and to this end the provisions of this charter are declared severable.

Section 11. Referendum election; transition.—

(1) REFERENDUM ELECTION.—The referendum election called for by this action shall be held on November 7, 2017, at which time the following question shall be placed upon the ballot:

Shall the Village of Indiantown be created and its charter adopted?

YES . . . .

NO . . . .

In the event this question is answered affirmatively by a majority of voters voting in the referendum, the charter will take effect as provided herein. The referendum election shall be conducted by the Supervisor of Elections of Martin County in accordance with the Florida Election Code, and the cost of such

election shall be funded by the Board of County Commissioners of Martin County.

(2) INITIAL ELECTION OF COUNCIL.—

(a) After the adoption of this charter, the Board of County Commissioners of Martin County shall call an election to be held March 13, 2018, for the election of five village council members. The election shall be conducted by the Supervisor of Elections of Martin County in accordance with the Florida Election Code, and the cost of such election shall be funded by the Board of County Commissioners of Martin County.

(b) An individual who wishes to run for one of five initial seats on the council shall qualify with the Supervisor of Elections of Martin County in accordance with this charter and general law. The qualifying period for the initial election of the village council shall begin at noon on the second Monday in January and end at noon on the second Friday in January, unless otherwise provided by law.

(c) For the initial elections, the county canvassing board shall certify the results of the elections in accordance with general law.

(d) The three council members receiving the highest number of votes shall each be elected to an initial term expiring upon certification of the election results for the August 2022 election. The two remaining council members shall each be elected to an initial term expiring upon certification of the

election results for the August 2020 election. Thereafter, all terms shall be for a period of 4 years.

(3) SCHEDULE.—

(a) First election of council members.—At the time of its adoption, this charter shall be in effect to the extent necessary so that the first election of members of the village council may be conducted in accordance with this charter.

(b) Time of taking full effect.—This charter shall be in full effect for all purposes on and after the date of the first meeting of the newly elected village council provided in paragraph (c).

(c) First council meeting.—On March 21, 2018, provided the results of the election of the village council under this charter have been certified, the newly elected members of the village council shall meet at a location to be determined. In the event the results have not been certified by March 21, 2018, the newly elected members shall meet on the following Tuesday. The initial council shall have the authority and power to enter into contracts, arrange for the hiring of legal counsel, begin recruiting applicants for village manager, provide for necessary village offices and facilities, and do such other things as it deems necessary and appropriate for the village.

(4) FIRST YEAR EXPENSES.—The council, in order to provide moneys for the expenses and support of the village, shall have the power to borrow money necessary for the operation of

municipal government until such time as a budget is adopted and revenues are raised in accordance with this charter.

(5) TRANSITIONAL ORDINANCES AND RESOLUTIONS.-

(a) All applicable county ordinances currently in place at the time of passage of the referendum, unless specifically referenced in this charter, shall remain in place until and unless rescinded by action of the council, except that a county ordinance, rule, or regulation that is in conflict with an ordinance, rule, or regulation of the village shall not be effective to the extent of such conflict. Any existing Martin County ordinances, rules, and regulations, as of April 1, 2018, shall not be altered, changed, rescinded, or added to, nor shall any variance be granted, if such action would affect the village without the approval of the council.

(b) The council shall adopt ordinances and resolutions required to effect the transition.

(6) TRANSITIONAL COMPREHENSIVE PLAN.-Until such time as the village adopts a comprehensive plan, the Martin County Comprehensive Plan, as it exists on the day that the village commences corporate existence, shall remain in effect as the village's transitional comprehensive plan. However, all planning functions, duties, and authority shall thereafter be vested in the council, which shall be deemed the local planning agency until the council establishes a separate local planning agency.

(7) TRANSITIONAL LAND DEVELOPMENT REGULATIONS.-To implement the transitional comprehensive land use plan when adopted, the village shall, in accordance with the procedures required by the laws of the state, adopt ordinances providing for land use development regulations within the corporate limits. Until the village adopts ordinances, the following shall apply:

(a) The comprehensive land use plan and land use development regulations of Martin County, as the same exists on the date that the village commenced corporate existence, shall remain in effect as the village's transitional land use development regulations and comprehensive land use plan.

(b) All powers and duties of the Martin County Growth Management and Building Departments, the Martin County Special Magistrate, and Board of County Commissioners of Martin County, as provided in these transitional land use development regulations, shall be vested in the council until such time as the council delegates all powers and duties, or a portion thereof, to another agency, department, or entity.

(c) Subsequent to the adoption of a local comprehensive land use plan and subject to general law, the council is fully empowered to amend, supersede, enforce, or repeal the transitional land use development regulations, or any portion thereof, by ordinance.

(d) Subsequent to the commencement of the village's corporate existence, an amendment of the comprehensive land use plan or land use development regulations enacted by the Board of County Commissioners of Martin County shall not be deemed an amendment of the village's transitional comprehensive land use plan or land use development regulations or otherwise take effect within the village's municipal boundaries.

(8) STATE-SHARED REVENUES.—The village shall be entitled to participate in all revenue sharing programs of the state effective April 1, 2018. The provisions of s. 218.23(1), Florida Statutes, shall be waived for the purpose of conducting audits and financial reporting through the end of the village fiscal year 2018-2019. For purposes of complying with s. 218.23(1), Florida Statutes, relating to ad valorem taxation, the millage levied by special districts may be used for an indefinite period of time. Initial revised population estimates for calculating eligibility for shared revenues shall be determined by the University of Florida Bureau of Economic and Business Research. Should the bureau be unable to provide an appropriate population estimate, the Martin County Department of Community Development shall provide the estimate.

(9) LOCAL REVENUE SOURCES.-The village shall be entitled to receive all local revenue sources available pursuant to general law, including, but not limited to, the local communications services tax imposed under s. 202.19, Florida

Statutes. The local communications services tax rate imposed by Martin County will continue within the village boundaries during the period commencing with the date of incorporation through January 1, 2019. Revenues from the tax shall be shared by Martin County with the village in proportion to the projected village population estimate of the Martin County Planning Division compared with the unincorporated population of Martin County before the incorporation of the village.

(10) LOCAL OPTION GAS TAX REVENUES.—Notwithstanding the requirements of s. 336.025, Florida Statutes, the village shall be entitled to receive local option gas tax revenue beginning on October 1, 2018. These revenues shall be distributed in accordance with general law or by any interlocal agreement negotiated with the Board of County Commissioners of Martin County.

(11) CONTRACTUAL SERVICES AND FACILITIES.—Contractual services for law enforcement, emergency management, public works, parks and recreation, planning and zoning, building inspection, development review, animal control, library services, village manager or management firm, village attorney and solid waste collection may be supplied by a contract between the village and the Board of County Commissioners of Martin County, special districts, municipalities, or private enterprise until such time as the council establishes such independent services. However, existing solid waste contracts shall be

honored as required by s. 165.061(1)(f), Florida Statutes, and s. 10, Article I of the State Constitution. Facilities for housing the newly formed municipal operations may be rented or leased until the village selects more permanent facilities.

(12) MARTIN COUNTY MUNICIPAL SERVICE TAXING UNITS; CONTINUATION.—Notwithstanding the incorporation of the Village of Indiantown, that portion of the Martin County Fire and Rescue MSTU, Parks and Recreation Municipal Service Taxing Unit, Stormwater Municipal Service Taxing Unit, and Roads Municipal Service Taxing Unit, special taxing districts created by the Board of County Commissioners of Martin County that lie within the boundaries of the Village of Indiantown, are authorized to continue in existence until the village adopts an ordinance, resolution, or interlocal agreement to the contrary.

(13) LAW ENFORCEMENT.—Law enforcement services shall be provided by the Martin County Sheriff's Office until the village adopts an ordinance or resolution or enters into an interlocal agreement to the contrary.

(14) MARTIN COUNTY COMMUNITY REDEVELOPMENT AGENCY DISTRICT (INDIANTOWN).—A portion of the Martin County Community Redevelopment Agency District is located within the incorporated limits of the Village of Indiantown. After incorporation, Martin County and the village shall adopt ordinances and enter into interlocal agreements to address the funding and taxation issues

associated with having a portion of the Martin County CRA District encroach over the boundaries of the village.

(15) ELIMINATION OF TRANSITIONAL ELEMENTS FROM THIS CHARTER.—Upon completion of the transitional phase provided in this charter, the sections of the charter relating to transition may be eliminated from this charter.

Section 12. Waiver.—The thresholds established by s. 165.061, Florida Statues, for incorporation have been met with the following exception: a waiver is granted to the provisions of s. 165.061(1)(c), Florida Statutes, relating to the requirement for a minimum average population density of 1.5 persons per acre, to protect the character, natural resources, and quality of life of the village.

Section 13. This act shall take effect only upon its approval by a majority vote of those qualified electors residing within the corporate limits of the proposed Village of Indiantown, as described in section 3, voting in a referendum conducted in accordance with the provisions of law relating to elections currently in force, except that this section and subsection (1) of section 11 shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 289 Property Taxes
SPONSOR(S): Agriculture & Property Rights Subcommittee; Donalds and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	12 Y, 0 N, As CS	Thompson	Smith
2) Ways & Means Committee		Dobson	Langston
3) Commerce Committee			

SUMMARY ANALYSIS

The bill makes changes to various provisions addressing the procedures of the value adjustment board (VAB), homestead tax exemptions, tax lien certificates, the Truth in Millage (TRIM) notification, and claims of adverse possession. Specifically, the bill:

- Requires, as a condition of establishing title by adverse possession, the payment of all "delinquent" taxes instead of all "outstanding" taxes on a parcel of real property;
- Sets a 60 day deadline for late filed petitions to be filed with the VAB;
- Revises the definition of "good cause" as it applies to rescheduling a VAB hearing;
- Amends the statutory provisions that address conflict of interest for special magistrates;
- Grants property appraisers additional authority to waive penalties and interest on tax liens for those who receive, but are not entitled to, homestead exemptions, homestead assessment limitations, homestead exemptions for persons age 65 or older, and homestead assessment reductions for parents and grandparents;
- Increases the tax exemption for widows, widowers, blind persons, and disabled persons from $500 to $5,000;
- Modifies property appraisers' current authority to grant the $25,000 exemption on tangible personal property absent a return having been filed, allowing businesses to receive the exemption beginning in the first year without filing a return; and
- Restricts the content that is required to be included in the yearly TRIM notice.

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill in its entirety. The provisions requiring waiver of penalties and interest and allowing granting of the tangible personal property exemption under certain circumstances is expected to have a negative, but unknown, impact on local government revenues. The increase in widows, blind and disabled exemption from $500 to $5,000 is expected to have a negative revenue impact to local governments of approximately $38.3 million annually beginning in the 2018-2019 fiscal year.

The bill has an effective date of July 1, 2017.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Adverse Possession

Present Situation

Adverse possession is the process by which someone occupies another's property without their consent for a period of time, and eventually acquires title to the property. In Florida, this can happen in two ways, with color of title and without. The requirements for adverse possession without color of title in Florida are set out plainly in s. 95.18, F.S. To claim adverse possession without color of title the claimant must have:

- Been in actual continued possession of the property for 7 years;[1]
- Paid all outstanding taxes and matured installments of special improvement liens against the property within 1 year of taking possession;[2]
- Made a return of the property to the assessor within 30 days of paying those taxes and liens;[3]
- Paid all taxes and matured installments of special improvement liens against the property for all remaining years necessary to establish a claim of adverse possession;[4] and
- Protected the property by substantial enclosure (typically a fence) or cultivated, maintained or improved in a usual manner.[5]

According to Florida law, all outstanding taxes are due and payable on November 1 of each year, and become delinquent on April 1 following the year in which they are assessed, or after 60 days have expired from the mailing of the original tax notice, whichever is later.[6]

Proposed Changes

The bill requires, as a condition of establishing title by adverse possession, the payment of all "delinquent" taxes instead of all "outstanding" taxes on a parcel of real property. Specifically, the bill amends s. 95.18, F.S., by allowing a property to be held adversely only after the taxes and matured installments of special improvement liens levied against the property within 1 year of taking possession have become delinquent, instead of outstanding.

Value Adjustment Board (VAB)

Present Situation

Part 1 of Chapter 194, F.S., provides for the administrative review of ad valorem tax assessments through local VABs. The VAB hearings are a venue in which taxpayers can present their case to a neutral party without the need to hire an attorney or go through the formal process of a circuit court case.

Current law authorizes a property owner to initiate a review by filing a petition with the clerk of the VAB within 25 days of the mailing of the Truth in Millage (TRIM) notice.[7] Pursuant to its rulemaking authority, the Florida Department of Revenue (DOR) prohibits the VAB from setting and publishing a deadline for

[1] s. 95.18(1), F.S.
[2] s. 95.18(1)(a), F.S.
[3] s. 95.18(1)(b), F.S.
[4] s. 95.18(1)(c), F.S.
[5] s. 95.18(1)(2), F.S.
[6] s. 197.333, F.S.
[7] s. 194.011(3), F.S.

late filed petitions.[8] In addition, DOR provides that failure to meet the statutory filing deadline for a petition does not prevent consideration of the petition if the VAB or its designee determines that the petitioner has demonstrated good cause and the delay will not be detrimental to the board's function within the tax process.[9]

A taxpayer receives notice of their hearing at least 25 days before the scheduled hearing.[10] A condominium association, cooperative association, or any homeowners' association is authorized to file with the VAB a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines to be substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition.[11] However, contrary to other classes of property ownership, a condominium association must provide its unit owners at least 20 days to opt out (elect, in writing, that his or her unit not be included) of the petition.[12]

In most counties, the VAB hearing takes place in front of a special magistrate instead of the VAB.[13] Special magistrates are experienced appraisers and attorneys who are hired to serve as impartial hearing officers.[14] After the hearing the special magistrate produces a recommended decision which is given to the VAB which produces the final decision. This step does not occur if the VAB hears the petition directly. The petitioner and the property appraiser may each reschedule the hearing once and must show good cause.[15]

Once the final written decision is issued by the VAB, if the petitioner disagrees with the decision, he or she then has 60 days to file an action in circuit court contesting that decision.[16] However, an appeal of a VAB decision by the property appraiser must be filed, if the tax roll has been extended during a VAB hearing, within 30 days of the certification.[17] In addition, it does not appear that either party is afforded the authority to file a counterclaim to an appeal.

Proposed Changes

Late Filed VAB Petitions

The bill sets a 60-day deadline for late filed petitions to be filed with the VAB. Specifically, the bill amends s. 194.011(3)(d), F.S., providing that if a petitioner identifies extenuating circumstances demonstrating to the VAB that the petitioner was unable to file a petition in a timely manner, the petitioner is authorized to file a petition within 60 days after the deadline. However, the VAB is not required to delay proceedings for the 60-day timeframe, and no late petition is authorized after the VAB has concluded its review of petitions.

VAB Hearing Rescheduling

The bill revises the definition of "good cause", as it applies to valid reasons a petitioner and property appraiser may reschedule a hearing. Specifically, the bill amends s. 194.032(2)(a), F.S., to provide that good cause does not include being scheduled for two separate hearings in different jurisdictions at the same time or date unless the hearings involve the same petitioner or the property appraiser and

[8] Rule 12D-9.015, F.A.C., Petition; Form and Filing Fee.
[9] Id.
[10] s. 194.032(2)(a), F.S.
[11] s. 194.011(3)(e), F.S.
[12] Id.
[13] Section 194.035(1), F.S., requires the use of special magistrates in counties with a population over 75,000. Smaller counties may opt to use special magistrates.
[14] s. 194.035(1), F.S.
[15] s. 194.032(2)(a), F.S., defines the term "good cause" as circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent the party from having adequate representation at the hearing.
[16] s. 194.171(2), F.S.
[17] s. 193.122(4), F.S.

petitioner agree to reschedule the hearing. Before the value adjustment board begins hearings for the roll year, the property appraiser and the individual, agent, or legal entity that signed the petition may identify up to 15 business days per roll year for which they are unavailable for hearings.

Special Magistrates Conflict of Interest

As current law requires VAB special magistrates to be qualified individuals, many are familiar with and employed in the appraisal business. The bill strengthens the statutory provisions that address conflict of interest for special magistrates. Specifically, the bill amends s. 194.035(1), F.S., providing that an appraisal performed by a special magistrate may not be submitted as evidence to the value adjustment board in any roll year during which he or she has served on that board as a special magistrate.

Homestead Exemption Liens

Present Situation

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[18]

Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional homestead exemption from all taxes other than district school taxes is available for assessed value above $50,000 and up to $75,000.

If delinquent ad valorem taxes are not paid by June 1 of the year after assessment, the county holds a tax certificate sale for real property located in the county in which the taxes became delinquent in that year.[19] A tax lien certificate is an interest bearing lien of first priority representing unpaid delinquent real estate property taxes. However, it does not convey any property rights or ownership to the certificate holder.

The property owner has a period of 2 years from the date the taxes became delinquent to redeem the tax certificate by paying to the county the total due, including accrued interest.[20] After the 2 year period, if the taxes remain unpaid, the lien holder may make an application for tax deed auction with the county.[21] If tax deed auction proceedings begin, the property owner must pay all due and delinquent years, plus fees and interest to stop the sale of their property at public auction.[22] If the tax certificate is not redeemed or sold at auction after 7 years, the tax certificate is cancelled and considered null and void.[23]

Current law provides that if a property appraiser determines that, within the prior 10 years, a property owner was granted a homestead exemption but was not entitled to it, the property appraiser must send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.[24] After receiving notice, the property owner has 30 days to pay the taxes owed, plus penalties and interest before the property appraiser may file the lien.[25] Once a tax lien is filed, the tax lien remains on the

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[18] *Sebring Airport Auth. v. McIntyre*, 783 So.2d 238, 248 (Fla. 2001); *Archer v. Marshall,* 355 So.2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney,* 360 So.2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So.2d 431, 432 (Fla. 1952).
[19] s. 197.432(1), F.S.
[20] s. 197.502(1) and (2), F.S.
[21] s. 197.502, F.S.
[22] s. 197.472, F.S.
[23] s. 197.482, F.S.
[24] s. 196.161(1)(b), F.S.
[25] *Id.*

property until it is paid or expires after 20 years.[26] This provision includes property owners who are granted an exemption and not required to file an annual application or statement.[27]

Proposed Changes

The bill requires property appraisers to waive penalties and interest on homestead exemption liens. Specifically, the bill amends ss. 196.011(9)(a), requiring a property appraiser to waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the exemption at the time the application was filed:

- Acted in good faith, and that, other than improperly receiving the tax savings,
- Did not receive an additional financial benefit, such as a rental payment or other income.

The bill prohibits the property appraiser from waiving the penalty or interest charges if the person claimed a property tax exemption or reduction predicated on the homestead exemptions provided in Article VII, Section 6, of the Florida Constitution on another property.

This applies to property owners who are granted an exemption and who are not required to file an annual application or statement.

Homestead Assessment Limitation Liens

Present Situation

Ad valorem tax valuation is based on the taxable value of property as of January 1 of each year.[28] The property appraiser annually determines the "just value"[29] of property within the taxing authority and then applies applicable exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[30] Article VII, section 4 of the Florida Constitution limits the Legislature's authority to provide for property valuations at less than just value, unless such is expressly authorized by the constitution.[31] This limitation is implemented statutorily. The law provides that, beginning in 1995 or the year after the property receives homestead exemption, an annual increase in homestead assessment is prohibited from exceeding the lower of the following:

- Three percent of the assessed value of the property for the prior year; or
- The percentage change in the Consumer Price Index (CPI) 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 U.S. Department of Labor, Bureau of Labor Statistics.[32]

Current law provides that if a property appraiser determines that, within the prior 10 years a person receives the homestead property assessment limitation and was not entitled to it, the property appraiser will send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.[33] After receiving notice, the property owner has 30 days to pay the taxes owed plus

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[26] s. 95.091(1)(b), F.S.
[27] s. 196.011(9)(a), F.S.
[28] Both real and tangible personal property are subject to the tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.
[29] Property must be valued at "just value" for purposes of property taxation, unless the State Constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction *See Walter v. Shuler,* 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey,* 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So. 2d 4 (Fla. 1973).
[30] *See* s. 192.001(2) and (16), F.S.
[31] *See* FLA. CONST. art. VII, s. 4.
[32] s. 193.155(1), F.S.
[33] s. 193.155(10), F.S.

penalties and interest before the property appraiser may file the lien.[34] Once a tax lien is filed, the tax lien remains on the property until it is paid or expires after 20 years.[35]

Proposed Changes

The bill requires property appraisers to waive penalties and interest on homestead property assessment limitation liens under certain circumstances. Specifically, the bill amends s. 193.155(10), F.S., requiring a property appraiser to waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the property assessment limitation at the time the application was filed:

- Acted in good faith, and that, other than improperly receiving the tax savings,
- Did not receive an additional financial benefit, such as a rental payment or other income.

The bill prohibits the property appraiser from waiving the penalty or interest if the person claimed a property tax exemption or reduction predicated on the homestead exemptions provided in Article VII, Section 6, of the Florida Constitution on another property.

In addition, the bill provides that if the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.

