The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Tuesday, October 4, 2011
TIME: 8:30 —10:30 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Hill, Richter, Ring, Storms, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 148** Bullard	Community Redevelopment; Expanding the definition of the term "blighted area" to include land previously used as a military facility, etc. CA 10/04/2011 MS BC	
2	**SB 170** Altman (Identical H 103)	Transfer of Tax Liability; Revising provisions relating to a tax liability when a person transfers or quits a business; providing that the transfer of the assets of a business or stock of goods of a business under certain circumstances is considered a transfer of the business; requiring the Department of Revenue to provide certain notification to a business before a circuit court temporarily enjoins business activity by that business; providing that transferees of the business are liable for certain taxes unless specified conditions are met; requiring the department to conduct certain audits relating to the tax liability of transferors and transferees of a business within a specified time period; requiring certain notification by the Department of Revenue to a transferee before a circuit court enjoins business activity in an action brought by the Department of Legal Affairs seeking an injunction, etc. CA 10/04/2011 CM BC	
3	**A proposed committee substitute** for the following bill (SB 182) is expected to be considered:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	SB 182 Garcia	Miami-Dade County Lake Belt Mitigation Plan; Providing for the redirection of funds for seepage mitigation projects; requiring the proceeds of the water treatment plant upgrade fee to be transferred by the Department of Revenue to the South Florida Water Management District and to be deposited into the Lake Belt Mitigation Trust Fund; providing criterion when the transfer is not required; clarifying the uses for the proceeds from the water treatment plant upgrade fee, etc. CA 10/04/2011 EP BC	
4	Consideration of proposed committee bill (Interim Project 2012-115 - Insignificant Fiscal Impact):		
	SPB 7002	Laws Requiring Counties or Municipalities to Spend Funds/Limiting Ability to Raise Revenue or Receive State Tax Revenue; Defining the term “insignificant fiscal impact”; requiring that certain criteria be used in determining whether a law has an insignificant fiscal impact on counties and municipalities, etc.	
5	Presentation by Jack Gaskins, Jr., Special Districts Information Program, Department of Economic Opportunity.		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 148
INTRODUCER:	Senator Bullard
SUBJECT:	Community Redevelopment
DATE:	September 13, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Roam	Yeatman	CA	**Pre-meeting**
2.			MS	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill expands the definition of "blighted area" for purposes of the Community Redevelopment Act to include land previously used as a military facility which is undeveloped and which the Federal government has declared surplus within the preceding 20 years.

This bill substantially amends s. 163.340(8) of the Florida Statutes.

II. Present Situation:

Community Redevelopment Act

Part III of chapter 163, F.S., the Community Redevelopment Act of 1969, authorizes a county or municipality to create community redevelopment areas (CRAs) as a means of redeveloping slums or blighted areas. CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing (TIF). TIF uses the incremental increase in ad valorem tax revenue within a designated redevelopment area to finance redevelopment projects within that area.

As property tax values in the redevelopment area rise above an established base, tax increment revenues are calculated by applying the current millage rate to that increase in value and depositing that amount into a trust fund. This occurs annually as the taxing authority must annually appropriate an amount representing the calculated increment revenues to the redevelopment trust fund. These revenues are used to back bonds issued to finance redevelopment projects. School district revenues are not subject to the tax increment mechanism.

Section 163.355, F.S., prohibits a county or municipality from exercising the powers conferred by the Act until after the governing body has adopted a resolution finding that:

> (1) One or more slum or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, exist in such county or municipality; and
>
> (2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas, including, if appropriate, the development of housing which residents of low or moderate income, including the elderly, can afford, is necessary in the interest of the public health, safety, morals, or welfare of the residents of such county or municipality.

Community Redevelopment Plans and Initiation

Section 163.360(1), F.S., provides:

> Community redevelopment in a community redevelopment area shall not be planned or initiated unless the governing body has, by resolution, determined such area to be a slum area, a blighted area, or an area in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, or a combination thereof, and designated such area as appropriate for community redevelopment.

Section 163.340(8), F.S., defines "blighted area" as follows:

> An area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:
>
> (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
> (b) 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;
> (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
> (d) Unsanitary or unsafe conditions;
> (e) Deterioration of site or other improvements;
> (f) Inadequate and outdated building density patterns;
> (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
> (h) Tax or special assessment delinquency exceeding the fair value of the land;
> (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
> (j) Incidence of crime in the area higher than in the remainder of the county or municipality;

(k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
(l) 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;
(m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
(n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.

However, the term "blighted area" also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2)(a) agree, either by inter-local agreement or agreements with the agency or by resolution, that the area is blighted.