Homestead Exemption Liens for Seniors

Article VII, section 6(d) of the Florida Constitution authorizes the legislature to allow, by general law, counties and municipalities to grant either or both of the following additional homestead exemptions for purposes of their own property tax levies:

- An exemption not exceeding $50,000 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 65, and whose household income, as defined by general law, does not exceed $20,000;[36] or
- An exemption equal to the assessed value of the property to any person who has the legal or equitable title to real estate with a just value less than $250,000 based on the value during the year in which the exemption is originally applied for, and who has maintained thereon the permanent residence of the owner for not less than 25 years, and who has attained age 65, and whose household income does not exceed $20,000.[37]

This exemption is implemented in s.196.075, F.S. The law allows counties and municipalities the discretion to grant the exemptions. Counties and municipalities may grant either or both of these exemptions through the adoption of an ordinance.[38] The law also provides that if a property appraiser determines that, within the prior 10 years, a person received the homestead property assessment limitation and was not entitled to it, the property appraiser will send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.[39] After receiving notice, the property owner has 30 days to pay the taxes owed, plus penalties and interest, before the property appraiser may file the lien.[40] Once a tax lien is filed, the tax lien remains on the property until it is paid or expires after 20 years.[41]

[34] Id.
[35] s. 95.091(1)(b), F.S.
[36] Art. VII, s. 6(d)(1), Fla. Const.
[37] Art. VII, s. 6(d)(2), Fla. Const.
[38] s. 196.075(4), F.S.
[39] s. 196.075(9), F.S.
[40] Id.
[41] s. 95.091(1)(b), F.S.

Proposed Changes

The bill requires property appraisers to the waive penalties and interest on homestead exemption liens for senior citizen property owners under certain circumstances. Specifically, the bill amends s.196.075(9), F.S., requiring a property appraiser to waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the exemption at the time the application was filed,

- Acted in good faith, and that, other than improperly receiving the tax savings,
- Did not receive an additional financial benefit, such as a rental payment or other income.

The bill prohibits the property appraiser from waiving the penalty or interest if the person claimed a property tax exemption or reduction predicated on the homestead exemptions provided in Article VII, Section 6, of the Florida Constitution on another property.

Homestead Assessment Reduction Liens for Parents and Grandparents

Present Situation

Article VII, section 4(f) of the State Constitution authorizes counties to provide a reduction in assessed value of homestead property resulting from construction or reconstruction on the homestead property for the purpose of providing living quarters for parents or grandparents (granny flats). This reduction is implemented in s. 193.703, F.S. The law applies to natural or adoptive parents or grandparents of the owner of the property or of the owner's spouse, if at least one of the parents or grandparents for whom the living quarters are provided is at least 62 years of age.[42]

The law provides that if a property appraiser determines that within the prior 10 years a person receives the reduction in assessed value and was not entitled to it, the property appraiser must serve the owner with a notice of intent to file a tax lien on any property owned by the owner in that county.[43] After receiving notice, the property owner has 30 days to pay the taxes owed, plus penalties and interest before the property appraiser may file the lien.[44] Even if a tax lien is filed, the tax lien remains on the property until it is paid or expires after 20 years.[45]

Proposed Changes

The bill requires property appraisers to waive penalties and interest on granny flat liens under certain circumstances. Specifically, the bill amends s.193.703(7), F.S., requiring a property appraiser to waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the reduction at the time the application was filed:

- Acted in good faith, and that, other than improperly receiving the tax savings,
- Did not receive an additional financial benefit, such as a rental payment or other income.

The bill prohibits the property appraiser from waiving the penalty or interest if the person claimed a property tax exemption or reduction predicated on the homestead exemptions provided in Article VII, Section 6, of the Florida Constitution on another property.

[42] s. 193.703(1), F.S.
[43] s. 193.703(7), F.S.
[44] Id.
[45] s. 95.091(1)(b), F.S.

Tax Exemption for Widows, Widowers, Blind Persons, and Persons Totally and Permanently Disabled

Present Situation

Article VII, section 3(b) of the Florida Constitution provides a specific exemption to "every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars." This exemption is implemented in s. 196.202, F.S. The law applies to every person who is a bona fide resident of this state.[46] An applicant for the exemption may apply for the exemption before receiving the necessary documentation from the United States Department of Veterans Affairs, or its predecessor, or the Social Security Administration.[47] Upon receipt of the documentation, the exemption is granted as of the date of the original application and any excess taxes paid are refunded.[48]

Proposed Changes

The bill increases the amount of the exemption from $500 to $5,000. Specifically, the bill amends s. 196.202(1), F.S., exempting from taxation property to the value of $5,000 of every widow, widower, blind person, or totally and permanently disabled person who is a bona fide resident of this state.

Tangible Personal Property

Present Situation

Article VII, section 3(e), of the Florida Constitution provides for a $25,000 exemption from the assessed value of tangible personal property subject to ad valorem taxation. This exemption is implemented in s. 196.183, F.S., and applies at each site in the county where the owner of tangible personal property transacts business. The owners of property previously assessed by the property appraiser without a return being filed may, at the option of the property appraiser, qualify for the exemption under this section without filing an initial return. This allows these businesses to receive the exemption in the second year of operation.

Proposed Changes

The bill removes the time limitation for business owners to receive the $25,000 exemption from the assessed value of tangible personal property. This allows these business entities to receive the exemption beginning in its first year without filing an initial return. Specifically, the bill amends s. 196.183(4), F.S., providing that owners of property that has been assessed by the property appraiser without a return being filed may, at the option of the property appraiser, qualify for the exemption under this section without filing an initial return.

The Truth in Millage (TRIM) notice

Present Situation

Each August, a Truth in Millage notice is sent out by the property appraiser to all taxpayers providing specific information about their parcel.[49]

[46] s. 196.202, F.S.
[47] s. 196.202(2), F.S.
[48] *Id.*
[49] s. 200.069, F.S.

The TRIM notice lists each taxing authority that levies taxes on the property, how much they collected from that parcel in the previous year, how much they propose to collect this year, and how much would be levied on the property if the taxing authority made no budget changes.[50] It also lists the day and time that the taxing authority will be holding its preliminary budget hearing, so that the taxpayer can participate in the process and provide input to the taxing authority if they disagree with the proposed taxes.[51] After this meeting, where a tentative millage (tax) rate and budget are adopted, the taxing authority must then publish the proposed millage rate[52] and the proposed budget[53] in a newspaper of general circulation before holding a meeting for the final adoption of the millage rate and budget.[54] This gives citizens two opportunities to have input into the process of setting the millage rate and budget.

The TRIM notice also provides key information about the valuation of the property. It lists the value the property appraiser has placed on the property, shows any reductions which have been made to that value due to a classification or assessment limitation, and shows what exemptions have been granted on that property and the value of those exemptions.[55] This gives taxpayers notice of the assessment of their property, lets them review any assessment limitations or classifications applied, allows them to check to make sure they are getting all of the exemptions they are entitled to receive, and allows them to dispute any of these matters before the tax bills are sent out.

Proposed Changes

The bill prohibits the annual TRIM notice from containing statements not relating to the items that are in the notice. Specifically, the bill amends s. 200.069, F.S., requiring the property appraiser to only include in the mailing of the notice of ad valorem taxes and non-ad valorem assessments additional statements explaining any item on the notice.

B. SECTION DIRECTORY:

Section 1 amends s. 95.18, F.S., relating to real property actions; adverse possession without color of title.

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

Section 3 amends s. 193.703, F.S., relating to reduction in assessment for living quarters of parents or grandparents.

Section 4 amends s. 194.011, F.S., relating to assessment notice; objections to assessments.

Section 5 amends s. 194.032, F.S., relating to hearing purposes; timetable.

Section 6 amends s. 194.035, F.S., relating to special magistrates; property evaluators.

Section 7 amending s. 196.011, F.S., relating to annual application required for exemption.

Section 8 amending s. 196.075, F.S., relating to additional homestead exemption for persons 65 and older.

Section 9 amending s. 196.183, F.S., relating to exemption for tangible personal property.

[50] Id.
[51] s. 200.069(4)(g), F.S.
[52] s. 200.065(3), F.S.
[53] s. 200.065(3)(l), F.S.
[54] s. 200.065 (2)(d), F.S.
[55] s. 200.069(6), F.S.

Section 10 amending s. 196.202, F.S., relating to property of widows, widowers, blind persons, and persons totally and permanently disabled.

Section 11 amending s. 200.069, F.S., relating to the notice of proposed property taxes and non-ad valorem assessments (TRIM notice).

Section 12 provides an effective date of July 1, 2017.

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 the fiscal impact of the bill in its entirety.

   The provisions requiring waiver of penalties and interest and allowing granting of the tangible personal property exemption under certain circumstances is expected to have a negative, but unknown, impact on local government revenues.

   The Revenue Estimating Conference on February 10, 2017, conducted an analysis of the impacts of the increase in widows, blind and disabled exemption from $500 to $5,000 found in section 14 of the bill. Section 14 of the bill is expected to have a negative revenue impact to local governments of approximately $38.3 million annually beginning in the 2018-2019 fiscal year.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida residents who are widows, widowers, blind, or totally and permanently disabled will pay less property tax.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill increases the tax exemption for widows, widowers, blind persons, and disabled persons and requires waiver of penalties and interest in certain circumstances, thereby reducing local government's ability to raise ad valorem revenues. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:
   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Agriculture & Property Rights Subcommittee adopted one strike-all amendment to HB 289. The amendment retains:

- The adverse possession provision, which requires the payment of all "delinquent" taxes instead of all "outstanding" taxes to establish title by adverse possession;
- The provision that removes the time limitation for business owners to receive the $25,000 exemption on tangible personal property;
- The provision that increases the tax exemption for widows, widowers, blind persons, and disabled persons from $500 to $5,000; and
- The provision that restricts the content that is required to be included in the yearly TRIM notice.

The amendment removes:

- The provision that matches the value adjustment board (VAB) appeals timeframe for property appraisers with the 60 day VAB appeals timeframe for taxpayers, and removes the provision that grants each side 30 days to file a counterclaim;
- The provision that prohibits a tax assessment limitation from being based on a VAB final written decision that is under appeal;
- The provision that reduces the information that the notice by mail of non-ad valorem assessment hearings is required to include; and
- The provision that allows local governments to provide the notice by mail of non-ad valorem assessment hearings information via a website, instead of in a newspaper.

The amendment revises:

- The penalties and interest provision to require, instead of allow, property appraisers in specified circumstances to waive penalties and interest on tax liens for those who receive, but are not entitled to, homestead exemptions, homestead assessment limitations, homestead exemptions for persons age 65 or older, and homestead assessment reductions for parents and grandparents; and

- The "good cause" provision as it applies to rescheduling a VAB hearing to exclude scheduling two separate hearings in different jurisdictions at the same time or date.The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

A bill to be entitled

An act relating to property taxes; amending s. 95.18, F.S.; providing that a possessor of real property for 7 years must pay all delinquent taxes prior to claiming adverse possession; amending ss. 193.155, 193.703, 196.011, and 196.075, F.S.; providing criteria under which a property appraiser must waive unpaid penalties and interest for improper nonpayment or reduction of payment of ad valorem taxes by certain property owners claiming a homestead exemption; providing criteria under which a property appraiser may not waive penalties and interest; amending s. 194.011, F.S.; providing circumstances and timeframes under which a person may file a petition late to a value adjustment board; amending s. 194.032, F.S.; specifying situations under which the term "good cause" does not apply in rescheduling a hearing before a value adjustment board; amending s. 194.035, F.S.; specifying the circumstances under which a special magistrate's appraisal may not be submitted as evidence to a value adjustment board; amending s. 196.183, F.S.; revising a provision authorizing a property appraiser to exempt certain tangible personal property from ad valorem taxation without filing an initial return; amending s. 196.202, F.S.; revising

the value of property owned by certain persons that is exempt from taxation; amending s. 200.069, F.S.; authorizing property appraisers to include certain information in the notice of ad valorem taxes and non-ad valorem assessments; providing an effective date.

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

Section 1. Subsection (1) of section 95.18, Florida Statutes, is amended to read:

95.18 Real property actions; adverse possession without color of title.—

(1) When a ~~the~~ possessor has been in actual continued possession of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, or when those under whom the possessor claims meet these criteria, the property actually possessed is held adversely if the person claiming adverse possession:

(a) Paid, subject to s. 197.3335, all delinquent ~~outstanding~~ taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality within 1 year after entering into possession;

(b) Made a return, as required under subsection (3), of the property by proper legal description to the property appraiser of the county where it is located within 30 days after complying with paragraph (a); and

(c) Has subsequently paid, subject to s. 197.3335, all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality for all remaining years necessary to establish a claim of adverse possession.

Section 2. Subsection (10) 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.

(10)(a) If the property appraiser determines that for any year or years within the prior 10 years a person who was not entitled to the homestead property assessment limitation granted under this section was granted the homestead property assessment limitation, the property appraiser making such determination shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property

must be identified in the notice of tax lien. Such property that is situated in this state is subject to the unpaid taxes, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, when a person entitled to exemption pursuant to s. 196.031 inadvertently receives the limitation pursuant to this section following a change of ownership, the assessment of such property must be corrected as provided in paragraph (9)(a), and the person need not pay the unpaid taxes, penalties, or interest. The property appraiser shall waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the property assessment limitation at the time the application was filed, the person acted in good faith, and, other than improperly receiving the tax savings, the person did not receive an additional financial benefit, such as a rental payment or other income. The property appraiser may not waive the penalty or interest if the person claimed a property tax exemption or reduction on another property predicated on the homestead exemptions provided in s. 6, Art. VII of the State Constitution.

(b) However, if the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.

(c) Before a lien may be filed, the person or entity so notified must be given 30 days to pay the taxes and any applicable penalties and interest. ~~If the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.~~

Section 3. Subsection (7) of section 193.703, Florida Statutes, is amended to read:

193.703 Reduction in assessment for living quarters of parents or grandparents.—

(7)(a) If the property appraiser determines that for any year within the previous 10 years a property owner who was not entitled to a reduction in assessed value under this section was granted such reduction, the property appraiser shall serve on the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and that property must be identified in the notice of tax lien. Any property that is owned by that person and is situated in this state is subject to the taxes exempted by the improper reduction, plus a penalty of 50 percent of the unpaid taxes for each year and interest at a rate of 15 percent per annum. The property appraiser shall waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the reduction at the time the

application was filed, the person acted in good faith, and that, other than improperly receiving the tax savings, the person did not receive an additional financial benefit, such as a rental payment or other income. The property appraiser may not waive the penalty or interest if the person claimed a property tax exemption or reduction on another property predicated on the homestead exemptions provided in s. 6, Art. VII of the State Constitution.

(b) However, if a reduction is improperly granted due to a clerical mistake or an omission by the property appraiser, the person who improperly received the reduction may not be assessed a penalty or interest.

(c) Before such lien may be filed, the owner must be given 30 days within which to pay the taxes, penalties, and interest. Such lien is subject to s. 196.161(3).

Section 4. Paragraph (d) of subsection (3) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. A petition to the value adjustment board must be signed by the taxpayer or be accompanied at the time of filing by the taxpayer's written authorization or power

of attorney, unless the person filing the petition is listed in s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a petition with a value adjustment board without the taxpayer's signature or written authorization by certifying under penalty of perjury that he or she has authorization to file the petition on behalf of the taxpayer. If a taxpayer notifies the value adjustment board that a petition has been filed for the taxpayer's property without his or her consent, the value adjustment board may require the person filing the petition to provide written authorization from the taxpayer authorizing the person to proceed with the appeal before a hearing is held. If the value adjustment board finds that a person listed in s. 194.034(1)(a) willfully and knowingly filed a petition that was not authorized by the taxpayer, the value adjustment board shall require such person to provide the taxpayer's written authorization for representation to the value adjustment board clerk before any petition filed by that person is heard, for 1 year after imposition of such requirement by the value adjustment board. A power of attorney or written authorization is valid for 1 assessment year, and a new power of attorney or written authorization by the taxpayer is required for each subsequent assessment year. A petition shall also describe the property by parcel number and shall be filed as follows:

(d) The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day

following the mailing of the notice by the property appraiser as provided in subsection (1). With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser under s. 193.461, s. 193.503, s. 193.625, s. 196.173, or s. 196.193 or notice by the tax collector under s. 197.2425. If the petitioner identifies extenuating circumstances demonstrating to the value adjustment board that the petitioner was unable to file a petition in a timely manner, the petitioner may file a petition within 60 days after the deadline. However, the value adjustment board is not required to delay proceedings for the 60-day timeframe and no late petition is authorized after the value adjustment board has concluded its review of petitions.

Section 5. Paragraph (a) of subsection (2) of section 194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.—

(2)(a) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance

at least 25 calendar days before the day of the scheduled appearance. The notice must indicate whether the petition has been scheduled to be heard at a particular time or during a block of time. If the petition has been scheduled to be heard within a block of time, the beginning and ending of that block of time must be indicated on the notice; however, as provided in paragraph (b), a petitioner may not be required to wait for more than a reasonable time, not to exceed 2 hours, after the beginning of the block of time. The property appraiser must provide a copy of the property record card containing information relevant to the computation of the current assessment, with confidential information redacted, to the petitioner upon receipt of the petition from the clerk regardless of whether the petitioner initiates evidence exchange, unless the property record card is available online from the property appraiser, in which case the property appraiser must notify the petitioner that the property record card is available online. The petitioner and the property appraiser may each reschedule the hearing a single time for good cause. As used in this paragraph, the term "good cause" means circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent the party from having adequate representation at the hearing. Good cause does not include being scheduled for two separate hearings in different jurisdictions at the same time or date unless the

hearings involve the same petitioner or the property appraiser and petitioner agree to reschedule the hearing. Before the value adjustment board begins hearings for the roll year, the property appraiser and the individual, agent, or legal entity that signed the petition may identify up to 15 business days per roll year for which they are unavailable for hearings. If the hearing is rescheduled by the petitioner or the property appraiser, the clerk shall notify the petitioner of the rescheduled time of his or her appearance at least 15 calendar days before the day of the rescheduled appearance, unless this notice is waived by both parties.

Section 6. Subsection (1) of section 194.035, Florida Statutes, is amended to read:

194.035 Special magistrates; property evaluators.—

(1) In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to

make known to them that opportunities to serve as special magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment board pursuant to this section. The department shall establish a reasonable range for payments per case to special magistrates based on such payments in other counties. Requests for reimbursement of payments outside this range shall be justified by the county. If the total of all requests for reimbursement in any year exceeds the amount available pursuant to this section, payments to all counties shall be prorated accordingly. If a county having a population less than 75,000 does not appoint a special magistrate to hear each petition, the person or persons designated to hear petitions before the value adjustment board or the attorney appointed to advise the value adjustment board shall attend the training provided pursuant to subsection (3), regardless of whether the person would otherwise be required to attend, but shall not be required to pay the tuition fee specified in subsection (3). A special magistrate appointed to hear issues of exemptions, classifications, and determinations that a change of ownership, a change of ownership or control, or a qualifying

improvement has occurred shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation. A special magistrate need not be a resident of the county in which he or she serves. A special magistrate may not represent a person before the board in any tax year during which he or she has served that board as a special magistrate. An appraisal performed by a special magistrate may not be submitted as evidence to the value adjustment board in any roll year during which he or she has served that board as a special magistrate. Before appointing a special magistrate, a value adjustment board shall verify the special magistrate's qualifications. The value adjustment board shall ensure that the selection of special magistrates is based solely upon the experience and qualifications of the special magistrate and is not influenced by the property appraiser. The special magistrate shall accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, shall include

proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board. When appointing special magistrates or when scheduling special magistrates for specific hearings, the board, the board attorney, and the board clerk may not consider the dollar amount or percentage of any assessment reductions recommended by any special magistrate in the current year or in any previous year.

Section 7. Paragraph (a) of subsection (9) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(9)(a) A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for exemption of property within the county after an initial application is made and the exemption granted. The waiver under this subsection of the annual application or statement requirement applies to all exemptions under this chapter except the exemption under s. 196.1995. Notwithstanding such waiver, refiling of an application or statement shall be required when any property granted an exemption is sold or otherwise disposed of, when the ownership changes in any manner, when the applicant

for homestead exemption ceases to use the property as his or her homestead, or when the status of the owner changes so as to change the exempt status of the property. In its deliberations on whether to waive the annual application or statement requirement, the governing body shall consider the possibility of fraudulent exemption claims which may occur due to the waiver of the annual application requirement. The owner of any property granted an exemption who is not required to file an annual application or statement shall notify the property appraiser promptly whenever the use of the property or the status or condition of the owner changes so as to change the exempt status of the property. If any property owner fails to so notify the property appraiser and the property appraiser determines that for any year within the prior 10 years the owner was not entitled to receive such exemption, the owner of the property is subject to the taxes exempted as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. Except for homestead exemptions controlled by s. 196.161, the property appraiser making such determination shall record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property is subject to the payment of all taxes and penalties. Such lien when filed shall attach to any property, identified in the notice of tax lien, owned by the

person who illegally or improperly received the exemption. If such person no longer owns property in that county but owns property in some other county or counties in the state, the property appraiser shall record a notice of tax lien in such other county or counties, identifying the property owned by such person or entity in such county or counties, and it shall become a lien against such property in such county or counties. The property appraiser shall waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the exemption at the time the application was filed, the person acted in good faith, and that, other than improperly receiving the tax savings, the person did not receive an additional financial benefit, such as a rental payment or other income. The property appraiser may not waive the penalty or interest if the person claimed a property tax exemption or reduction on another property predicated on the homestead exemptions provided in s. 6, Art. VII of the State Constitution.

Section 8. Subsection (9) of section 196.075, Florida Statutes, is amended to read:

196.075 Additional homestead exemption for persons 65 and older.—

(9)(a) If the property appraiser determines that for any year within the immediately previous 10 years a person who was not entitled to the additional homestead exemption under this section was granted such an exemption, the property appraiser

shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and that property must be identified in the notice of tax lien. Any property that is owned by the taxpayer and is situated in this state is subject to the taxes exempted by the improper homestead exemption, plus a penalty of 50 percent of the unpaid taxes for each year and interest at a rate of 15 percent per annum. The property appraiser shall waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the exemption at the time the application was filed, the person acted in good faith, and that, other than improperly receiving the tax savings, the person did not receive an additional financial benefit, such as a rental payment or other income. The property appraiser may not waive the penalty or interest if the person claimed a property tax exemption or reduction on another property predicated on the homestead exemptions provided in s. 6, Art. VII of the State Constitution.

(b) However, if such an exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person who improperly received the exemption may not be assessed a penalty and interest.

(c) Before any such lien may be filed, the owner must be given 30 days within which to pay the taxes, penalties, and

interest. Such a lien is subject to the procedures and provisions set forth in s. 196.161(3).

Section 9. Subsection (4) of section 196.183, Florida Statutes, is amended to read:

196.183 Exemption for tangible personal property.—

(4) Owners of property ~~previously~~ assessed by the property appraiser without a return being filed may, at the option of the property appraiser, qualify for the exemption under this section without filing an initial return.

Section 10. Subsection (1) of section 196.202, Florida Statutes, is amended to read:

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

(1) Property to the value of $5,000 ~~$500~~ of every widow, widower, blind person, or totally and permanently disabled person who is a bona fide resident of this state is exempt from taxation. As used in this section, the term "totally and permanently disabled person" means a person who is currently certified by a physician licensed in this state, by the United States Department of Veterans Affairs or its predecessor, or by the Social Security Administration to be totally and permanently disabled.

Section 11. Section 200.069, Florida Statutes, is amended to read:

200.069 Notice of proposed property taxes and non-ad valorem assessments.—Pursuant to s. 200.065(2)(b), the property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction and at the expense of the county, shall prepare and deliver by first-class mail to each taxpayer to be listed on the current year's assessment roll a notice of proposed property taxes, which notice shall contain the elements and use the format provided in the following form. Notwithstanding the provisions of s. 195.022, no county officer shall use a form other than that provided herein. The Department of Revenue may adjust the spacing and placement on the form of the elements listed in this section as it considers necessary based on changes in conditions necessitated by various taxing authorities. If the elements are in the order listed, the placement of the listed columns may be varied at the discretion and expense of the property appraiser, and the property appraiser may use printing technology and devices to complete the form, the spacing, and the placement of the information in the columns. In addition, the property appraiser may only include in the mailing of the notice of ad valorem taxes and non-ad valorem assessments additional statements explaining any item on the notice. A county officer may use a form other than that provided by the department for purposes of this part, but only if his or her office pays the related expenses and he or

she obtains prior written permission from the executive director of the department; however, a county officer may not use a form the substantive content of which is at variance with the form prescribed by the department. The county officer may continue to use such an approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director.

(1) The first page of the notice shall read:

NOTICE OF PROPOSED PROPERTY TAXES

DO NOT PAY—THIS IS NOT A BILL

The taxing authorities which levy property taxes against your property will soon hold PUBLIC HEARINGS to adopt budgets and tax rates for the next year.

The purpose of these PUBLIC HEARINGS is to receive opinions from the general public and to answer questions on the proposed tax change and budget PRIOR TO TAKING FINAL ACTION.

Each taxing authority may AMEND OR ALTER its proposals at the hearing.

(2)(a) The notice shall include a brief legal description of the property, the name and mailing address of the owner of record, and the tax information applicable to the specific parcel in question. The information shall be in columnar form. There shall be seven column headings which shall read: "Taxing Authority," "Your Property Taxes Last Year," "Last Year's Adjusted Tax Rate (Millage)," "Your Taxes This Year IF NO Budget

Change Is Adopted," "Tax Rate This Year IF PROPOSED Budget Is Adopted (Millage)," "Your Taxes This Year IF PROPOSED Budget Change Is Adopted," and "A Public Hearing on the Proposed Taxes and Budget Will Be Held:."

(b) As used in this section, the term "last year's adjusted tax rate" means the rolled-back rate calculated pursuant to s. 200.065(1).

(3) There shall be under each column heading an entry for the county; the school district levy required pursuant to s. 1011.60(6); other operating school levies; the municipality or municipal service taxing unit or units in which the parcel lies, if any; the water management district levying pursuant to s. 373.503; the independent special districts in which the parcel lies, if any; and for all voted levies for debt service applicable to the parcel, if any.

(4) For each entry listed in subsection (3), there shall appear on the notice the following:

(a) In the first column, a brief, commonly used name for the taxing authority or its governing body. The entry in the first column for the levy required pursuant to s. 1011.60(6) shall be "By State Law." The entry for other operating school district levies shall be "By Local Board." Both school levy entries shall be indented and preceded by the notation "Public Schools:". For each voted levy for debt service, the entry shall be "Voter Approved Debt Payments."

(b) In the second column, the gross amount of ad valorem taxes levied against the parcel in the previous year. If the parcel did not exist in the previous year, the second column shall be blank.

(c) In the third column, last year's adjusted tax rate or, in the case of voted levies for debt service, the tax rate previously authorized by referendum.

(d) In the fourth column, the gross amount of ad valorem taxes which will apply to the parcel in the current year if each taxing authority levies last year's adjusted tax rate or, in the case of voted levies for debt service, the amount previously authorized by referendum.

(e) In the fifth column, the tax rate that each taxing authority must levy against the parcel to fund the proposed budget or, in the case of voted levies for debt service, the tax rate previously authorized by referendum.

(f) In the sixth column, the gross amount of ad valorem taxes that must be levied in the current year if the proposed budget is adopted.

(g) In the seventh column, the date, the time, and a brief description of the location of the public hearing required pursuant to s. 200.065(2)(c).

(5) Following the entries for each taxing authority, a final entry shall show: in the first column, the words "Total Property Taxes:" and in the second, fourth, and sixth columns,

the sum of the entries for each of the individual taxing authorities. The second, fourth, and sixth columns shall, immediately below said entries, be labeled Column 1, Column 2, and Column 3, respectively. Below these labels shall appear, in boldfaced type, the statement: SEE REVERSE SIDE FOR EXPLANATION.

(6)(a) The second page of the notice shall state the parcel's market value and for each taxing authority that levies an ad valorem tax against the parcel:

1. The assessed value, value of exemptions, and taxable value for the previous year and the current year.

2. Each assessment reduction and exemption applicable to the property, including the value of the assessment reduction or exemption and tax levies to which they apply.

(b) The reverse side of the second page shall contain definitions and explanations for the values included on the front side.

(7) The following statement shall appear after the values listed on the front of the second page:

If you feel that the market value of your property is inaccurate or does not reflect fair market value, or if you are entitled to an exemption or classification that is not reflected above, contact your county property appraiser at ...(phone number)... or ...(location)....

If the property appraiser's office is unable to resolve the matter as to market value, classification, or an exemption, you

may file a petition for adjustment with the Value Adjustment Board. Petition forms are available from the county property appraiser and must be filed ON OR BEFORE ...(date)....

(8) The reverse side of the first page of the form shall read:

EXPLANATION

*COLUMN 1—"YOUR PROPERTY TAXES LAST YEAR"
This column shows the taxes that applied last year to your property. These amounts were based on budgets adopted last year and your property's previous taxable value.
*COLUMN 2—"YOUR TAXES IF NO BUDGET CHANGE IS ADOPTED"
This column shows what your taxes will be this year IF EACH TAXING AUTHORITY DOES NOT CHANGE ITS PROPERTY TAX LEVY. These amounts are based on last year's budgets and your current assessment.
*COLUMN 3—"YOUR TAXES IF PROPOSED BUDGET CHANGE IS ADOPTED"
This column shows what your taxes will be this year under the BUDGET ACTUALLY PROPOSED by each local taxing authority. The proposal is NOT final and may be amended at the public hearings shown on the front side of this notice. The difference between columns 2 and 3 is the tax change proposed by each local taxing authority and is NOT the result of higher assessments.
*Note: Amounts shown on this form do NOT reflect early payment discounts you may have received or may be eligible to receive.

(Discounts are a maximum of 4 percent of the amounts shown on this form.)

(9) The bottom portion of the notice shall further read in bold, conspicuous print:

"Your final tax bill may contain non-ad valorem assessments which may not be reflected on this notice such as assessments for roads, fire, garbage, lighting, drainage, water, sewer, or other governmental services and facilities which may be levied by your county, city, or any special district."

(10)(a) If requested by the local governing board levying non-ad valorem assessments and agreed to by the property appraiser, the notice specified in this section may contain a notice of proposed or adopted non-ad valorem assessments. If so agreed, the notice shall be titled:

NOTICE OF PROPOSED PROPERTY TAXES
AND PROPOSED OR ADOPTED
NON-AD VALOREM ASSESSMENTS
DO NOT PAY—THIS IS NOT A BILL

There must be a clear partition between the notice of proposed property taxes and the notice of proposed or adopted non-ad valorem assessments. The partition must be a bold, horizontal line approximately 1/8-inch thick. By rule, the department shall provide a format for the form of the notice of proposed or adopted non-ad valorem assessments which meets the following minimum requirements:

1. There must be subheading for columns listing the levying local governing board, with corresponding assessment rates expressed in dollars and cents per unit of assessment, and the associated assessment amount.

2. The purpose of each assessment must also be listed in the column listing the levying local governing board if the purpose is not clearly indicated by the name of the board.

3. Each non-ad valorem assessment for each levying local governing board must be listed separately.

4. If a county has too many municipal service benefit units or assessments to be listed separately, it shall combine them by function.

5. A brief statement outlining the responsibility of the tax collector and each levying local governing board as to any non-ad valorem assessment must be provided on the form, accompanied by directions as to which office to contact for particular questions or problems.

(b) If the notice includes all adopted non-ad valorem assessments, the provisions contained in subsection (9) shall not be placed on the notice.

Section 12. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 313 Child Support
SPONSOR(S): Children, Families & Seniors Subcommittee, Daniels
TIED BILLS: **IDEN./SIM. BILLS:** SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	12 Y, 0 N, As CS	Roth	Brazzell
2) Ways & Means Committee		Dugan RD	Langston
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Child support is a parent's legal obligation to contribute to the economic maintenance and education of his or her child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.

The Department of Revenue (DOR) is the state agency responsible for child support enforcement and has the authority to take actions to ensure that children are provided for by their parents. If a parent ordered to pay child support fails to pay, there are several options DOR may use to enforce the support order. One method DOR uses is the suspension of the driver license and motor vehicle registration of an individual who owes child support (the obligor).

The bill amends s. 61.13106, F.S, to include inability to make payments as an additional circumstance that an obligor parent can use in order to contest the notice of delinquency and suspension of driver license received from DOR.

The bill allows an obligor parent to explain to the court that he or she is unable to make the delinquent child support payment, based on circumstances including, but not limited to:

- Temporary interruption in employment as the result of a natural disaster;
- Incapacitation as the result of an illness or temporary medical condition; or
- Temporary unexpected involuntary employment.

Each court has discretion to decide whether the obligor parent has demonstrated an inability to pay and whether the obligor parent's license should be suspended.

The Revenue Estimating Conference determined the bill does not have a fiscal impact on state or local funds.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Child Support

Child support is a parent's legal obligation to contribute to the economic maintenance and education of his or her child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.[1] This obligation arises since each parent has a duty to support[2] his or her minor or legally dependent child.[3] Child support can be entered into voluntarily, by court order, or by an administrative agency. Child support is an important source of income for millions of children in the United States. Child support payments represent on average 40 percent of income for poor custodial families who receive them; such payments lifted one million people above poverty in 2008.[4]

Establishment of Child Support Obligation

When parents live apart due to divorce or separation, the court may order a parent who owes a duty of support to a child to pay support to the other parent, or in the case of both parents, to a third party who has custody, in accordance with the guidelines schedule in s. 61.30, F.S.[5] Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of child support to be provided based on parents' income. The judicial officer is permitted to deviate from the guideline amount plus or minus 5 percent after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent.[6] The judicial officer is also permitted to deviate from the guideline amount more than plus or minus 5 percent, but he or she must include a written finding in the support order explaining why the guideline amount is unjust or inappropriate.[7]

Department of Revenue Child Support Program

The federal Department of Health and Human Services (HHS) coordinates with child support enforcement programs administered in each state, which perform collection and enforcement services.[8] Each state's child support enforcement agency operates under an approved state plan based on the program standards and policy set by the federal government.[9] In Florida, the department administering the child support program is the Department of Revenue (DOR).[10][11] Child support payments may be handled through private attorneys; these payments are separate from state child support programs.[12]

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[1] Black's Law Dictionary 100 (3rd pocket ed. 2006).
[2] S. 61.046(22), F.S., defines "support" as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.
[3] S. 61.29, F.S. See generally ss. 744.301 and 744.361, F.S.
[4] National Conference of State Legislatures, *Child Support Overview*, March 15, 2016, available at http://www.ncsl.org/research/human-services/child-support-homepage.aspx (last viewed March 16, 2017).
[5] S. 61.13(1)(a), F.S.
[6] S. 61.30(1)(a), F.S.
[7] *Id.*
[8] National Conference of State Legislatures, *Child Support 101: State Administration*, April 2013, available at http://www.ncsl.org/research/human-services/child-support-adminstration.aspx (last viewed March 17, 2017).
[9] *Id.*
[10] S. 409.2557(1), F.S.
[11] Department of Revenue, *About the Child Support Program*, 2016, available at http://floridarevenue.com/dor/childsupport/about_us.html (last viewed March 17, 2017).
[12] *Supra*, at FN 8.

Child support program structures vary widely from state to state, but at a minimum, services offered in all child support programs include:

- Locating noncustodial parents;
- Establishing paternity;
- Establishing and modifying support orders;
- Collecting support payments and enforcing child support orders; and
- Referring noncustodial parents to employment services.[13]

Any parent or person with custody of a child who needs help to establish a child support order or to collect support payments may apply for services. Individuals receiving public assistance from the state are required to participate in the state child support program.[14] IV-D cases are cases in which a state provides child support services through the state or tribal IV-D program to a custodial parent. The program is funded under Title IV-D of the Social Security Act. There are three subtypes of state IV-D cases:

- Public or Current Assistance Cases: Parents who receive public assistance under the state's Temporary Assistance for Needy Families (TANF) program are required to assign their rights to child support payments to the state. The state automatically refers these cases to the Office of Child Support Enforcement in order to attempt to collect child support directly from the noncustodial parent.
- Non-Public Assistance Cases: Non-public assistance cases are those in which the family is not currently or is no longer receiving cash assistance or Medicaid but the state child support agency is providing collection services.
- Foster Care and Adoption Assistance (IV-E Cases): Cases where the state currently provides benefits or services for foster care maintenance to a child that meets IV-E eligibility guidelines. In these cases, someone other than a parent is caring for a child or children—this could include a relative caregiver or the foster care system. These cases are also automatically referred to the child support agency in order to attempt to recoup costs from the noncustodial parent(s).[15]

Non IV-D cases are cases where child support is established and maintained privately, most often following a divorce where support orders are determined as part of the divorce proceedings. Any family is eligible for support enforcement services from the state. Some private cases become state IV-D cases when they are referred to help collect unpaid child support.[16]

During the 2015 federal fiscal year, approximately $32.4 billion in child support was collected on behalf of the 15.9 million children served by child support enforcement programs across the country.[17] Also during that fiscal year, Florida had a total caseload of 650,421 cases and collected approximately $1.4 billion in child support collections. However, the total amount of arrearages was approximately $5.7 billion.[18] In fiscal year 2015-2016, Florida DOR IV-D child support enforcement hearing officers held 131,474 hearings and signed 139,817 orders for child support establishment, modification, and enforcement.[19]

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[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] National Conference of State Legislatures, *2015 State by State Data on Child Support Collections*, April 25, 2016, available at http://www.ncsl.org/research/human-services/2015-state-by-state-data-on-child-support-collections.aspx#5 (last viewed March 17, 2017).
[18] *Id.*
[19] Florida Courts, *Uniform Data Reporting, Child Support FY2015-16*, 2017, available at http://www.flcourts.org/publications-reports-stats/statistics/uniform-data-reporting.stml#Support (last viewed March 17, 2017).

Enforcement

As the state agency designated as the agency responsible for the administration of the child support enforcement program,[20] DOR has the authority to take actions necessary to ensure that children are maintained from the resources of their parents.[21] If a parent ordered to pay child support fails to pay, there are several options to enforce a support order, including both civil and criminal remedies. Civil remedies include garnishment of the obligor's[22] wages,[23] an order for income deduction,[24] suspension or denial of certain business and professional licenses and certificates,[25] suspension of the person's driver license and motor vehicle registration,[26] and an order to seek employment or job training.[27]

Driver License Suspension

If an obligor is 15 days delinquent in making a support payment DOR (in Title IV-D cases) or the clerk of the court (in non-IV-D cases) will provide notice to the obligor of the delinquency.[28] The notice must state that DOR or the clerk of the court will request the Department of Highway Safety and Motor Vehicles (DHSMV) to suspend the obligor's driver license within 20 days after the date that the notice is mailed.[29] The notice[30] lists several ways for an obligor to stop suspension of his or her license, including:

- Paying the delinquency in full;
- Entering into a written agreement for payment (with the obligee[31] or DOR);
- Contesting the delinquency notice;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she is disabled and incapable of self-support;
- Demonstrating that he or she receives temporary cash assistance; or
- Demonstrating that he or she is making bankruptcy payments.[32]

In addition, the notice states that DOR will consider the obligor's current situation and ability to pay, and that if the obligor enters into a written agreement with DOR, DOR will not have the obligor's license suspended as long as the agreed-upon payments are made. The notice also states that an obligor may contest the notice if he or she does not have the ability to make payments.[33]

If an obligor's driver license is suspended, the obligor can choose to petition the court to direct DHSMV to issue a license for driving privileges restricted to business purposes only.[34] In Fiscal Year 2015-2016, DHSMV received 170,332 requests for driver license suspensions from DOR for failure to pay child support.[35]

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[20] S. 409.2557(1), F.S.
[21] S. 409.2557(2), F.S.
[22] S. 61.046, F.S. defines "obligor" as a person responsible for making payments pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.
[23] S. 61.12, F.S.
[24] S. 61.1301, F.S.
[25] S. 61.13015, F.S.
[26] S. 61.13016, F.S.
[27] S. 61.14(5)(b), F.S.
[28] S. 61.13016(1), F.S.
[29] S. 61.13016(1)(c), F.S.
[30] Email from Debbie Longman, Director of Office of Legislative and Cabinet Services, Department of Revenue, RE: Notice of Intent to Suspend Driver's License (March 11, 2017) on file with the Children, Families, and Seniors Subcommittee staff.
[31] S. 61.046, F.S. defines "obligee" as the person to whom payments are made pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.
[32] S. 61.13016(1)(c)1., F.S
[33] *Supra*, at FN 30.
[34] S. 61.13016(2), F.S. The term "a driving privilege restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes. Section 322.271(1)(c)1., F.S.
[35] Department of Highway Safety and Motor Vehicles, *2017 Agency Legislative Bill Analysis*, February 2017, p. 3 (on file with the Children, Families, and Seniors Subcommittee staff).

In Fiscal Year 2012-2103, approximately 65 percent of the licenses suspended for failure to pay child support were reinstated within one year of the suspension. DOR officials believe that the threat of losing a driver license is one of the best compliance tools it has to enforce child support orders. In Fiscal Year 2012-2103, DOR collected approximately $101.8 million in delinquent child support payments from parents who received a notice of suspension or whose license was suspended.[36]

Effect of Proposed Changes

The bill amends s. 61.13106, F.S, to include inability to make payments as an additional ground that an obligor parent can use in his or her petition to contest the notice of delinquency and suspension of driver license provided by DOR.

The bill allows an obligor parent to explain to the court the reason he or she is unable to make the delinquent child support payment. The bill provides three situations of inability to pay:

- Temporary interruption in employment as the result of a natural disaster;
- Incapacitation as the result of an illness or temporary medical condition; or
- Temporary unexpected involuntary employment.

The obligor parent is not limited to these three situations, and must demonstrate to the court the reason he or she is unable to make the payment. Each court has discretion to decide whether the obligor parent has demonstrated an inability to pay and whether the obligor parent's license should be suspended.

B. SECTION DIRECTORY:

Section 1: Creates the "Florida Responsible Parent Act."

Section 2: Amends s. 61.13016, F.S., relating to suspension of driver license and motor vehicle registrations.

Section 3: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On March 31, 2017, the Revenue Estimating Conference determined the bill has no fiscal impact on state or local funds.