Disposal of Military Real Property

The U. S. Department of Defense (DOD) provides for the disposal of real property "for which there is no foreseeable military requirement, either in peacetime or for mobilization."[1] Disposal of such property is subject to a number of statutory and department regulations which consider factors such as the:

- Presence of any hazardous material contamination;
- Valuation of property assets;
- McKinney-Vento Homeless Assistance Act;
- National Historic Preservation Act;
- Real property mineral rights; and
- Presence of floodplains and wetlands.[2]

Once the DOD has classified land as excess to their needs, the land is transferred to the Office of Real Property Disposal within the federal General Services Administration (GSA). With general federal surplus lands, GSA has a clear process wherein they first offer the land to other federal agencies. If no other federal agency identifies a need, the land is then labeled "surplus" (rather than "excess") and available for transfer to state and local governments and certain nonprofit agencies. Uses which benefit the homeless must be given priority, and then the land may be transferred at a discount of up to 100% if it is used for other specific types of public uses which include education, corrections, emergency management, airports, self-help housing, parks and recreation, law enforcement, wildlife conservation, public health, historic monuments, port facilities, and highways. If the public use is not among those public benefits, the GSA may negotiate a sale at appraised fair market value to a state or local government for another public purpose.[3]

[1] Department of Defense Instruction 4165.72.
[2] Id.
[3] General Services Administration Public Buildings Service, *Acquiring Federal Real Estate for Public Uses* (Sep. 2007), https://extportal.pbs.gsa.gov/RedinetDocs/cm/rcdocs/Acquiring%20Federal%20Real%20Estate%20for%20Public%20Uses1222988606483.pdf (last visited Mar. 08, 2011).

The Base Realignment and Closure Act (BRAC) of 1990 provides for an exception to this process in which the Department of Defense (DOD) supersedes the normal surplus process. BRAC is a process by which military facilities are recommended for realignment or closure and approved by the President; the BRAC process has been undertaken in 1988, 1991, 1993, 1995, and 2005. Surplus disposal authority is delegated to the DOD when BRAC properties are involved. The Secretary of Defense is authorized to work with Local Redevelopment Authorities (LRAs) in determining what to do with surplus BRAC properties. This includes the possibility of transferring BRAC property to an LRA at reduced or no cost for the purpose of economic development, which is not an acceptable public purpose under the general federal surplus process. The Secretary of Defense is responsible for determining what constitutes an LRA and what cost, if any, will be associated with the transfer.[4]

There are four Florida cities which have been affected by BRAC closures, all resulting from the 1993 BRAC process. Homestead Air Force Base was realigned in 1992; Pensacola's Naval Aviation Depot and Fleet and Industrial Supply Center were closed in 1996; Jacksonville's Cecil Field was closed in 1999; and Orlando's Naval Training Center and Naval Hospital were closed in 1999.[5]

III. Effect of Proposed Changes:

Section 1 of the bill expands the current definition of the term "blighted area" provided for in s. 163.340(8), F.S., to include land previously used as a military facility which is undeveloped and which the Federal Government has declared surplus within the preceding 20 years.

Section 2 of the bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[4] Congressional Research Service, *Base Realignment and Closure (BRAC): Transfer and Disposal of Military Property* (Mar. 31, 2009), http://www.fas.org/sgp/crs/natsec/R40476.pdf (last visited Mar. 14, 2011).
[5] United States Department of Defense, *Major Base Closure Summary*, http://www.defense.gov/faq/pis/17.html (last visited Mar. 14, 2011).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Community redevelopment agencies will be able to develop a community redevelopment plan utilizing the expanded definition of "blighted area" to include land previously used as a military facility which is undeveloped and which the federal government has declared surplus within the preceding 20 years. As a result, these areas may receive TIF revenues under the Community Redevelopment Act, and property values in the area may increase as a result of any improvements using TIF. Redevelopment of these areas can contribute to increased economic interest in a region and an overall improved economic condition.

Counties and municipalities are required by s. 163.345, F.S., to prioritize private enterprise in the rehabilitation and redevelopment of blighted areas. The increase in ad valorem taxation could be used to finance private development projects within this new category of "blighted area." Overall property values in the surrounding area may also increase as a result, affecting current homeowners' resale values and ad valorem taxation.