2. Expenditures:

   DOR indicates that the bill will have an insignificant fiscal impact on state government expenditures; however, DOR and the court system may see an increase in filings by obligors in response to the notice of driver license suspension.[37]

[36] Office of Program Policy Analysis and Government Accountability,
Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons, February 2014, p. 8, available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf (last viewed March 18, 2017).
[37] DOR Agency Bill Analysis, HB 313, March 24, 2017.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill facilitates a process for individuals who have an inability to pay a child support delinquency and helps them avoid suspension of their driver licenses. The bill will also help them avoid payment of a $60 fee to reinstate those licenses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing the four specific reasons listed in the bill for an individual to challenge a possible driver license suspension notice for non-payment, and instead allowing an individual to challenge generally due to inability to pay. It also removes provisions regarding contempt of court and the tax credit program. This analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.

A bill to be entitled

An act relating to child support; creating the "Florida Responsible Parent Act"; amending s. 61.13016, F.S.; providing additional circumstances under which an obligor who fails to pay child support may avoid suspension of his or her driver license and motor vehicle registration; providing an effective date.

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

Section 1. This act may be cited as the "Florida Responsible Parent Act."

Section 2. Subsections (1) and (4) of section 61.13016, Florida Statutes, are amended to read:

61.13016 Suspension of driver licenses and motor vehicle registrations.—

(1) The driver license and motor vehicle registration of a support obligor who is delinquent in payment or who has failed to comply with subpoenas or a similar order to appear or show cause relating to paternity or support proceedings may be suspended. When an obligor is 15 days delinquent making a payment in support or failure to comply with a subpoena, order to appear, order to show cause, or similar order in IV-D cases, the Title IV-D agency may provide notice to the obligor of the

delinquency or failure to comply with a subpoena, order to appear, order to show cause, or similar order and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. When an obligor is 15 days delinquent in making a payment in support in non-IV-D cases, and upon the request of the obligee, the depository or the clerk of the court must provide notice to the obligor of the delinquency and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. In either case, the notice must state:

(a) The terms of the order creating the support obligation;

(b) The period of the delinquency and the total amount of the delinquency as of the date of the notice or describe the subpoena, order to appear, order to show cause, or other similar order that has not been complied with;

(c) That notification will be given to the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver license and motor vehicle registration unless, within 20 days after the date that the notice is mailed, the obligor:

1.a. Pays the delinquency in full and any other costs and fees accrued between the date of the notice and the date the delinquency is paid;

b. Enters into a written agreement for payment with the obligee in non-IV-D cases or with the Title IV-D agency in IV-D cases; or in IV-D cases, complies with a subpoena or order to appear, order to show cause, or a similar order;

c. Files a petition with the circuit court to contest the delinquency action as provided in subsection (4);

d. Demonstrates that he or she receives reemployment assistance or unemployment compensation pursuant to chapter 443;

e. Demonstrates that he or she is disabled and incapable of self-support or that he or she receives benefits under the federal Supplemental Security Income program or Social Security Disability Insurance program;

f. Demonstrates that he or she receives temporary cash assistance pursuant to chapter 414; or

g. Demonstrates that he or she is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq.; and

2. Pays any applicable delinquency fees.

If an obligor in a non-IV-D case enters into a written agreement for payment before the expiration of the 20-day period, the obligor must provide a copy of the signed written agreement to the depository or the clerk of the court. If an obligor seeks to satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-

subparagraph 1.f., or sub-subparagraph 1.g. before expiration of the 20-day period, the obligor must provide the applicable documentation or proof to the depository or the clerk of the court.

(4)(a) The obligor may, within 20 days after the mailing date on the notice of delinquency or noncompliance and intent to suspend, file in the circuit court a petition to contest the notice of delinquency or noncompliance and intent to suspend on the ground of:

1. Mistake of fact regarding the existence of a delinquency; ~~or~~

2. Mistake of fact regarding the identity of the obligor; or

3. No ability to make payments toward the delinquency due to circumstances including, but not limited to, temporary interruption in employment as the result of a natural disaster, incapacitation as the result of an illness or temporary medical condition, or temporary unexpected involuntary unemployment.

(b) The obligor must serve a copy of the petition on the Title IV-D agency in IV-D cases or depository or clerk of the court in non-IV-D cases. When an obligor timely files a petition to contest, the court must hear the matter within 15 days after the petition is filed. The court must enter an order resolving the matter within 10 days after the hearing, and a copy of the order must be served on the parties. The timely filing of a

petition to contest stays the notice of delinquency and intent to suspend until the entry of a court order resolving the matter.

Section 3. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 689 Division of Alcoholic Beverages and Tobacco
SPONSOR(S): Careers & Competition Subcommittee, Burton
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 400

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N, As CS	Willson	Anstead
2) Ways & Means Committee		Aldridge	Langston
3) Commerce Committee			

SUMMARY ANALYSIS

The bill specifies that regional and district management positions within the bureaus of the Division of Alcoholic Beverages and Tobacco (Division) of the Department of Business and Professional Regulation (DBPR) are classified as Select Exempt Service in the state personnel system. The classification specified by the bill will conform positions of similar duties and responsibilities to the same position classification, and within the Division's bureau of law enforcement, will classify management rank positions of captain and major as SES consistent with other state law enforcement agencies.

Alcoholic beverage license applications for consumption on the premises must be accompanied by a certificate stating that the business meets all of the sanitary requirements of the state. Currently, the certificate may be issued by:

- The Division of Hotels and Restaurants of the Department of Business and Professional Regulations,
- The Department of Agriculture and Consumer Services,
- The Department of Health, or
- The county health department where the place of business is located.

The bill adds the Agency for Health Care Administration (AHCA) to the above list.

Currently, a $100 fee for a temporary alcoholic beverage license is issued for:

- The transfer of a license to the purchaser of a licensed business, or
- A change in the type or series of a license.

The bill eliminates the fees associated with the issuance of a temporary license for applications for transfer of a license or applications for an increase in the type or series of a license. The permanent license fees associated with a license transfer or an increase in the series of a license are not impacted by the bill.

A "distillery" is defined as a manufacturer of distilled spirits. A "craft distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises and has notified the Division in writing of its decision to qualify as a craft distillery. All distilleries, regardless of designation as a craft distillery, are subject to the distillery license fee of $4,000 under current law.

The bill reduces the annual license fee for a craft distillery from $4,000 to $1,000. Distillery licenses that do not qualify as a craft distillery remain subject to the $4,000 annual license fee in current law.

The Revenue Estimating Conference has estimated that the bill will reduce state revenues by $0.4 million annually.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

State Employment

Chapter 110, F.S., establishes the state's personnel management system. The system establishes the means to recruit, select, train, develop, and maintain an effective and responsible workforce and must include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.[2]

The Department of Management Services is charged with establishing and maintaining a classification and compensation program addressing Career Service, Select Exempt Service (SES), and Senior Management Service positions.[3] The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.[4]

A Career Service employee who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.[5] Career Service employees that have completed the probationary period are also entitled to a grievance process[6] and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.[7]

SES is a separate system of personnel administration for positions that are exempt from the Career Service System.[8] SES employees serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.[9] SES provides greater pay and benefits overall than are provided for Career Service employees, but less pay and benefits overall than are provided for the Senior Management Service.[10]

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[1] s. 561.02, F.S.
[2] s. 110.105(1), F.S.
[3] s. 110.2035(1), F.S.
[4] s. 110.205(1), F.S.
[5] s. 110.227(1), F.S.
[6] s. 110.227(4), F.S.
[7] ss. 110.227(5) and (6), F.S.
[8] s. 110.602, F.S.
[9] s. 110.604, F.S.
[10] *See* s. 110.603, F.S.

Employee Classification System at the Division[11]

Currently, certain supervisory staff within the Division are classified as (SES), while other supervisory staff with comparable supervisory duties are classified as Career Service. For example, while the Chiefs of the Bureaus of Enforcement, Licensing and Auditing are all classified as Select Exempt (SES):

- The Assistant Chiefs of Licensing and Auditing are classified as SES. However, the Assistant Chief of Enforcement is classified as Career Service.
- The Regional Managers of Licensing and Auditing are classified as SES. The Regional Managers for Enforcement (majors) are classified as Career Service.
- The District and Office Managers for Licensing and Auditing are SES. The District Managers for Enforcement (captains) are Career Service.

In addition, other state law enforcement agencies, including the Florida Highway Patrol, Department of Financial Services (DFS), Division of Investigative and Forensic Services, and some classifications of positions at Department of Agriculture, and Division of Law Enforcement, currently classify positions comparable to the Division's captains and majors as SES through various means. The Fish and Wildlife Conservation Commission has identified the rank of major as SES statewide.

Certification of Sanitary Compliance on License Applications

Section 561.17, F.S., requires that alcoholic beverage license applications for consumption on the premises be accompanied by a certificate stating that the business meets all of the sanitary requirements of the state. Currently, the certificate may be issued by:

- the Division of Hotels and Restaurants of the Department of Business and Professional Regulations,
- the Department of Agriculture and Consumer Services,
- the Department of Health, or
- the county health department where the place of business is located.

Chapter 2010-161, Laws of Florida, amended the food service establishment inspection jurisdiction of the Department of Health (DOH) to more explicitly delineate the food service establishment entities inspected by DOH, which effectively excluded hospitals and nursing homes. Hospitals and certain nursing homes are licensed under the jurisdiction of the Agency for Health Care Administration (AHCA), and following the 2010 legislation, are subject to inspection for the storage, preparation, serving, and display of food within AHCA's licensure and inspection processes. Chapter 2010-161, Laws of Florida, and subsequent laws did not amend s. 561.17(2), F.S., to include the new jurisdiction of AHCA as the agency with the primary jurisdiction for certification on these requirements at nursing homes and hospitals.

Temporary Licenses and Fees

Section 561.331, F.S., governs temporary beverage licenses upon application for transfer, change of location, or change of type or series. Subsection 561.331(1), F.S., establishes the authority and associated fees for a temporary license upon application for transfer of a license to a purchaser of a currently licensed business. Subsection 561.331(3), F.S., establishes the authority and associated fees for a temporary license upon application for a change in the type or series of a currently valid license.

If an application does not on its face disclose any reason for denying the license, the applicant is entitled as a matter of right to receive a temporary beverage license.[12] The temporary license is valid

[11] The information that follows regarding the employee classification system at the Division was provided by the Department in its Agency Analysis of 2017 House Bill 689, p.8 (Mar. 2, 2017).
[12] s. 561.331, F.S.

for all purposes under the Beverage Law until the application is denied or until 14 days after the application is approved.

Temporary beverage licenses are issued by the district supervisor of the district in which the application is made, upon payment of a $100 fee. If approved for the permanent license, the applicant must also pay the permanent license fee for the license.[13]

Craft Distilleries

Section 565.03, F.S., defines "distillery" as a manufacturer of distilled spirits. A "craft distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises and has notified the Division in writing of its decision to qualify as a craft distillery. All distilleries, regardless of designation as a craft distillery, are subject to the distillery license fee of $4,000 under current law.

Effect of the Bill

The bill amends s. 561.11(2), F.S., dealing with the power and authority of the Division, to provide Select Exempt Service status to chief, assistant chiefs, regional managers (including majors), and district or office managers (including captains).

The bill amends s. 561.17(2), F.S., to add the Agency for Health Care Administration as one of the agencies from which an applicant for a consumption on premises license must obtain a certificate that its place of business meets all sanitary requirements.

The bill amends s. 561.331(1), F.S., to repeal the $100 fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. The bill also repeals the fees in s. 561.331(3), F.S., for a temporary license issued in connection with an application to change the type or series of a license. The permanent license fees associated with a license transfer or an increase in the series of a license are not impacted by the bill.

The bill amends s. 565.03(2)(a)1., F.S., to reduce the annual license fee for a craft distillery from $4,000 to $1,000. Distillery licenses that do not qualify as a craft distillery remain subject to the $4,000 annual license fee in current law.

B. SECTION DIRECTORY:

Section 1 Amends s. 562.11 F.S., revising the power and authority of the Division of Alcoholic Beverages and Tobacco to include appointment of Division personnel; requiring that certain personnel be assigned to the Selected Exempt Service.

Section 2 Amends s. 565.17, F.S., authorizing the Agency for Health Care Administration to certify that an alcoholic beverage license applicant's place of business meets sanitary requirements.

Section 3 Amends s. 561.331, F.S., removing the fee for transferring or changing the location of a temporary beverage license.

[13] The temporary license fee for a type or series change varies. If the type or series or license applied for is greater than the fee for the license then held by the applicant, the applicant for such temporary license must pay a fee in the amount of $100 or one-fourth of the difference between the fees, whichever amount is greater. A fee is not required for an application for a temporary license of a type or series for which the fee is the same as or less than the fee for the license then held by the applicant. If subsequently approved for permanent increase in the license series, applicants for an increase in license series must also pay the difference in the annual license fee for increases to a license for which the annual license fee is greater than the license held by the applicant.

Section 4 Amends s. 561.03, F.S., revising requirements for an annual state license tax for a distillery and craft distillery.

Section 5 Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has estimated that the bill will reduce state revenues by $0.4 million annually.

   Also see Fiscal Comments below.

2. Expenditures:

   According to DBPR, the reclassification of certain positions to SES status will increase state expenditures by between $5,499 and $19,800, but states that it believes the anticipated expenses can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Fee Elimination for Temporary Licenses[14]
Licensees will save at least $100 or more on each temporary license in these license transactions.

Furthermore, licensees may see increased sales revenue due to the continued operation of businesses throughout their modification of licenses.

Craft Distilleries[15]
Craft distilleries that qualify for the craft distillery designation will see a 75% reduction in the annual license fee for a distillery license, or a savings of $3,000 per license each year.

D. FISCAL COMMENTS:

DBPR estimates that the conversion of Career Service positions to SES will cost between $5,499 and $19,800 annually, depending on how many of the 11 positions choose single and how many choose family health coverage, but it believes that this additional cost can be absorbed within existing resources.

[14] *See* DBPR, Agency Analysis of 2017 House Bill 689, p.8 (Mar. 2, 2017)
[15] *Id.*

	Career Service 11 FTE	Select Exempt 11 FTE	Benefit Increase
Single (low estimate)	84,854.88	90,354.00	5,499.12
Family (high estimate)	182,107.20	201,907.20	19,800.00

Additionally, there may be an occasional increase in cost for annual leave payouts at the time of separation. Any increase is anticipated by the Department to be minimal.

Fee Elimination for Temporary Licenses[16]

During FY 2014-15, six temporary beverage wholesaler licenses were issued as part of an application for an increase in license type or series. Additionally, in FY 2014-15, 261 temporary beverage retailer licenses were issued for a change in license type or series, and 11 temporary beverage retailer licenses were issued for transfers with an increase in series. These temporary license fees amounted to $191,600.

During FY 2015-16, four temporary beverage wholesaler licenses were issued as part of an application for an increase in license type or series. Additionally, in FY 2015-16, 135 temporary beverage retailer licenses were issued for a change in type or series, and 16 temporary beverage retailer licenses were issued for transfers with an increase in series. These temporary license fees amounted to $251,300.

These amounts vary by year based on individual licensee circumstances and business discretion in determining whether to pursue the sale and transfer of a business or the increase in type or series of a license for expanded alcoholic beverage sales.

Craft Distillery Licenses[17]

There are currently 23 designated craft distilleries on record and an additional 21 licensed distilleries that could qualify as craft distilleries based on the reported number of gallons produced by the distilleries. The reduction in the annual fees for craft distilleries from $4,000 to $1,000 would equal $69,000 for the currently licensed craft distilleries and may be up to $132,000 if the 21 distilleries that have produced less than 75,000 gallons choose to be designated as craft distilleries and seek the reduced license fee in the future.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

[16] *Id.*
[17] *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Careers and Competition Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute removes the provisions that amend s. 561.20(2)(a), F.S., relating to qualifications for certain special licenses that are not subject to quota limitations.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.

A bill to be entitled

An act relating to the Division of Alcoholic Beverages and Tobacco; amending s. 561.11, F.S.; revising the power and authority of the division to include appointment of division personnel; requiring that certain personnel be assigned to the Selected Exempt Service; amending s. 561.17, F.S.; authorizing the Agency for Health Care Administration to certify that an alcoholic beverage license applicant's place of business meets sanitary requirements; amending s. 561.331, F.S.; removing the fee for transferring or changing the location of a temporary beverage license; amending s. 565.03, F.S.; revising requirements for an annual state license tax for a distillery and craft distillery; providing an effective date.

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

Section 1. Subsection (2) of section 561.11, Florida Statutes, is amended to read:

561.11 Power and authority of division.—

(2) The division shall have full power and authority to appoint division personnel and provide for the continuous training and upgrading of all such ~~division~~ personnel in their respective positions with the division. Notwithstanding any law

to the contrary, chiefs, assistant chiefs, regional managers including majors, and district and office managers including captains shall be assigned to the Selected Exempt Service and their salaries and benefits shall be set by the Department of Management Services in accordance with the rules of the Selected Exempt Service under part V of chapter 110. The ~~This~~ training shall include the attendance of such ~~division~~ personnel at workshops, seminars, or special schools established by the division or other organizations when attendance at such educational programs shall in the opinion of the division be deemed appropriate to the particular position that ~~which~~ the employee holds.

Section 2. Subsection (2) of section 561.17, Florida Statutes, is amended to read:

561.17 License and registration applications; approved person.—

(2) All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, ~~or~~ the Department of Agriculture and Consumer Services, ~~or~~ the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

Section 3. Subsections (1) and (3) of section 561.331, Florida Statutes, are amended to read:

561.331 Temporary license upon application for transfer, change of location, or change of type or series.—

(1) Upon the filing of a properly completed application for transfer pursuant to s. 561.32, which application does not on its face disclose any reason for denying an alcoholic beverage license, by any purchaser of a business that ~~which~~ possesses a beverage license of any type or series, the purchaser of such business and the applicant for transfer are entitled as a matter of right to receive a temporary beverage license of the same type and series as that held by the seller of such business. The temporary license will be valid for all purposes under the Beverage Law until the application is denied or until 14 days after the application is approved. Such temporary beverage license shall be issued by the district supervisor of the district in which the application for transfer is made without the assessment of any additional fee or tax ~~upon the payment of a fee of $100~~. A purchaser operating under ~~the provisions of~~ this subsection is subject to the same rights, privileges, duties, and limitations of a beverage licensee as are provided by law, except that purchases of alcoholic beverages during the term of such temporary license shall be for cash only. However, such cash-only restriction does not apply if the entity holding a temporary license pursuant to this section

purchases alcoholic beverages as part of a single-transaction cooperative purchase placed by a pool buying agent or if such entity is also the holder of a state beverage license authorizing the purchase of the same type of alcoholic beverages as authorized under the temporary license.

(3) Upon the filing of a properly completed application to change the type or series of a beverage license by any qualified licensee having a beverage license of any type or series, which application does not on its face disclose any reason for denying an alcoholic beverage license, the licensee is entitled as a matter of right to receive a temporary beverage license of the type or series applied for, which temporary license is valid for all purposes under the Beverage Law until the application is denied or until 14 days after the application is approved. Such temporary license shall be issued by the district supervisor of the district in which the application for change of type or series is made <u>without the assessment of any additional fee or tax</u>. If the department issues a notice of intent to deny the license application for failure of the applicant to disclose the information required by s. 561.15(2) or (4), the temporary license for transfer, change of location, or change of type of series expires and shall not be extended during any proceeding for administrative or judicial review pursuant to chapter 120. ~~If the fee for the type or series or license applied for is greater than the fee for the license then held by the applicant,~~

~~the applicant for such temporary license must pay a fee in the amount of $100 or one-fourth of the difference between the fees, whichever amount is greater. A fee is not required for an application for a temporary license of a type or series for which the fee is the same as or less than the fee for the license then held by the applicant~~. The holder of a temporary license under this subsection is subject to the same rights, privileges, duties, and limitations of a beverage licensee as are provided by law.

Section 4. Paragraph (a) of subsection (2) of section 565.03, Florida Statutes, is amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—

(2)(a) A distillery or a craft distillery authorized to do business under the Beverage Law shall pay an annual state license tax for each plant or branch operating in the state, as follows:

1. A distillery ~~If~~ engaged in the business of manufacturing distilled spirits: ~~, a state license tax of~~ $4,000.

2. A craft distillery engaged in the business of manufacturing distilled spirits: $1,000.

3.~~2.~~ A person ~~If~~ engaged in the business of rectifying and blending spirituous liquors and nothing else: ~~, a state license~~

~~tax of~~ $4,000.

Section 5. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 903 Homestead Exemption Fraud
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Cortes
TIED BILLS: **IDEN./SIM. BILLS:** SB 1350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N, As CS	Darden	Miller
2) Ways & Means Committee		Dobson MD	Langston
3) Government Accountability Committee			

SUMMARY ANALYSIS

According to Florida Statutes, each property appraiser has the duty to examine each claim for homestead property tax exemption in the county and grant the exemption if found to be in accordance with the law. In addition, property appraisers may, but are not required to, file a tax lien on property if the property appraiser determines the property owner was granted a homestead exemption to which the property owner was not entitled, in order to collect unpaid taxes, interest, and penalties. Further, if a lien is filed, the normal tax certificate/collection process does not apply.

The bill authorizes the Central Florida Homestead Exemption Fraud Detection Pilot Program, allowing the property appraisers for Orange, Osceola, and Seminole Counties to conduct an audit of homestead tax exemptions to determine the percentage of property owners who were not entitled to the homestead exemption. If the audit reveals that more than five percent of property owners were claiming an exemption to which the owner was not entitled, the property appraiser may request the county contract for services to conduct a full examination and audit. The bill specifies the terms of the contract between the county and a contractor conducting an audit, including compensation and contact with the property owner. The bill provides that the pilot program terminates September 30, 2019.

The bill authorizes payment by the respective counties for information relating to violation of tax laws discovered by the Central Florida Homestead Exemption Fraud Detection Pilot Program.

The bill also requires a property appraiser, upon determining a property owner was granted a homestead exemption to which the owner was not entitled, to certify to the county tax collector the additional assessment due for each year and to provide notice to the property owner by mail. The bill provides that if it is determined that a homestead exemption was granted to which the owner was not entitled, a tax lien shall be filed if the taxes, penalties, fees, and interest owed are not paid within thirty days. The bill requires taxes, penalties, fees, and interest assessed due an improperly granted homestead exemption (except where granted due to a clerical mistake) to be included in the next tax notice and collected in the same manner as current ad valorem taxes. A property owner may appeal the disallowance of a homestead exemption under the pilot program to the county value adjustment board.

The Revenue Estimating Conference estimates that the bill will have a positive indeterminate impact on local government revenues.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[1] The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[3] and provides for specified assessment limitations, property classifications and exemptions.[4] After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[5]

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a homestead tax exemption.[6]

According to Florida Statutes, each property appraiser has the duty to examine each claim for homestead exemption in the county and grant the exemption if found to be in accordance with the law.[7]

Delinquent Property Taxes

Each year, county property appraisers will certify the tax roll to the corresponding tax collector, and the tax collector will then send tax bills to all properties owing tax within the county.[8] Property taxes are due once a year, and can be paid beginning November 1st of the assessment year.[9] Generally, taxes become delinquent if not paid in full as of April 1st of the year after assessment.[10] Delinquent taxes will accrue interest until paid,[11] and may accrue penalties in certain circumstances.[12]

If delinquent ad valorem taxes are not paid by June 1 of the year after assessment, the County holds a tax certificate sale for real property located in the County on which the taxes became delinquent in that year.[13] A tax lien certificate is an interest bearing first lien representing unpaid delinquent real estate property taxes; however, it does not convey any property rights or ownership to the certificate holder.

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[1] Article VII, s. 1(a), Fla. Const.
[2] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[3] Article VII, s. 4, Fla. Const.
[4] Article VII, ss. 3, 4, and 6, Fla. Const.
[5] Section 196.031, F.S.
[6] An additional homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding school district levies.
[7] Section 196.141, F.S.
[8] Section 197.322(2), (3), F.S.
[9] Section 197.333, F.S.
[10] Section 197.333, F.S.
[11] Section 197.152, F.S.
[12] *See* s. 196.161, F.S.
[13] Section 197.432, F.S.

The property owner has a period of two years from the date the taxes became delinquent to redeem the tax certificate by paying to the county the total due, including accrued interest.[14] After the two year period, if the taxes remain unpaid, the lien holder may make an application for tax deed auction with the county.[15] If tax deed auction proceedings begin, the property owner must pay all taxes for all years that are due and delinquent, plus fees and interest to stop the sale of the property at public auction.[16] If the tax certificate is not redeemed or sold at auction after seven years, the tax certificate is cancelled and considered null and void.[17]

Under current law, when any deferred taxes, assessments, or interest are collected, the tax collector maintains a record of the payment and distributes payments received to each taxing authority in the proportionate share of the collected taxes as reflected in the tax bill.[18] The tax collector will make this distribution at least four times during the first two months after the tax roll comes into the tax collector's possession for collection and at least one time in all other months.[19]

Fraudulent Homestead Exemption Claims

Current law provides that if a property owner was granted a homestead exemption to which the property owner was not entitled, the property appraiser will send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.[20] The property owner has 30 days to pay the taxes owed, plus penalties and interest.[21] If not paid within 30 days of notice, the property appraiser may file a tax lien.[22] Even if a tax lien is filed, current administration of the law does not follow the tax certificate process described above. Instead, the tax lien remains on the property until it is paid or expires after 20 years.[23]

Value Adjustment Board

A property owner who disagrees with the assessment in the Truth in Millage (TRIM) notice or who was denied an exemption or property classification may appeal the property appraiser's decision to the county value adjustment board (VAB).[24]

A petition to the VAB concerning valuation issues may be filed at any time during the taxable year on or before the 25th day following the mailing of the TRIM notice.[25] Petitions concerning the denial of an exemption, a property classification application, or a deferral must be filed at any time during the taxable year on or before the 30th day following the mailing of the TRIM notice.[26]

VAB hearings must begin between 30 and 60 days after the mailing of the TRIM notice.[27] The VAB must remain in session from day to day until all petitions, complaints, appeals, and disputes are heard.[28] Current law does not establish a date when the VAB hearings must be concluded.

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[14] Section 197.502, F.S.
[15] *Id.*
[16] Section 197.472, F.S.
[17] Section 197.482, F.S.
[18] Section 197.383., F.S.
[19] Section 197.383, F.S.
[20] Section 196.161, F.S.
[21] *Id.*
[22] *Id.*
[23] Section 95.091(1)(b), F.S.
[24] Section 194.011(3), F.S.
[25] Section 194.011(3)(d), F.S.
[26] *Id.*
[27] Section 194.032(1)(a), F.S.
[28] Section 194.032(3), F.S.

After challenges to assessed value of the property have been concluded, the VAB submits the VAB-adjusted assessment roll to the property appraiser[29] and to the Department of Revenue.[30] The property appraiser's certification of the tax roll occurs after making any adjustments to the assessment rolls caused by the VAB hearings.[31]

Proposed Changes

The bill creates the Central Florida Homestead Exemption Fraud Detection Pilot Program, authorizing the property appraisers for Orange, Osceola, and Seminole Counties to conduct an audit of homestead tax exemptions by October 1, 2017 to determine the percentage of property owners who were not entitled to the homestead exemption.

For the purposes of the audit, the property owner will be considered entitled to the homestead exemption if the owner claims homestead exemption on the property and is either registered to vote at the address of the property or the address of the property is the legal residence provided by the owner to the Department of Highway Safety and Motor Vehicles when applying for a driver license or identification card. The property owner will also be considered entitled to the exemption if the owner lived in the property for the twelve months preceding admission to a long-term care facility.[32]

If the audit reveals that more than 5 percent of property owners were claiming an exemption to which the owner is not entitled, the property appraiser may request the county contract for services to conduct a full examination and audit. If the county contracts for services then it must do so using the same purchasing processes and requirements in general use by the county. The county may not agree to pay the contractor more than 25 percent of the taxes, penalties, and interest found to be due and must appropriate funds for payments through the county budget process.

If the contractor provides the property appraiser with information showing that the property owner was not entitled to a claimed homestead exemption, the property appraiser may disallow the claimed exemption and remove the homestead exemption from the previous tax rolls. The property appraiser may remove up to five years of claimed exemptions from the rolls. The property appraiser may not disallow and remove the homestead exemption if the owner is admitted to a long-term care facility.

The contractor may only contact property owners in a manner prescribed by the property appraiser or by the contract with the county. The contractor must inform the property owner that:

- The contractor is a third party who has been contracted by the county to examine or audit homestead tax exemptions; and
- The property owner should contact the property appraiser if the owner has any questions and provide the property appraiser's contact information.

The contractor shall not:

- Simulate a governmental official;
- Communicate with the person between 9 p.m. and 8 a.m. in the person's time zone without the person's prior consent;
- Suggest, communicate, or threaten the person that any money is owed;
- Publish or post, threaten to publish or post, or cause to be published or posted to the public any individual names or list of names of people who have claimed a homestead exemption.

[29] Section 193.122(2), F.S.
[30] Section 193.122(1), F.S.
[31] Section 193.122(2), F.S.
[32] A nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility. S. 400.0060(6), F.S.

If the property appraiser disallows and removes a property owner's claimed homestead exemption, the property owner may challenge the property appraiser's decision before the value adjustment board. The bill authorizes the value adjustment board to consider claims from previous tax years for the purposes of reviewing disallowed homestead exemption claims under this program.

The Central Florida Homestead Exemption Fraud Detection Pilot Program expires September 30, 2019.

The bill amends s. 196.161, F.S., to clarify that a tax lien based on a fraudulent homestead claim shall be filed for the taxes, penalties, and interest that remain unpaid 30 or more days after the notice of tax lien is sent. Further, the tax lien will remain on the property until the taxes, penalties, and interest are paid in full.[33]

The bill provides that the unpaid taxes, interest, and penalties will be added to the next tax assessment if not paid in accordance with s. 196.161, F.S., and shall be collected in the same manner as, and in addition to, the current ad valorem taxes under chapter 197 (including the sale of tax certificates).

The bill amends s. 213.30, F.S., to allow for the collection of money by contractors pursuant to s. 196.1611, F.S.[34]

B. SECTION DIRECTORY:

Section 1: Creates s. 196.1611, F.S., creating the Central Florida Homestead Exemption Fraud Detection Pilot Program.

Section 2: Amends s. 196.161, F.S., to clarify the tax lien procedure for fraudulent homestead claims.

Section 3: Amends s. 213.30, F.S. to allow for the compensation of contractors pursuant to s. 196.1611, F.S.

Section 4: Provides an effective date of July 1, 2017.

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 estimates that the bill will have a positive indeterminate impact on local government revenues.

[33] A lien issued pursuant to this section is a first lien, superior to all other liens on the property and will only be removed when discharged by payment or until barred under ch. 95. S. 197.122, F.S.

[34] Under current law, s. 213.30 is the sole means by which a person who provide information to the Department of Revenue leading to certain violations of tax laws may be compensated by the department.

2. Expenditures:

Local governments may expend funds to contract for services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in additional business for firms that investigate homestead exemption fraud.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed in that the committee substitute creates a two year homestead exemption fraud detection pilot program in Orange, Osceola, and Seminole Counties. The committee substitute excludes from consideration those homestead owners who move into certain types of assisted living or extended care situations as well as those owners who have a driver's license and voter registration listing the property address as their residence. The committee substitute also provides for contracting and oversight to be conducted through the county commission.

This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to homestead exemption fraud; creating s. 196.1611, F.S.; authorizing a homestead exemption fraud detection pilot program in Orange, Osceola, and Seminole Counties; authorizing each property appraiser to conduct an audit of homestead exemption claims; setting criteria for audit of homestead exemption claims; authorizing the board of county commissioners to contract for the examination and audit of homestead exemption claims; specifying payment for such contracted services; specifying authorized and prohibited practices for such contractors in contacting certain people; amending s. 196.161, F.S.; specifying property appraiser duties upon a determination that a person improperly received a homestead exemption from ad valorem taxation; specifying the time period by which a tax lien must be filed under certain circumstances; specifying the calculation to be used in determining the amount of the tax lien; requiring unpaid taxes, penalties, fees, and interest to be included in the next tax notice; providing methods of collection; amending s. 213.30, F.S.; specifying the governmental entities that may contract for certain services to collect money for the failure by a person to comply with the tax laws;

providing an effective date.

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

Section 1. Section 196.1611, Florida Statutes, is created to read:

196.1611 Central Florida Homestead Exemption Fraud Detection Pilot Program.—

(1) By October 1, 2017, the property appraisers for Orange, Osceola, and Seminole counties each may conduct an audit of homestead tax exemptions claimed on exemption rolls. If an audit is conducted, the property appraiser shall determine the percentage of property owners who were not entitled to the claimed homestead exemption. For the purposes of the audit, a property owner is entitled to a homestead exemption if:

(a) The property owner claims homestead exemption on the property; and

1. The address of the property is the legal residence provided by the property owner to the Department of Highway Safety and Motor Vehicles when applying for a driver license or identification card under chapter 322; or

2. The property owner is registered to vote at the address.

(b) The property owner lived in the homestead property for the 12 months preceding admission to a long-term care facility

as defined in s. 400.0060(6).

(2) If a property appraiser conducts an audit under subsection (1) and finds that more than 5 percent of property owners claiming a homestead exemption were not entitled to the claimed exemption, the property appraiser may request the county commission to contract for homestead exemption examination services to conduct a full examination and audit of homestead tax exemptions claimed on assessment rolls.

(a) If the county commission contracts for homestead exemption examination services, the county commission shall procure the services using the same purchasing process and requirements generally used by the county.

(b) An agreement for contracted services shall specify that the contractor may only receive as compensation an amount not to exceed 25 percent of the back taxes, penalties, and interest imposed pursuant to this chapter that are collected on each assessment made as a result of the contractor's examination or audit. Any payments made under this section must be approved by the county commission as part of county budget or an amendment to the county budget.

(3) If a contractor finds that an owner was not entitled to an exemption, the property appraiser may disallow the claimed exemption and remove the homestead exemption from previous tax rolls subject to the following conditions:

(a) A claimed exemption may be disallowed and removed from

the tax rolls under this section for no more than the previous 5 years.

(b) A claimed exemption may not be disallowed and removed from the tax rolls under this section where the owner is admitted to a long-term care facility as defined in s. 400.0060(6).

(4) A contractor retained under this section may only contact persons claiming a homestead exemption in a manner prescribed in the contract or by the property appraiser. At a minimum, the contractor shall notify the person claiming the homestead exemption that:

(a) The contractor is a third party who has been contracted by the county to examine or audit homestead tax exemptions.

(b) The person should contact the property appraiser if he or she has any questions. The contractor shall provide the property appraiser's contact information.

(5) The contractor may not:

(a) Simulate a governmental official in any manner.

(b) Communicate with the person between the hours of 9 p.m. and 8 a.m. in the person's time zone without prior consent of the person.

(c) Suggest, communicate, or threaten that the person owes any money.

(d) Publish or post, threaten to publish or post, or cause

to be published or posted before the general public individual names or any list of names of people who have claimed a homestead exemption.

(6) The property owner may appeal to the value adjustment board a decision by the property appraiser refusing to allow the exemption for which application was made as provided in s. 196.151. Notwithstanding s. 196.151, when reviewing the disallowance of claimed homestead exemptions under this section, the value adjustment board may consider the determination of the property appraiser as applied to previous tax years.

(7) This section shall expire September 30, 2019.

Section 2. Paragraph (b) of subsection (1) and subsection (2) of section 196.161, Florida Statutes, are amended to read:

196.161 Homestead exemptions; lien imposed on property of person claiming exemption although not a permanent resident.—

(1)

(b)1. In addition, upon determination by the property appraiser that for any year or years within the prior 10 years a person who was not entitled to a homestead exemption was granted a homestead exemption from ad valorem taxes, ~~it shall be the duty of~~ the property appraiser making such determination shall immediately certify to the county tax collector the additional assessment for each year that the owner was not entitled to the exemption and shall provide the owner the same information. The tax collector may provide the notice to the owner by United

States Postal Service to the address of record and shall ~~to~~ serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county.~~, and~~ Such property shall be identified in the notice of tax lien. Such property which is situated in this state shall be subject to the taxes exempted thereby, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. The tax lien shall be filed for the taxes, penalties, fees, and interest that remain unpaid 30 or more days after the notice is sent and shall remain on the property until the taxes, penalties, fees, and interest are paid in full. ~~However, if a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest.~~ Before any such lien may be filed, the owner so notified must be given 30 days to pay the taxes, penalties, and interest.

2. If a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption may not be assessed a penalty, interest, or fees.

(2) Except when the property appraiser makes a clerical error and improperly grants a homestead exemption, the taxes, penalties, fees, and interest assessed pursuant to this section

that are not paid in full shall be included in the next tax notice and shall be collected in the same manner as, and in addition to, the current ad valorem taxes under chapter 197, including the annual tax certificate sale when appropriate ~~The collection of the taxes provided in this section shall be in the same manner as existing ad valorem taxes, and the above procedure of recapturing such taxes shall be supplemental to any existing provision under the laws of this state~~.

Section 3. Subsection (3) of section 213.30, Florida Statutes, is amended to read:

213.30 Compensation for information relating to a violation of the tax laws.—

(3) Notwithstanding any other provision of law, this section and s. 196.1611 are ~~is~~ the sole means by which any person may seek or obtain any moneys as the result of, in relation to, or founded upon the failure by another person to comply with the tax laws of this state. A person's use of any other law to seek or obtain moneys for such failure is in derogation of this section and s. 196.1611 and conflicts with the state's duty to administer the tax laws.

Section 4. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1123 Fee and Surcharge Reductions
SPONSOR(S): Drake and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1442

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee		Dugan RD	Langston
2) Appropriations Committee			

SUMMARY ANALYSIS

HB 1123 reduces or eliminates numerous fees or surcharges imposed in the Florida Statutes. Specifically, the bill:

- Eliminates a $10 fee for commissions for elected officers;
- Eliminates the $2 fee deducted from each motor fuel sales tax refund claim;
- Eliminates the $5 registration fee for persons or businesses required to register with the Department of Revenue for collecting, reporting, and remitting sales and use tax;
- Exempts a surviving spouse of a deceased motor vehicle owner from the motor vehicle title transfer fees when transferring the title into the surviving spouse's name;
- Eliminates the $1 and $2 fees for a veteran to receive a "Veteran" designation on his or her driver license or identification card;
- Exempts a veteran from the fee for an original commercial driver license;
- Exempts a person who is 80 years of age or older from the $25 identification card fees;
- Provides a flat $25 delinquency fee for specified professional licensees, and removes current law requiring that the delinquency fee is set by each professional board at a rate not to exceed the biennial renewal fee for an active status license;
- Reduces the application and license fees for commercial driver schools by half; and
- Reduces the surcharge assessed on all building permit fees from 1.5 percent to one percent of the permit fee.

The Revenue Estimating Conference (REC) reviewed the bill on March 10, 2017,[1] and estimated the bill's annual impact to be -$2.0 million to General Revenue, -$3.7 million to various state trust funds, and negative insignificant to local government.

The bill is effective July 1, 2017, except for certain provisions that take effect January 1, 2018.

[1] EDR, REC, *Various State Fees – HB 1123 (SB 1442 identical)* (Mar. 10, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page319-332.pdf (last visited Mar. 24, 2017).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Elected Officer's Fee for Commission (Sections 1 and 2)

Current Situation

Section 113.01, F.S., prescribes a $10 fee for the issuance of each commission issued by the Governor and attested by the Secretary of State for elected officers or a notary public. A commission to officers is a warrant or authority granted by government, which empowers the named individual to execute official acts. The commission cannot be issued or bear the state seal until the required fee is paid.[2] The $10 fee is charged to persons elected or appointed to fill vacant positions, paid to the Chief Financial Officer, and deposited in the General Revenue Fund.[3]

The number of people charged the $10 fee varies each year due to the number of elections and appointments. In Fiscal Year 2016-2017, there were 1,936 commissions issued, and 202 commissions that will be issued upon payment of the fee, totaling $21,380 for the fiscal year.[4]

Proposed Changes

The bill eliminates the $10 fee for commissions for elected officers.

Motor Fuel Tax Refund Claims (Section 3)

Current Situation

Section 206.41, F.S., imposes the following state taxes on motor fuel:

- "Constitutional fuel tax" of two cents per net gallon;[5]
- "County fuel tax" of one cent per net gallon;[6]
- "Municipal fuel tax" of one cent per net gallon;[7]
- "Ninth-cent fuel tax" may be imposed by each county of one cent per net gallon;[8]
- "Local option fuel tax" may be imposed by each county of between one and eleven cents per net gallon;[9]
- State Comprehensive Enhanced Transportation System Tax, which is a motor fuel tax equal to two-thirds of the lesser of the sum of a county's ninth-cent fuel tax and the local option fuel tax or six cents, rounded to the nearest tenth of a cent;[10]

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[2] s. 113.02, F.S.

[3] s. 15.09(3), F.S.

[4] Office of Economic and Demographic Research (EDR), Revenue Estimating Conference (REC), *Elimination of $10 Elected Officer's Commission Fee* (Mar. 10, 2017), *available* at p. 319 *at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page319-332.pdf (last visited Mar. 22, 2017).

[5] To be placed monthly in the state roads distribution fund in the state treasury and distributed as required by s. 9(c), art. XII of the State Constitution.

[6] To be used for public transportation purposes as required by s. 206.60, F.S.

[7] Which is transferred into the Revenue Sharing Trust Fund for Municipalities to be used for transportation purposes as authorized in s. 206.605, F.S.

[8] County and municipal governments may use the moneys received only for transportation expenditures; See s. 336.021, F.S.

[9] Section 336.025, F.S.; County and municipal governments may use the moneys received only for transportation expenditures needed: to meet the requirements of the capital improvements element of an adopted comprehensive plan; to meet immediate local transportation problems; and for building comprehensive roadway networks by local governmental, excluding routine road maintenance.

- "Fuel sales tax" of at least 6.9 cents per net gallon, which may be increased by a percentage change in the average of the Consumer Price Index issued by the U.S. Department of Labor for the most recent 12-month period ending September 30, compared to the base year average (the average for the 12-month period ending September 30, 1989);[11] and
- An additional 0.125 cents per net gallon to defray expenses related to inspecting, testing, and analyzing motor fuel in this state.

Section 206.41, F.S., exempts qualified entities from certain motor fuel taxes, and authorizes refunds for qualified entities that have purchased and used tax-paid fuel for an exempt purpose. For example, any person who uses motor fuel for the following purposes on which the local option fuel tax, State Comprehensive Enhanced Transportation System Tax, or fuel sales tax was imposed is entitled to a refund of such tax:

- *Agricultural purposes*: motor fuel used in any tractor, vehicle, or farm equipment used exclusively on a farm or for processing farm products on the farm; and motor fuel used for transporting bees by water and the operating of equipment used in the apiary of a beekeeper.
- *Commercial fishing and aquacultural purposes*: motor fuel used in the operation of boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh water under the jurisdiction of the state for resale to the public. This does not include any fuel used for sport or pleasure fishing, or for any fuel used in any vehicle or equipment operated upon Florida highways.
- *Commercial aviation purposes*: motor fuel used in the operation of aviation ground support vehicles or equipment, not used in any vehicle or equipment operated on Florida highways. [12]

A person must apply to receive a permit from the Department of Revenue (DOR) to be issued a refund. Such permits are in effect for a year and shall be continuous as long as the person files refund claims with the DOR each year. A person will need to apply for a new permit if he or she does not file a claim for any year.[13]

Refunds are issued quarterly, and no refund will be authorized unless the amount due is for at least $5. Additionally, the DOR is authorized to deduct a fee of $2 for each refund claim, which will be deposited into the General Revenue Fund.[14]

In Fiscal Year 2015-2016, the DOR withheld $2,020 from fuel refunds.[15]

Proposed Changes

Effective January 1, 2018, the bill eliminates the $2 fee deducted from each motor fuel sales tax refund claim.

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[10] Majority of the funds are deposited into and used from the State Transportation Trust Fund and may be used only for projects in the adopted work program in the district in which the tax proceeds are collected. See s. 206.608, F.S.

[11] Section 206.606, F.S., provides such proceeds are deposited in the Fuel Tax Collection Trust Fund to be distributed among the State Transportation Trust Fund, the Invasive Plant Control Trust Fund, the State Game Trust Fund, the Agricultural Emergency Eradication Trust Fund, and the Marine Resources Conservation Trust Fund.

[12] Additional entities entitled to certain motor fuel tax refunds are listed in s. 206.41(4), F.S., more information is available on the DOR website, *Fuel Tax Refunds*, http://floridarevenue.com/dor/taxes/fuel/fuel_tax_refunds.html (last visited Mar. 24, 2017).

[13] s. 206.41(5)(a), F.S.

[14] s. 206.41(5)(c), F.S.

[15] EDR, REC, Elimination of the $2 Deduction, *available at p. 320 at:http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page319-332.pdf (last visited Mar. 22, 2017).*

Registration Fee for Dealers and Businesses (Sections 4 and 5)

Current Situation

Section 212.18, F.S., provides that every person desiring to engage in or conduct business in this state as a sales and use tax dealer, or to lease, rent, or let or grant license in transient lodgings or real property, and every person who receives money for admissions must register with the DOR to collect, report, and remit such taxes. A $5 registration fee must accompany the application for a certificate of registration; however, the registration fee is not required to accompany an application to engage in or conduct business to make mail order sales. Additionally, the DOR may waive the registration fee for applications submitted through the DOR internet registration process.

A person who engages in activities that require registration but fails or refuses to do so is subject to a $100 registration fee in lieu of the $5 fee. However, the DOR may waive the increase in the fee if it finds that the failure to register was due to reasonable cause and not to willful negligence, willful neglect, or fraud.[16]

Section 212.0596, F.S., provides that the DOR may establish procedures to provide for the waiver of registration fees from unregistered persons who make mail order purchases for which tax is required to be remitted.

According to the DOR, in Fiscal Year 2015-2016, DOR collected $130,766 of such fees.[17]

Proposed Changes

Effective January 1, 2018, the bill eliminates the $5 registration fee for persons or businesses required to register with the DOR in order to collect, report, and remit sales and use tax.

Motor Vehicle Title Transfer Fee (Sections 6 and 7)

Current Situation

Florida law provides the fees, service charges, and disposition of funds for certificates of title. Specifically, s. 319.32(1), F.S., provides that the Department of Highway Safety and Motor Vehicles (DHSMV) charges a $70 fee for each original and duplicate certificate of title, except for motor vehicles for hire,[18] which are $49, and $2 for each salvage certificate of title. The DHSMV also charges $2 to note a lien on the certificate, $1 to cover the cost of materials, and $2.50 for shipping and handling. Additionally, s. 319.32(2), F.S., provides that there is a $4.25 service charge for each certificate of title application, a $10 additional fee for an original certificate of title issued for a vehicle registered outside of Florida, and a $7 additional fee for each lien placed on a vehicle by the state child enforcement program.

The $70 fee is distributed between the State Transportation Trust Fund and the General Revenue Fund, excluding $1 that is deposited into the Highway Safety Operating Trust Fund to fund the DHSMV's efforts to prevent and detect odometer fraud.[19] The DHSMV or the tax collector who processes the application retains the $4.25 service charge.[20]

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[16] s. 212.18(3)(c), F.S.

[17] EDR, REC, *Elimination of the $5 Registration Fee for Certain Dealers or Businesses* available at p. 321 at:http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page319-332.pdf (last visited Mar. 22, 2017).

[18] Vehicles registered under s. 320.08(6), F.S.

[19] ss. 319.32(5) and 319.324, F.S.; Section 319.32(5), F.S., provides that $47 of each fee collected for an original or duplicate certificate of title is deposited into the State Transportation Trust Fund, which may receive up to $200 million in any fiscal year. The remainder of the fee and any fees in excess of the $200 million are deposited into the General Revenue Fund.

[20] s. 319.32(2)(b), F.S.

A surviving spouse who inherits the deceased spouse's motor vehicle may dispose of the vehicle without being required to obtain a certificate of title in his or her name.[21] If the married couple are co-owners of the vehicle with names appearing conjoined by an "or" on the title, it is not necessary for the surviving spouse to apply for a new title, as he or she already has absolute rights to the vehicle. However, if the names are conjoined by "and" or if the vehicle is not co-owned by the surviving spouse and he or she wishes to maintain ownership of the vehicle, the surviving spouse will be required to apply for an original certificate in his or her own name.

Proposed Changes

The bill exempts a surviving spouse from motor vehicle title transfer fees provided under s. 319.32(1), F.S., when the title is being transferred from the deceased motor vehicle owner to the surviving spouse. The fee exemption is for a surviving spouse regardless of whether he or she is named on the deceased motor vehicle owner's title.

"Veteran" Designation Fee (Sections 8 and 9)

Current Situation

Florida provides the option for a veteran[22] designation to be placed on a veteran's driver license or identification card upon request from the veteran, payment of a fee, and the presentation of a copy of the veteran's DD Form 214[23] or other acceptable form specified by the Florida Department of Veterans' Affairs (FDVA).[24] The designation is added onto a driver license or identification card for a $1 fee when the license or card is being issued or renewed, or a $2 fee solely to replace a license or card in order to add on the designation, which is deposited in the Highway Safety Operating Trust Fund (HSOTF).[25]

Proposed Changes

The bill eliminates the $1 and $2 fee to receive the "Veteran" designation on a driver license or ID card.

Commercial Driver License (CDL) for Veterans (Section 10)

Current Situation

An original or renewal CDL is $75; however, if an applicant for a CDL has completed training and is applying for employment or is currently employed in a public or nonpublic school system that requires a CDL, the CDL is $48.[26] These fees are deposited in the General Revenue Fund.[27]

Proposed Changes

The bill exempts a veteran from the fee for an original CDL upon presentation of his or her DD Form 214 or another acceptable form specified by the FDVA.

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[21] s. 319.28(1)(c), F.S.

[22] Section 1.01(14), F.S., defines a "veteran" as "a person who served in the active military, naval, or air service who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the U.S. Department of Veteran Affairs on individuals discharged or released with other than honorable discharges."

[23] The Department of Defense issues each veteran a DD-214. This form identifies the veteran's condition of discharge, and contains information commonly needed to verify military service for benefits, retirement, employment, and membership in veterans' organizations. *See* DD214 website, http://www.dd214.us/ (last visited Mar. 23, 2017).

[24] See ss. 322.051(8)(b) and 322.14(1)(d), F.S.

[25] The current veteran designation is a "V" printed on the license or card; however, the designation will be changed to read "Veteran" upon implementation of new designs for the license and card by the DHSMV. See ss. 322.051(8)(b) and 322.14(1)(d), F.S.

[26] s. 322.21(1)(a), F.S.

[27] s. 322.21(5), F.S.

Free Identification (ID) Card for Persons 80 Years of Age and Older (Section 10)

Current Situation

Section 322.21(1)(f), F.S., provides that there is a $25 fee for an original, renewal, or replacement ID card. The fee is deposited as follows:

- For an original ID card, the fee is deposited into the General Revenue Fund;
- For a replacement ID card, $6 is deposited into the HSOTF and $19 into the General Revenue Fund;
- For a renewal ID issued by the DHSMV, $9 is deposited into the HSOTF and $16 into the General Revenue Fund; and
- For a renewal ID issued by the tax collector, $9 is retained by the tax collector and $16 is deposited into the General Revenue Fund.

Currently, the fee for an ID card is waived for the following individuals:

- A person who is homeless;
- A person whose annual income is at or below 100 percent of the federal poverty level; and
- A juvenile offender in the custody or under the supervision of the Department of Juvenile Justice who is participating in transition-to-adulthood services under s. 985.461, F.S., and issued the ID card from a DHSMV mobile issuing unit.

Proposed Changes

The bill exempts a person who is 80 years of age or older from the $25 fee for an original, renewal, or replacement ID card.

Delinquency Fee for Professional License (Section 11)

Current Situation

The Department of Business and Professional Regulation (DBPR) is the governmental agency responsible for licensing and regulating many businesses and professionals in the state of Florida.[28]

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[29]

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.[30]

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by administrative rule[31] the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.[32]

[28] *See* Florida DBPR website, http://www.myfloridalicense.com/dbpr/os/os-info.html (last visited Mar. 23, 2017).
[29] *See* s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. *See* s. 455.221(1), F.S.
[30] ss. 455.01(4) and (5), F.S.
[31] The administrative rules of the DBPR and of each Board are available through the DBPR's website at http://www.myfloridalicense.com/dbpr/divisions.html (last visited Mar. 23, 2017).
[32] s. 455.219(1), F.S.

Licensees may practice a profession only if they have an active status license.[33] Generally, most licensees who practice a profession without an active status license[34] are subject to discipline, fines, or assessments as described in s. 455.227, F.S. At least 90 days before the end of a licensure cycle, the DBPR must provide a licensure renewal notification to an active or inactive licensee, and a notice of pending cancellation of licensure to a delinquent status licensee.[35]

Each board, or the DBPR when there is no board,[36] must permit a licensee to choose active or inactive status at the time of licensure renewal, and impose a fee for an inactive status license that does not exceed the fee for an active status license.[37] An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status, including payment of all required fees, and meeting all continuing education requirements. Failure of a licensee to renew a license before its expiration causes the license to become delinquent in the license cycle following expiration (delinquency cycle).[38]

A delinquent status licensee must re-apply for active or inactive status during the delinquency cycle. Failure by a delinquent status licensee to become active or inactive before the expiration of the delinquency cycle renders the license void, with no further action by the board.[39]

The DBPR may, at its discretion, reinstate a license that has become void (excepting those public accountancy licenses issued under ch. 473, F.S.) if the DBPR determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the DBPR for reinstatement, pay all required fees, including a reinstatement fee, meet all continuing education requirements, and otherwise be eligible for renewal of licensure.[40]

Section 477.271(7), F.S., provides that each board must impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, when a delinquent status licensee applies for active or inactive status. According to the DBPR, all boards have adopted delinquency fees, which vary by profession ranging from $25 to $260.[41] The fees collected are deposited into the Professional Regulation Trust Fund, which is used to carry out the provisions of ch. 455, F.S., as well as "provisions of law with respect to professions regulated by the department and any board within the department."[42]

Proposed Changes

The bill provides a flat $25 delinquency fee that is assessed against a licensee applying for active or inactive status while in delinquent status. The bill removes current law that the delinquency fee is adopted by rule by each board at a rate not to exceed the biennial renewal fee for an active status license. This change provides consistency among all licensees regulated by the DBPR, and eliminates the needs for boards to engage in continued rulemaking regarding delinquency fees.

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[33] s. 455.271(1), F.S.

[34] Section 455.271, F.S., on inactive and delinquent status of licenses, does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to ch. 310, F.S. on Pilots, Piloting, and Pilotage, or ch. 475, F.S., on Real Estate Brokers, Sales Associates, Schools, and Appraisers.

[35] *See* s. 455.273, F.S.

[36] Whenever a board for a profession does not exist, the DBPR is generally authorized by law to act instead. *See* e.g., ss. 455.219 and 455.271, F.S., for multiple references to actions of "the board, or the department when there is no board."

[37] The status or a change in status of a licensee does not alter the board's right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent. *See* s. 455.271(11), F.S.

[38] *See s. 455.271(11), F.S.*

[39] *See s. 455.271(11), F.S.*

[40] *See s. 455.271(11), F.S.*

[41] DBPR, *2017 Agency Legislative Bill Analysis: SB 514* (identical language in SB 1442) (Feb. 28, 2017) (on file with the Senate Committee on Transportation).

[42] s. 455.219(3), F.S.

Commercial Driver School License Fee (Section 12)

Current Situation

The DHSMV is responsible for overseeing and licensing all commercial driver schools except commercial truck driving schools. A commercial driving school, also known as "traffic school," educates individuals on driving skills, traffic laws, road safety, substance abuse, and other behind-the-wheel skills necessary for non-commercial vehicle drivers.[43]

To become a licensed commercial driving school, the applicant must submit an application to the DHSMV. The application must include:

- The business's name and a certified copy of a certificate of Fictitious Name or Certificate of Incorporation from the Department of State;
- The business's address with a certificate of occupancy or a lease agreement;
- The names of all owners and operators of the business;
- A list of instructors and agents employed by the school;
- A list of the school's vehicles (including current certificates of insurance for each vehicle);
- Fingerprints for a background check of every owner, officer, or partner of the school; and
- A nonrefundable application fee of $50.[44]

If the application is approved the school must pay a $200 fee to receive the license. The license is valid for one year, and costs $100 to renew. Additionally, the license is nontransferable. In the event that there is any change in ownership or interest in the business, the commercial driving school must surrender its current license and apply for a new license.[45]

Application and license fees, including the renewal fee, are deposited into the General Revenue Fund.[46]

Proposed Changes

The bill reduces the application and license fees, by half, for commercial driver schools. For commercial driver schools, the license application fee is $25, instead of $50; the license issuance fee is $100, instead of $200; and the annual license renewal fee is $50, instead of $100.

Florida Building Code Permit Surcharge (Section 13)

Current Situation

Section 553.721, F.S., provides that all local building departments are required to assess and collect a surcharge at the rate of 1.5 percent on building permit fees (with a minimum surcharge of $2) for the purpose of administering and enforcing the Florida Building Code[47].

The governmental authority responsible for collecting building permit fees in its local jurisdiction is authorized to retain 10 percent of the surcharge amount, which must be used to fund participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.

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[43] DHSMV website, *Commercial Driving Schools*, https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/commercial-driving-schools/ (last visited Mar. 23, 2017).
[44] DHSMV, *Form HSMV 77074S – CDS Application* (September 2010), *available at* https://www.flhsmv.gov/pdf/forms/77074s.pdf (last visited Mar. 23, 2017).
[45] s. 488.03, F.S.
[46] s. 488.08, F.S.
[47] Part IV of ch. 553, F.S., is cited as the "Florida Building Codes Act."

The remaining amount is remitted to the DBPR quarterly to be deposited into the Professional Regulation Trust Fund to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program.

From these funds, the Florida Building Code Compliance and Mitigation Program must be allocated $925,000 each fiscal year, and the Program shall fund recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed $30,000 in Fiscal Year 2016-2017. Additionally, funds collected from the surcharge must be used to fund Florida Fire Prevention Code informal interpretations managed by the State Fire Marshall for each fiscal year; however, funds used for this purpose may not exceed $15,000. Funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings.

Proposed Changes

The bill reduces the surcharge assessed on all building permit fees from 1.5 percent of the permit fee to one percent of the permit fee.

B. SECTION DIRECTORY:

Section 1. Amends s. 15.09(3), F.S., to conform to changes made in section 2 of the bill.

Section 2. Amends s. 113.01(3), F.S., to delete the fee for a commission of an elected officer by the Governor.

Section 3. Amends s. 206.41(5)(c), F.S., to delete the fee for a motor fuel tax refund.

Section 4. Amends s. 212.0596(7), F.S., to conform to changes made in section 5 of the bill.

Section 5. Amends s. 212.18(3)(a), (c), F.S., to delete certain dealer registration fees.

Section 6. Amends s. 319.28(1)(a), F.S., to conform to changes made in section 7 of the bill.

Section 7. Amends s. 319.32, F.S., to exempt a surviving spouse from the fee to transfer a motor vehicle title.

Section 8. Amends s. 322.051(8)(b), F.S., to delete "Veteran" identification card fees.

Section 9. Amends s. 322.14(1)(d), F.S., to delete "Veteran" driver license fees.

Section 10. Amends s. 322.21(1)(a), (f), F.S., to exempt veterans from commercial driver license fees.

Section 11. Amends s. 455.271(7), F.S., to revise delinquency fees for certain DBPR licenses.

Section 12. Amends s. 488.03, F.S., to reduce driver school operator license fees.

Section 13. Amends s. 553.721, F.S., to reduce the Florida Building Code permit fee surcharge.

Section 14. Provides an effective date of July 1, 2017, except sections 3-5 of the bill are effective January 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) reviewed the bill on March 10, 2017,[48] and estimated the bill's annual impact to be -$2.0 million to General Revenue and -$3.7 million to various state trust funds.

2. Expenditures:

DOR indicates there will be insignificant administrative costs to implement the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference determined the bill would have a negative insignificant impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on certain individuals due to the reduction of fees and surcharges.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

[48] EDR, REC, *Various State Fees – HB 1123 (SB 1442 identical)* (Mar. 10, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page319-332.pdf (last visited Mar. 24, 2017).

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to fee and surcharge reductions; amending s. 113.01, F.S.; deleting the fee for a commission of an elected officer by the Governor; amending s. 206.41, F.S.; deleting the fee for a claim for refund of the tax on motor fuel; amending s. 212.18, F.S.; deleting a registration fee for certain dealers or businesses; amending s. 319.32, F.S.; exempting a surviving spouse from the fee to transfer a motor vehicle title; amending ss. 322.051 and 322.14, F.S.; deleting fees for adding the word "Veteran" to an identification card or driver license; amending s. 322.21, F.S.; exempting veterans from the fee for an original commercial driver license; exempting certain persons from the fee for an identification card; amending s. 455.271, F.S.; revising provisions relating to imposition and amount of a delinquency fee for licensees regulated by the Department of Business and Professional Regulation; amending s. 488.03, F.S.; reducing fees for application, licensure, and renewal of licensure to operate a driver school; amending s. 553.721, F.S.; reducing the amount of the surcharge assessed by the department on Florida Building Code permit fees; amending ss. 15.09, 212.0596, and 319.28, F.S.;

conforming provisions to changes made by the act; providing effective dates.

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

Section 1. Subsection (3) of section 15.09, Florida Statutes, is amended to read:

15.09 Fees.—

(3) All fees arising from certificates of election or appointment to office ~~and from commissions to officers~~ shall be paid to the Chief Financial Officer for deposit in the General Revenue Fund.

Section 2. Section 113.01, Florida Statutes, is amended to read:

113.01 Fee for commissions issued by Governor.—A fee of $10 is prescribed for the issuance of each commission issued by the Governor of the state and attested by the Secretary of State for ~~an elected officer or~~ a notary public.

Section 3. Effective January 1, 2018, paragraph (c) of subsection (5) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(5)

(c)1. No refund may be authorized unless a sworn application therefor containing such information as the

department may determine is filed with the department not later than the last day of the month following the quarter for which the refund is claimed. However, when a justified excuse for late filing is presented to the department and the last preceding claim was filed on time, the deadline for filing may be extended an additional month. No refund will be authorized unless the amount due is for $5 or more for any refund period and unless application is made upon forms prescribed by the department.

2. Claims made for refunds provided pursuant to subsection (4) shall be paid quarterly. ~~The department shall deduct a fee of $2 for each claim, which fee shall be deposited in the General Revenue Fund.~~

Section 4. Effective January 1, 2018, subsection (7) of section 212.0596, Florida Statutes, is amended to read:

212.0596 Taxation of mail order sales.—

(7) The department may establish by rule procedures for collecting the use tax from unregistered persons who but for their mail order purchases would not be required to remit sales or use tax directly to the department. The procedures may provide for waiver of registration ~~and registration fees~~, provisions for irregular remittance of tax, elimination of the collection allowance, and nonapplication of local option surtaxes.

Section 5. Effective January 1, 2018, paragraphs (a) and (c) of subsection (3) of section 212.18, Florida Statutes, are

amended to read:

212.18 Administration of law; registration of dealers; rules.—

(3)(a) A person desiring to engage in or conduct business in this state as a dealer, or to lease, rent, or let or grant licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps that are subject to tax under s. 212.03, or to lease, rent, or let or grant licenses in real property, and a person who sells or receives anything of value by way of admissions, must file with the department an application for a certificate of registration for each place of business. The application must include the names of the persons who have interests in such business and their residences, the address of the business, and other data reasonably required by the department. However, owners and operators of vending machines or newspaper rack machines are required to obtain only one certificate of registration for each county in which such machines are located. The department, by rule, may authorize a dealer that uses independent sellers to sell its merchandise to remit tax on the retail sales price charged to the ultimate consumer in lieu of having the independent seller register as a dealer and remit the tax. The department may appoint the county tax collector as the department's agent to accept applications for registrations. The application must be submitted to the

department before the person, firm, copartnership, or corporation may engage in such business~~, and it must be accompanied by a registration fee of $5. However, a registration fee is not required to accompany an application to engage in or conduct business to make mail order sales. The department may waive the registration fee for applications submitted through the department's Internet registration process~~.

(c)1. A person who engages in acts requiring a certificate of registration under this subsection and who fails or refuses to register commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Such acts are subject to injunctive proceedings as provided by law. A person who engages in acts requiring a certificate of registration and who fails or refuses to register is also subject to a $100 initial registration fee ~~in lieu of the $5 registration fee required by paragraph (a)~~. However, the department may waive the ~~increase in the~~ registration fee if it finds that the failure to register was due to reasonable cause and not to willful negligence, willful neglect, or fraud.

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

b. The department shall provide written notice of the duty to register to the person by personal service or by sending

notice by registered mail to the person's last known address. The department may provide written notice by both methods described in this sub-subparagraph.

Section 6. Paragraph (a) of subsection (1) of section 319.28, Florida Statutes, is amended to read:

319.28 Transfer of ownership by operation of law.—

(1)(a) In the event of the transfer of ownership of a motor vehicle or mobile home by operation of law as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, attachment, execution, or other judicial sale or whenever the engine of a motor vehicle is replaced by another engine or whenever a motor vehicle is sold to satisfy storage or repair charges or repossession is had upon default in performance of the terms of a security agreement, chattel mortgage, conditional sales contract, trust receipt, or other like agreement, and upon the surrender of the prior certificate of title or, when that is not possible, presentation of satisfactory proof to the department of ownership and right of possession to such motor vehicle or mobile home, and upon payment of the fee prescribed by law, except as provided in s. 319.32(1)(d), and presentation of an application for certificate of title, the department may issue to the applicant a certificate of title thereto.

Section 7. Subsection (1) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(1)(a) The department shall charge a fee of $70 for each original certificate of title, except for a certificate of title for a motor vehicle for hire registered under s. 320.08(6) for which the title fee shall be $49; $70 for each duplicate copy of a certificate of title, except for a certificate of title for a motor vehicle for hire registered under s. 320.08(6) for which the title fee shall be $49; $2 for each salvage certificate of title; and $3 for each assignment by a lienholder. The department shall also charge a fee of $2 for noting a lien on a title certificate, which fee includes the services for the subsequent issuance of a corrected certificate or cancellation of lien when that lien is satisfied.

(b) If an application for a certificate of title is for a vehicle that is required by s. 319.14(1)(b) to have a physical examination, the department shall charge an additional fee of $40 for the initial examination and $20 for each subsequent examination. The initial examination fee shall be deposited into the General Revenue Fund, and each subsequent examination fee shall be deposited into the Highway Safety Operating Trust Fund. The physical examination of the vehicle includes, but is not limited to, verification of the vehicle identification number and verification of the bill of sale or title for major components.

(c) In addition to all other fees charged, a sum of $1

shall be paid for the issuance of an original or duplicate certificate of title to cover the cost of materials used for security purposes. A service fee of $2.50, to be deposited into the Highway Safety Operating Trust Fund, shall be charged for shipping and handling for each paper title mailed by the department.

(d) The surviving spouse of a deceased motor vehicle owner who applies for a transfer of title in his or her own name is exempt from the fees imposed under this subsection.

Section 8. Paragraph (b) of subsection (8) of section 322.051, Florida Statutes, is amended to read:

322.051 Identification cards.—

(8)

(b) The word "Veteran" shall be exhibited on the identification card of a veteran upon ~~the payment of an additional $1 fee for the identification card and~~ the presentation of a copy of the person's DD Form 214, issued by the United States Department of Defense, or another acceptable form specified by the Department of Veterans' Affairs. Until a veteran's identification card is next renewed, the veteran may have the word "Veteran" added to his or her identification card upon surrender of his or her current identification card~~,~~ ~~payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund,~~ and presentation of a copy of his or her DD Form 214 or another acceptable form specified by the

Department of Veterans' Affairs. If the applicant is not conducting any other transaction affecting the identification card, a replacement identification card shall be issued with the word "Veteran" without payment of the fee required in s. 322.21(1)(f)3.

Section 9. Paragraph (d) of subsection (1) of section 322.14, Florida Statutes, is amended to read:

322.14 Licenses issued to drivers.—

(1)

(d) The word "Veteran" shall be exhibited on the driver license of a veteran upon ~~the payment of an additional $1 fee for the license and~~ the presentation of a copy of the person's DD Form 214, issued by the United States Department of Defense, or another acceptable form specified by the Department of Veterans' Affairs. Until a veteran's license is next renewed, the veteran may have the word "Veteran" added to his or her license upon surrender of his or her current license~~, payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund,~~ and presentation of a copy of his or her DD Form 214 or another acceptable form specified by the Department of Veterans' Affairs. If the applicant is not conducting any other transaction affecting the driver license, a replacement license shall be issued with the word "Veteran" without payment of the fee required in s. 322.21(1)(e).

Section 10. Paragraphs (a) and (f) of subsection (1) of

section 322.21, Florida Statutes, are amended to read:

322.21 License fees; procedure for handling and collecting fees.—

(1) Except as otherwise provided herein, the fee for:

(a) An original or renewal commercial driver license is $75, which shall include the fee for driver education provided by s. 1003.48. However, if an applicant has completed training and is applying for employment or is currently employed in a public or nonpublic school system that requires the commercial license, the fee is the same as for a Class E driver license. A delinquent fee of $15 shall be added for a renewal within 12 months after the license expiration date. A veteran is exempt from the fee for an original commercial driver license upon presentation of his or her DD Form 214, issued by the United States Department of Defense, or another acceptable form specified by the Department of Veterans' Affairs.

(f) An original, renewal, or replacement identification card issued pursuant to s. 322.051 is $25, except that an applicant who presents evidence satisfactory to the department that he or she is homeless as defined in s. 414.0252(7); his or her annual income is at or below 100 percent of the federal poverty level; ~~or~~ he or she is a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice, is receiving services pursuant to s. 985.461, and whose identification card is issued by the department's mobile issuing

units; or he or she is 80 years of age or older is exempt from such fee. Funds collected from fees for original, renewal, or replacement identification cards shall be distributed as follows:

1. For an original identification card issued pursuant to s. 322.051, the fee shall be deposited into the General Revenue Fund.

2. For a renewal identification card issued pursuant to s. 322.051, $6 shall be deposited into the Highway Safety Operating Trust Fund, and $19 shall be deposited into the General Revenue Fund.

3. For a replacement identification card issued pursuant to s. 322.051, $9 shall be deposited into the Highway Safety Operating Trust Fund, and $16 shall be deposited into the General Revenue Fund. Beginning July 1, 2015, or upon completion of the transition of the driver license issuance services, if the replacement identification card is issued by the tax collector, the tax collector shall retain the $9 that would otherwise be deposited into the Highway Safety Operating Trust Fund and the remaining revenues shall be deposited into the General Revenue Fund.

Section 11. Subsection (7) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(7) Notwithstanding the provisions of the professional

practice acts administered by the department, each board, or the department when there is no board, shall~~, by rule,~~ impose an additional delinquency fee of $25~~, not to exceed the biennial renewal fee for an active status license,~~ on a delinquent status licensee when such licensee applies for active or inactive status.

Section 12. Section 488.03, Florida Statutes, is amended to read:

488.03 License; application; expiration; renewal; fees.—An application for a license shall be made in the form prescribed by the Department of Highway Safety and Motor Vehicles. Every application for an original license must be accompanied by an application fee of $25 ~~$50~~, which fee may not be refunded. If the application is approved, a further fee of $100 ~~$200~~ must be paid before the license may be issued. The license shall be valid for a period of 1 year from the date of issuance and is not transferable. In the event of any change in ownership or interest in the business, an application for a new license, together with all instructors' certificates issued thereunder, must be surrendered to the department before a license will be issued to a new owner of the business. The fee for the annual renewal of a license is $50 ~~$100~~.

Section 13. Section 553.721, Florida Statutes, is amended to read:

553.721 Surcharge.—In order for the Department of Business

and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1 ~~1.5~~ percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be $925,000 each fiscal year. The Florida Building Code Compliance and Mitigation Program shall fund the

recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed $30,000 in the 2016-2017 fiscal year. Funds collected from the surcharge shall also be used to fund Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal and shall be limited to $15,000 each fiscal year. The State Fire Marshal shall adopt rules to address the implementation and expenditure of the funds allocated to fund the Florida Fire Prevention Code informal interpretations under this section. The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health and the State Fire Marshal shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 14. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1351 Renewable Energy Source Devices
SPONSOR(S): Energy & Utilities Subcommittee; Rodrigues
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	13 Y, 0 N, As CS	Voyles	Keating
2) Ways & Means Committee		Dobson	Langston
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution provides for local government ad valorem taxes on real property and tangible personal property, assessment of property for tax purposes, and exemptions to these taxes. In 2016, the Legislature passed CS/HJR 193, a joint resolution proposing an amendment to the Florida Constitution that would authorize the Legislature, by general law, to establish certain tax treatment for solar and renewable energy source devices installed on non-residential real property. Specifically, the amendment authorized the Legislature to:

- Exempt from ad valorem taxation the assessed value of solar devices or renewable energy source devices subject to tangible personal property tax; and
- Prohibit the consideration of the installation of such devices in determining the assessed value of residential and nonresidential real property for the purpose of ad valorem taxation.

Pursuant to CS/HB 195, the amendment was placed on the ballot on August 30, 2016, as "Amendment 4." Amendment 4 was approved by 73% of the voters in the election and, by its terms, will take effect on January 1, 2018, and expire on December 31, 2037.

The bill implements the provisions of Amendment 4 by exempting renewable energy source devices installed on or after January 1, 2018 from ad valorem taxes on real property The bill also exempts renewable energy source devices from ad valorem taxes on tangible personal property. . Consistent with Amendment 4, the bill provides for expiration of these provisions on December 31, 2037.

In addition, the bill establishes safety, performance, and reliability standards for the installation of certain renewable energy source devices and establishes disclosure requirements and penalties related to agreements to sell, finance, or lease such devices. The bill applies these disclosure requirements to any financing agreement entered into between a local government and a property owner to finance certain qualifying improvements, including renewable energy systems, through a non-ad valorem property assessment.

The Revenue Estimating Conference estimates that the provisions of the bill which implement Amendment 4 will have no impact on state government revenues and, for local government revenues, will have no impact in fiscal year (FY) 2017-18, an impact of -$44.2 million in FY 2018-19, and an impact of -$55.8 million in FY 2019-2020. The remaining provisions of the bill appear to have no impact on state and local government revenues or expenditures.

The bill provides an effective date of January 1, 2018.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ad Valorem Taxation of Real Property and Tangible Personal Property

The Florida Constitution provides for finance and taxation, including local government ad valorem taxes on real property and tangible personal property,[1] assessment of property for tax purposes,[2] and exemptions to these taxes.[3]

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[4] The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[5] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[6] and it provides for specified assessment limitations, property classifications, and exemptions.[7] After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[8]

Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.[9] Property owners who lease, lend, or rent property must also file. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value.[10]

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes.[11] Under Florida law, "just valuation" is synonymous with "fair market value," and is defined as what a willing buyer would pay a willing seller for property in an arm's length transaction.[12]

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[1] FLA. CONST. art. VII, s. 9.
[2] FLA. CONST. art. VII, s. 4.
[3] FLA. CONST. art. VII, s. 3.
[4] FLA. CONST. art. VII, s. 1(a).
[5] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[6] FLA. CONST. art. VII, s. 4.
[7] FLA. CONST. art. VII, ss. 3, 4, and 6.
[8] s. 196.031, F.S.
[9] s. 193.062, F.S.; *see also* FLA. DEP'T OF REVENUE, *Tangible Personal Property*, http://dor.myflorida.com/dor/property/tpp/ (last visited Mar. 17, 2017).
[10] FLA. CONST. article VII, s. 3.
[11] The constitutional provisions in art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[12] s. 193.011, F.S. *See also, 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).

Ad Valorem Tax Treatment of Renewable Energy Source Devices

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property. For example, 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.[13]

The Legislature has implemented this prohibition, in part, through s. 193.624, F.S. The statute prohibits a property appraiser who is determining the assessed value of real property used for *residential* purposes from considering an increase in the just value of the property attributable to the installation of a renewable energy source device.[14] The statute applies to a renewable energy source device installed on or after January 1, 2013, on new and existing residential real property.[15] The statute defines the term "renewable energy source device" to mean any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:[16]

- 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, such equipment does not include conventional backup systems of any type;
- Windmills and wind turbines;
- Wind-driven generators;
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy; and
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

In 2016, the Legislature passed CS/HJR 193, a joint resolution proposing an amendment to the Florida Constitution that would authorize the Legislature, by general law, to establish certain tax treatment for solar and renewable energy source devices installed on *all* real property, not just residential property. Specifically, the amendment authorized the Legislature to:

- Prohibit a property appraiser from considering the installation of such devices in determining the assessed value of *all* real property for the purpose of ad valorem taxation; and
- Exempt from ad valorem taxation the assessed value of such devices subject to tangible personal property tax.

Pursuant to CS/HB 195, the amendment was placed on the ballot on August 30, 2016, as "Amendment 4."[17] Amendment 4 was approved by 73% of the voters in the election and, by its terms, will take effect on January 1, 2018, and expire on December 31, 2037.[18]

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[13] FLA. CONST. art. VII, s. 4(i).
[14] s. 193.624(2), F.S.
[15] s. 193.624(3), F.S.
[16] s. 193.624(1), F.S.
[17] FLA DEP'T OF STATE, *Constitutional Amendments*, http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=93 (last visited March 17, 2017).
[18] *Id.*

Consumer Protection Laws

Several distinct consumer protection laws are codified in Parts I through VII of Chapter 501, F.S. Part II of Chapter 501, F.S., establishes protections related to retail installment contracts.

Property Assessed Clean Energy Programs

In 2010, the Legislature authorized local governments, by ordinance or resolution, to create programs to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements.[19] Under these programs, commonly referred to as "Property Assessed Clean Energy" or "PACE" programs, a property owner within the jurisdiction of a local government that offers a PACE program may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.

A "qualifying improvement" includes the following:

- Any energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other form of energy on the property;
- A renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses hydrogen, solar, geothermal energy, bioenergy, or wind energy; and
- Certain wind resistance improvements.[20]

The qualifying improvement must be affixed to a building or facility that is part of the property and, if the work requires a license, it must be performed by a properly certified or registered contractor.[21]

Local governments choose whether or not to support a PACE program.[22] Accordingly, a property owner may only participate in a PACE program if the property is located within the boundaries of a local government that offers a PACE program.[23] If the local government supports a PACE program, the local government often contracts with a PACE "provider" (or providers) to administer the program. The provider may be a third party entity or an entity that consists of multiple local governments created by interlocal agreement.[24]

Once a provider is in place, the local government's role in the program is often to serve as a conduit issuer of bonds. Local governments pay for the qualifying improvements up front and are paid back by placing a non-ad valorem assessment on the improved property's tax bill. To finance the program, the local government issues bonds that are sold to the PACE provider (or an investor in the PACE provider), and the bond proceeds are used to finance the PACE improvement. The bonds are in turn repaid ("backed") by a voluntary special assessment that the local government levies on the property receiving the PACE improvement.[25] The assessment attaches to the property and takes priority to any mortgage on the property.[26]

Prior to entering into a financing agreement, a local government is required to "reasonably determine" that:

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[19] Ch. 2010-139, s. 1, Laws of Fla.
[20] s. 163.08(2)(b), F.S.
[21] s. 163.08(10)-(11), F.S.
[22] s. 163.08(3)-(4), F.S.
[23] *Id.*
[24] s. 163.08(5)-(6), F.S.
[25] s. 163.08(4), (8), (14), F.S.
[26] *See* s. 163.08(8), F.S.

- All property taxes and any other assessments levied on the property tax bill are paid and have not been delinquent for the past three years;
- There are no involuntary liens on the property;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the past three years; and
- The property owner is current on all mortgage debt on the property.

Without the consent of the holder or loan servicers of any mortgage secured by the property, the total amount of any non-ad valorem assessment under a PACE program may not exceed 20 percent of the just value of the property as determined by the county property appraiser. However, if an energy audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment, the 20 percent limit does not apply.[27]

At least 30 days before entering into a financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. A provision in any agreement between a mortgagee or other lienholder and a property owner which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a PACE financing agreement is not enforceable. However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.[28]

Effect of Proposed Changes

Ad Valorem Tax Treatment of Renewable Energy Source Devices

The bill implements the provisions of Amendment 4.

First, the bill expands s. 193.624, F.S., to prohibit a property appraiser from considering the installation of renewable energy source devices in determining the assessed value of *any* real property for the purpose of ad valorem taxation. The bill retains the definition of "renewable energy source device" from existing law. For devices installed on residential property, the bill retains existing law which states that the prohibition applies to devices installed on or after January 1, 2013. For devices installed on all other real property, the bill provides for prospective application to devices installed on or after January 1, 2018.

Second, the bill exempts from ad valorem taxation the assessed value of renewable energy source devices, as defined in s. 193.624, F.S., that are otherwise subject to tangible personal property tax.

Consistent with Amendment 4, the bill provides for expiration of both provisions on December 31, 2037.

Consumer Protection Laws related to Distributed Energy Generation Systems

The bill creates a new part of Chapter 520, F.S., (Part II) to govern the sale, finance, or lease of distributed energy generation systems.[29] Existing Part II of Chapter 520, F.S., related to retail installment contracts, is renumbered as Part III, and all subsequent parts of Chapter 520, F.S., are renumbered accordingly. The bill provides that the new Part II is supplemental to the renumbered Part III but shall control in the event of a conflict.

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[27] s. 163.08(12), F.S.

[28] s. 163.08(13), F.S.

[29] The bill defines "distributed energy generation system" as "a renewable energy source device, as defined in s. 193.624, that has a capacity, alone or in connection with other similar devices, of one kilowatt and that is primarily intended for on-site use." The bill provides that the term does not include an electric generator intended for occasional use.

The bill provides that a seller[30] who installs a distributed energy generation system must comply with applicable safety, performance, and reliability standards established by:

- The Public Service Commission (PSC).
- The electric utility, as defined in s. 366.02, F.S., in whose territory the distributed energy generation system will be installed.
- The National Electric Code.
- The National Electrical Safety Code.
- The Institute of Electrical and Electronics Engineers.
- UL.
- The Federal Energy Regulatory Commission.
- Local regulatory authorities.

A buyer[31] or lessee[32] who installs a distributed energy generation system and wishes to receive the benefit of an electric utility's net metering program must comply with the applicable interconnection tariffs and rules of the electric utility and any applicable interconnection rules and standards established by the PSC.

Further, the bill requires that each agreement[33] between a buyer or lessee and a seller that sells, finances, or leases a distributed energy generation system must:

- Be in at least 12-point type.[34]
- Be signed and dated by the person buying, financing, or leasing the system and the seller.
- Contain a provision granting the buyer or lessee the right to rescind the agreement for a period of not less than 3 business days after the agreement is signed by the buyer or lessee and before the system is installed.
- Provide a description of the system, including the make and model of its major components and the expected amount of energy it will produce based on average weather conditions. In lieu of providing this information, a seller may provide a warranty or guarantee of the energy production output that the system will provide over its life.
- Separately set forth the following items, if applicable:
    - The total cost to be paid by the buyer or lessee, including any interest, installation fees, document preparation fees, service fees, or other fees.
    - If the system is being financed or leased, the total number of payments, the payment frequency, the amount of the payment expressed in dollars, the total amount of interest expressed in dollars, and the payment due dates.
- Disclose and specifically identify all tax credits, including electric utility rate credits, rebates, or state or federal tax incentives for which the buyer or lessee may be eligible and that are used by the seller in calculating the purchase price of the system. This disclosure must identify any conditions or requirements to obtain such credits, rebates, or tax incentives.

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[30] The bill defines a "seller" as "a person regularly engaged in, and whose business substantially consists of, selling, financing, or leasing goods, including distributed energy generation systems, to buyers or lessees." For purposes of the disclosure requirements established in this section of the bill, the term includes a local government that finances the purchase of a qualified improvement under a PACE program.

[31] The bill defines a "buyer" as "a person that enters into an agreement to buy, lease, or finance a distributed energy generation system from a seller."

[32] The bill defines a "lessee" as "a person that enters into an agreement to lease or rent a distributed energy generation system."

[33] The bill defines an "agreement" as "a contract executed between a buyer or lessee and a seller that leases, finances, or sells a distributed energy generation system," including retail installment contracts. The bill defines a "retail installment contract" as "an agreement executed in this state between a buyer and a seller in which the title to, or a lien upon, a distributed energy source device is retained or taken by the seller from the buyer as security, in whole or in part, for the buyer's obligations to make specified payments over time."

[34] For reference, the body of this bill analysis is prepared in 11-point type.

- Identify any tax obligations that the buyer or lessee may be required to pay in buying, financing, or leasing the system, including:
    - Any taxes that may be assessed against the buyer or lessee.
    - Any obligation of the buyer or lessee to transfer tax credits, rebates, or other state or federal tax incentives that may apply to the system to any other person or to the seller.
- Disclose whether the seller will insure the system against damage or loss and, if applicable, disclose the circumstances under which the seller will not insure the system against damage or loss.
- Disclose whether the warranty or maintenance obligations of the system may be sold or transferred to a third party.
- Provide a full and accurate summary of the total costs under the agreement for maintaining and operating the distributed energy generation system over the life of the system, including financing, maintenance, and construction costs related to the system.
- If the agreement contains an estimate of the buyer's or lessee's future utility charges based on projected utility rates after the installation of a system:
    - Provide an estimate of the buyer's or lessee's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a 5-percent annual decrease to at least a 5-percent annual increase from current utility costs.
    - Specify whether, and the extent to which, the estimate is based upon the buyer's or lessee's participation in a utility net metering program and identify any conditions or requirements for participation in the program.

In addition, the bill provides that each lease agreement must identify the party responsible for the balance of the lease payments if the property on which the system is located is sold or if the lessee dies before the end of the lease.

The bill also provides that each agreement must contain the following disclosures, which must be separately acknowledged and signed by the buyer or lessee:

- A statement identifying whether the agreement contains any restrictions on the buyer's or lessee's ability to modify or transfer ownership of a distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party. If the modification or transfer of the system is subject to review or approval by a third party, the agreement must identify the name, address, and telephone number of the person responsible for approving the modification or transfer and must specify the method for updating any change in the person's information.
- A provision disclosing whether the agreement contains any restrictions on the ability of the buyer or lessee to modify or transfer ownership of real property to which a distributed energy generation system is or will be affixed, including whether a modification or transfer is subject to review or approval by a third party. The disclosure must identify the name, address, and telephone number of the person responsible for approving any modification or transfer and must specify the method for updating any change in the person's information.
- A statement that reads: "UTILITY RATES AND UTILITY RATE STRUCTURES MAY CHANGE AND THESE CHANGES CANNOT BE ACCURATELY PREDICTED. THEREFORE, PROJECTED SAVINGS FROM YOUR DISTRIBUTED ENERGY GENERATION SYSTEM MAY CHANGE. IN ADDITION, TAX CREDITS, REBATES, AND OTHER STATE OR FEDERAL INCENTIVES ARE SUBJECT TO CHANGE OR TERMINATION BY FEDERAL OR STATE EXECUTIVE, LEGISLATIVE, OR REGULATORY ACTION."

The bill provides that a person who is obligated to maintain or warrant a distributed energy generation system under an agreement may not transfer the maintenance or warranty obligations of the system until the person discloses the name, address, and telephone number of the person who will be assuming the maintenance or warranty of the system. The bill also provides that marketing materials provided to a buyer or lessee that estimate future utility charges based on projected utility rates that may apply after installation of a system must also provide an estimate of the buyer's or lessee's

estimated utility charges for the same period assuming a rate increase of at least 5 percent and assuming a rate decrease of at least 5 percent.

The bill states that these statements and disclosure requirements do not apply to a person or company, acting through its officers, employees, or agents, that markets, sells, solicits, negotiates, or enters into an agreement for a distributed energy generation system as part of a transaction involving the sale or transfer of real property to which the system is affixed. Thus, these provisions do not appear to apply to home sellers, including real estate brokers and agents.

The bill provides penalties for the willful and intentional violation of any of these provisions by a seller. Under the bill, such violations are noncriminal violations punishable by a fine not to exceed the cost of the distributed energy generation system involved in the transaction. In the event of such a violation, an owner[35] may recover, or may set off or counterclaim in any action against the owner by the violator, an amount equal to any finance charges and fees charged to the owner under the agreement, plus attorney fees and costs.

Property Assessed Clean Energy Programs

The bill requires that any financing agreement entered into between a local government and a property owner for the financing of a qualifying improvement under a PACE program must comply with the disclosure requirements described above for the sale, finance, or lease of a distributed energy generation system.

The bill amends various provisions of law to conform cross-references.

B. SECTION DIRECTORY:

Section 1. Amends s. 24.118, F.S., to conform a cross-reference.

Section 2. Amends s. 163.08, F.S., relating to authority for improvements to real property.

Section 3. Amends s. 193.624, F.S., relating to assessment of property.

Section 4. Amends s. 196.183, F.S., relating to exemption for tangible personal property.

Section 5. Amends s. 501.604, F.S., to conform cross-references.

Section 6. Creates a new Part II of ch. 520, F.S., relating to distributed energy generation system sales, and renumbers existing Parts II-VI of ch. 520, F.S.

Section 7. Amends s. 671.304, F.S., to conform cross-references.

Section 8. Provides for expiration of certain provisions on December 31, 2037, and provides terms upon which the text of such provisions may revert to that in existence in December 31, 2017.

Section 9. Provides an effective date of January 1, 2018.

[35] The bill does not define "owner." The term appears to refer either to the owner of a property to which a distributed energy generation system is affixed or to the owner of such a system.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The Revenue Estimating Conference estimates that the provisions of the bill which implement Amendment 4 will have no impact on state government revenues. The remaining provisions of the bill appear to have no impact on state government revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates that the provisions of the bill which implement Amendment 4 will have no impact on local government revenues in fiscal year (FY) 2017-18, an impact of -$44.2 million in FY 2018-19, and an impact of -$55.8 million in FY 2019-2020. The remaining provisions of the bill appear to have no impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill which implement Amendment 4 may result in lower ad valorem taxes and lower overall energy costs for taxpayers who make qualifying improvements to real property. These provisions may stimulate sales and leases of renewable energy source devices and encourage the development of renewable energy device leasing businesses. These provisions will reduce taxes for electric utilities that install renewable energy devices to produce electricity.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Article VII, section 18, of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing ad valorem tax bases compared to that which would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

For purposes of establishing new consumer protections related to the sale, finance, or lease of distributed energy generation systems, the bill defines such systems as renewable energy source devices with a capacity, alone or in connection with other similar devices, of one kilowatt. There are likely several renewable energy source devices that do not have a capacity of exactly one kilowatt or that could be designed to have a capacity other than one kilowatt. Thus, the bill may apply to a limited range of distributed energy generation systems.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Energy & Utilities Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Replaces references to "public utilities" with references to "electric utilities," which include all retail electric utilities in Florida.
- Clarifies that a buyer or lessee of a distributed energy generation system is not required to interconnect with an electric utility unless the buyer or lessee wishes to receive the benefit of a utility net metering program.
- Provides that, in an agreement which contains an estimate of a buyer's or lessee's future utility charges based on projected utility rates after the installation of a distributed generation system, the agreement must specify whether, and the extent to which, the estimate is based upon the buyer's or lessee's participation in a utility net metering program and must identify any conditions or requirements for participation in the program.
- Removes the requirement for a seller to disclose the assessed value of a distributed energy generation system.

This analysis addresses the committee substitute.

A bill to be entitled

An act relating to renewable energy source devices; amending s. 24.118, F.S.; correcting a cross-reference; amending s. 163.08, F.S.; articulating the 2016 constitutional amendment prohibiting consideration of solar or renewable energy source devices in determining assessed values of real properties; requiring local government financing agreements related to certain qualifying improvements to contain certain disclosures; amending s. 193.624, F.S.; revising the definition of the term "renewable energy source device"; excluding the value of a renewable energy source device installed on or after a specified date from the assessed value of real property; amending s. 196.183, F.S.; exempting the assessed value of certain renewable energy source devices from ad valorem taxation; amending s. 501.604, F.S.; correcting a cross-reference; creating part II of chapter 520, F.S., entitled "Distributed Energy Generation System Sales"; providing definitions; providing applicability relating to, and specifying the disclosures required of, certain agreements to sell, finance, or lease distributed energy generation systems; providing exemptions; requiring sellers, buyers, and lessees of such systems to comply with

specified standards, tariffs, and rules; providing penalties; amending s. 671.304, F.S.; correcting cross-references; providing for the future expiration and reversion of specified statutory text; providing an effective date.

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

Section 1. Subsection (1) of section 24.118, Florida Statutes, is amended to read:

24.118 Other prohibited acts; penalties.—

(1) UNLAWFUL EXTENSIONS OF CREDIT.—Any retailer who extends credit or lends money to a person for the purchase of a lottery ticket is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. This subsection shall not be construed to prohibit the purchase of a lottery ticket through the use of a credit or charge card or other instrument issued by a bank, savings association, credit union, or charge card company or by a retailer pursuant to <u>part III</u> ~~part II~~ of chapter 520, provided that any such purchase from a retailer shall be in addition to the purchase of goods and services other than lottery tickets having a cost of no less than $20.

Section 2. Paragraph (a) of subsection (1) and subsection (4) of section 163.08, Florida Statutes, are amended to read:

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real

property. In the 2016 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of the installation of a solar or renewable energy source device on any property in the determination of the assessed value of the underlying real property.

(4)(a) Subject to local government ordinance or resolution, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. Any financing agreement entered into between a local government and a property owner for the financing of a qualifying improvement must comply with the disclosure requirements in s. 520.23 that apply to distributed energy generation systems.

(b) A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment

authorized by this section, if the property appraiser, tax collector, and local government agree.

Section 3. Section 193.624, Florida Statutes, is amended to read:

193.624 Assessment of renewable energy source devices ~~residential property~~.—

(1) As used in this section, the term "renewable energy source device" means any of the following equipment or devices that collect, transmit, store, or use ~~collects, transmits, stores, or uses~~ solar energy, wind energy, or energy derived from geothermal deposits:

(a) Solar energy collectors, photovoltaic modules, and inverters.

(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, such equipment does not include conventional backup systems of any type.

(j) Windmills and wind turbines.

(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.

(2) In determining the assessed value of real property ~~used for residential purposes~~, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.

(3) This section applies to ~~the installation of~~ a renewable energy source device installed on or after January 1, 2013, on ~~to~~ new and existing residential real property. This section applies to a renewable energy source device installed on or after January 1, 2018, on all other real property.

Section 4. Subsection (1) of section 196.183, Florida Statutes, is amended to read:

196.183 Exemption for tangible personal property.—

(1)(a) Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value.

(b) In addition, the assessed value of a renewable energy source device, as defined in s. 193.624, that is otherwise subject to tangible personal property tax is exempt from ad

valorem taxation.

A single return must be filed for each site in the county where the owner of tangible personal property transacts business. Owners of freestanding property placed at multiple sites, other than sites where the owner transacts business, must file a single return, including all such property located in the county. Freestanding property placed at multiple sites includes vending and amusement machines, LP/propane tanks, utility and cable company property, billboards, leased equipment, and similar property that is not customarily located in the offices, stores, or plants of the owner, but is placed throughout the county. Railroads, private carriers, and other companies assessed pursuant to s. 193.085 shall be allowed one $25,000 exemption for each county to which the value of their property is allocated. The $25,000 exemption for freestanding property placed at multiple locations and for centrally assessed property shall be allocated to each taxing authority based on the proportion of just value of such property located in the taxing authority; however, the amount of the exemption allocated to each taxing authority may not change following the extension of the tax roll pursuant to s. 193.122.

Section 5. Subsection (13) of section 501.604, Florida Statutes, is amended to read:

501.604 Exemptions.—The provisions of this part, except

ss. 501.608 and 501.616(6) and (7), do not apply to:

(13) A commercial telephone seller licensed pursuant to chapter 516 or part III ~~part II~~ of chapter 520. For purposes of this exemption, the seller must solicit to sell a consumer good or service within the scope of his or her license and the completed transaction must be subject to the provisions of chapter 516 or part III ~~part II~~ of chapter 520.

Section 6. Parts II, III, IV, and V of chapter 520, Florida Statutes, are renumbered as Parts III, IV, V, and VI, respectively, and a new Part II, consisting of sections 520.20, 520.21, 520.22, 520.23, and 520.24, is created to read:

PART II

DISTRIBUTED ENERGY GENERATION SYSTEM SALES

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

(1) "Agreement" means a contract executed between a buyer or lessee and a seller that leases, finances, or sells a distributed energy generation system. For purposes of this part, the term includes retail installment contracts.

(2) "Buyer" means a person that enters into an agreement to buy, lease, or finance a distributed energy generation system from a seller.

(3) "Distributed energy generation system" means a renewable energy source device, as defined in s. 193.624, that has a capacity, alone or in connection with other similar devices, of one kilowatt and that is primarily intended for on-

site use. The term does not include an electric generator intended for occasional use.

(4) "Lessee" means a person that enters into an agreement to lease or rent a distributed energy generation system.

(5) "Retail installment contract" means an agreement executed in this state between a buyer and a seller in which the title to, or a lien upon, a distributed energy source device is retained or taken by the seller from the buyer as security, in whole or in part, for the buyer's obligations to make specified payments over time.

(6) "Seller" means a person regularly engaged in, and whose business substantially consists of, selling, financing, or leasing goods, including distributed energy generation systems, to buyers or lessees. For purposes of the disclosure requirements of s. 520.23, the term includes a local government that finances the purchase of a qualified improvement under s. 163.08(4).

520.21 Applicability.—This part applies to agreements to sell, finance, or lease a distributed energy generation system and is supplemental to other provisions contained in part III related to retail installment contracts. If any provision related to retail installment contract requirements for a distributed energy generation system under this part conflicts with any other provision related to retail installment contracts, this part controls.

520.22 Required safety standards.—

(1) A seller who installs a distributed energy generation system must comply with applicable safety, performance, and reliability standards established by:

(a) The Florida Public Service Commission.

(b) The electric utility, as defined in s. 366.02, in whose service territory the distributed energy generation system will be installed.

(c) The National Electric Code.

(d) The National Electrical Safety Code.

(e) The Institute of Electrical and Electronics Engineers.

(f) UL.

(g) The Federal Energy Regulatory Commission.

(h) Local regulatory authorities.

(2) A buyer or lessee who installs a distributed energy generation system and wishes to receive the benefit of an electric utility's net metering program must comply with the applicable interconnection tariffs and rules of the electric utility and any applicable interconnection rules and standards established by the Florida Public Service Commission.

520.23 Disclosures required.—

(1) Each agreement between a buyer or lessee and a seller that sells, finances, or leases a distributed energy generation system must be in at least 12-point type and must:

(a) Be signed and dated by the person buying, financing,

or leasing the distributed energy generation system and the seller.

(b) Contain a provision granting the buyer or lessee the right to rescind the agreement for a period of not less than 3 business days after the agreement is signed by the buyer or lessee and before the distributed energy generation system is installed.

(c) Provide a description of the distributed energy generation system, including the make and model of its major components and the expected amount of energy it will produce based on average weather conditions. In lieu of providing this information, a seller may provide a warranty or guarantee of the energy production output that the distributed energy generation system will provide over the life of the distributed energy generation system.

(d) Separately set forth the following items, if applicable:

1. The total cost to be paid by the buyer or lessee, including any interest, installation fees, document preparation fees, service fees, or other fees.

2. If the distributed energy generation system is being financed or leased, the total number of payments, the payment frequency, the amount of the payment expressed in dollars, the total amount of interest expressed in dollars, and the payment due dates.

(e) Disclose and specifically identify all tax credits, including electric utility rate credits, rebates, or state or federal tax incentives for which the buyer or lessee may be eligible and that are used by the seller in calculating the purchase price of the distributed energy generation system. The disclosure must identify any conditions or requirements to obtain such credits, rebates, or tax incentives.

(f) Identify any tax obligations that the buyer or lessee may be required to pay in buying, financing, or leasing the distributed energy generation system, including:

1. Any taxes that may be assessed against the buyer or lessee.

2. Any obligation of the buyer or lessee to transfer tax credits, rebates, or other state or federal tax incentives that may apply to the system to any other person or to the seller.

(g) Disclose whether the seller will insure the distributed energy generation system against damage or loss and, if applicable, circumstances under which the seller will not insure the system against damage or loss.

(h) Disclose whether the warranty or maintenance obligations of the distributed energy generation system may be sold or transferred to a third party.

(i) In each lease agreement, an identification of the party responsible for the balance of the lease payments if the property on which the distributed energy generation system is

located is sold or if the lessee dies before the end of the lease agreement.

(j) Provide a full and accurate summary of the total costs under the agreement for maintaining and operating the distributed energy generation system over the life of the system, including financing, maintenance, and construction costs related to the system.

(k) If the agreement contains an estimate of the buyer's or lessee's future utility charges based on projected utility rates after the installation of a distributed energy generation system:

1. Provide an estimate of the buyer's or lessee's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a 5-percent annual decrease to at least a 5-percent annual increase from current utility costs. The comparative estimates must be calculated using the same utility rates.

2. Specify whether, and the extent to which, the estimate is based on the buyer's or lessee's participation in a utility net metering program and identify the conditions or requirements for participation in the program.

(2) In addition to the requirements in subsection (1), each agreement shall include the following disclosures, separately acknowledged and signed by the buyer or lessee:

(a) A statement identifying whether the agreement contains

any restrictions on the buyer's or lessee's ability to modify or transfer ownership of a distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party. If the modification or transfer of the distributed energy generation system is subject to review or approval by a third party, the agreement must identify the name, address, and telephone number of the person responsible for approving the modification or transfer and must specify the method for updating any change in the person's information.

(b) A provision disclosing whether the agreement contains any restrictions on the ability of the buyer or lessee to modify or transfer ownership of real property to which a distributed energy generation system is or will be affixed, including whether a modification or transfer is subject to review or approval by a third party. The disclosure must identify the name, address, and telephone number of the person responsible for approving any modification or transfer and must specify the method for updating any change in the person's information.

(c) A statement that contains the following language:

UTILITY RATES AND UTILITY RATE STRUCTURES MAY CHANGE AND THESE CHANGES CANNOT BE ACCURATELY PREDICTED. THEREFORE, PROJECTED SAVINGS FROM YOUR DISTRIBUTED ENERGY GENERATION SYSTEM MAY CHANGE. IN ADDITION, TAX CREDITS, REBATES, AND OTHER STATE OR

FEDERAL INCENTIVES ARE SUBJECT TO CHANGE OR TERMINATION BY FEDERAL OR STATE EXECUTIVE, LEGISLATIVE, OR REGULATORY ACTION.

(3) A person who is obligated to maintain or warrant a distributed energy generation system under an agreement may not transfer the maintenance or warranty obligations of that system until the person discloses the name, address, and telephone number of the person who will be assuming the maintenance or warranty of that system.

(4) Marketing materials that are provided to a buyer or lessee that estimate a buyer's or lessee's future utility charges based on projected utility rates that might apply after installation of a distributed energy generation system must also provide an estimate of the buyer's or lessee's estimated utility charges for the same period assuming a rate increase of at least 5 percent and assuming a rate decrease of at least 5 percent.

(5) This section does not apply to a person or company, acting through its officers, employees, or agents, that markets, sells, solicits, negotiates, or enters into an agreement for a distributed energy generation system as part of a transaction involving the sale or transfer of real property to which the system is affixed.

520.24 Penalties.—

(1) Any seller who willfully and intentionally violates any provision of this part commits a noncriminal violation, as

defined in s. 775.08(3), punishable by a fine not to exceed the cost of the distributed energy generation system.

(2) In the case of a willful and intentional violation of this part, the owner may recover from the person committing such violation, or may set off or counterclaim in any action against the owner by such person, an amount equal to any finance charges and fees charged to the owner under the agreement, plus attorney fees and costs incurred by the owner to assert his or her rights under this part.

Section 7. Paragraph (d) of subsection (2) of section 671.304, Florida Statutes, is amended to read:

671.304 Laws not repealed; precedence where code provisions in conflict with other laws; certain statutory remedies retained.—

(2) The following laws and parts of laws are specifically not repealed and shall take precedence over any provisions of this code which may be inconsistent or in conflict therewith:

(d) Chapter 520—Retail installment sales (Part I, Motor Vehicle Sales Finance Act; Part III ~~Part II~~, Retail Installment Sales Act; Part IV ~~Part III~~, Installment Sales Finance Act).

Section 8. The amendments made by this act to s. 193.624(2) and (3) and s. 196.183(1), Florida Statutes, expire on December 31, 2037, and the text of those subsections shall revert to that in existence on December 31, 2017, except that any amendments to such text enacted other than by this act shall

be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of the text which expire pursuant to this section.

Section 9. This act shall take effect January 1, 2018.