C. Government Sector Impact:

A municipality or county would be able to develop a community redevelopment plan utilizing the expanded definition of "blighted area" to include land previously used as a military facility which is undeveloped and which the federal government has declared surplus within the preceding 20 years. This could result in a portion of the ad valorem taxes from those lands being used for TIF. County and municipal governments would then not directly receive the ad valorem tax revenue on the increase in property value within the CRA, but could see an increase in other aspects of the local economy.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Miami-Dade County has expressed interest in developing the area around Metrozoo as a recreation destination.[6] The family entertainment center, as considered in 2004, was projected to bring 9,000 permanent jobs to the area.[7] Coast Guard property adjacent to current Metrozoo property could be part of this development, and tax increment financing through a CRA could

[6] Oscar Pedro Musibay, *Plans for Entertainment District Near Miami Metrozoo Progress*, South Florida Business Journal, Sep. 21, 2009, *available at* http://www.bizjournals.com/southflorida/stories/2009/09/21/story6.html (last visited Mar. 14, 2011).
[7] Susan Stabley, *Zoo Entertainment Park Planned*, South Florida Business Journal, Dec. 27, 2004, *available at* http://www.bizjournals.com/southflorida/stories/2004/12/27/story1.html (last visited Mar. 14, 2011).

help finance such improvements. The Richmond Coast Guard Base, which is currently open, is reportedly considering a deal where the county would help them attain a new location while selling the land to private developers who would then build this new development.[8]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[8] Conversation with Kevin Asher, Special Project Manager, Miami-Dade Parks and Recreation Department (Sept. 19, 2011).

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 170
INTRODUCER:	Senator Altman
SUBJECT:	Transfer of Tax Liability
DATE:	September 27, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Pre-meeting**
2.			CM	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill consolidates and revises statutes governing the transfer of tax liabilities when businesses or business assets are transferred to successor owners. In general, a person who buys a business (transferee) assumes the tax liabilities of the seller (transferor), unless an exception applies. Current law provides three different statutes governing tax liability related to the transfer of a business to new ownership. This bill repeals two specific tax statutes (sales and communications)[1] and amends the statute relating to taxes owed.[2]

The bill revises the requirements for a transferee to take possession of a business without assuming any outstanding tax liabilities of a transferor. Under current law, if the transferor provides a certificate from the Department of Revenue showing that no taxes are owed, and the department conducts an audit finding no liability for taxes, the transferee can take possession without assuming any tax liability. This bill allows the transferee to take the business without assuming the transferor's liabilities under either of the following two circumstances:

- The transferee receives a certificate of compliance from the transferor showing that the transferor has not received notice of audit, has filed all required tax returns, has paid the tax due from those returns, and there are no insiders in common between the transferor and the transferee; or
- The Department of Revenue conducts an audit, at the request of the transferee or transferor, and finds that the transferor is not liable for any taxes.

[1] Sections 212.10 and 202.31, F.S., respectively.
[2] Section 213.758, F.S.

The bill amends sections 213.758 and 213.053, Florida Statutes, and repeals sections 212.10 and 202.31, Florida Statutes.

II. Present Situation:

Transfer of Tax Liability

Three sections of the Florida Statutes outline what is required with regard to tax liability when a business is transferred or sold.

- Section 212.10, F.S., governs sales and use tax liability when a business is quit or sold.[3]
- In 2000, the Legislature enacted s. 202.31, F.S., to govern the transfer of communications services tax liability related to communications services businesses.[4]
- In 2010, the Legislature enacted s. 213.758, F.S., as a comprehensive statute to govern the transfer of tax liability for all taxes administered by the Department of Revenue (DOR or department), excluding the corporate income tax.[5]

Section 213.758, F.S.: Tax Liability when Quitting, Selling or Acquiring a Business

A taxpayer who quits a business without selling, assigning, or transferring the business must make a final return and full payment for any taxes due, excluding corporate income tax, within 15 days of quitting the business.[6] Similarly, a taxpayer who transfers a business must make a final return and full payment for any taxes due, excluding corporate income tax, within 15 days of the date of transfer.[7]

The transferee, or group of transferees, of more than 50 percent of a business is liable for the taxes due by the transferor, *unless*:

- the transferor provides the transferee a receipt or certificate from DOR showing that the transferor is not liable for taxes, *and*
- DOR conducts an audit and finds that the transferor is not liable for taxes.[8]

The maximum liability for a transferee is the greater of the fair market value of the business or the purchase price paid. The transferee may withhold a portion of the consideration to pay the taxes to pay DOR within 30 days of the date of transfer. A transferee becomes liable for outstanding taxes only for voluntary transfers. [9]

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[3] This statute has been in Florida law in some form since 1949. Section 10, ch. 26319, 1949.
[4] Sections 23, 58, ch. 2000-260, L.O.F. See also s. 38, ch. 2001-140, L.O.F.
[5] Chapter 2010-166, L.O.F. For a list of all taxes administered by DOR, see s. 213.05, F.S. Section 220.829, F.S., governs the transfer of tax liability for corporate income taxes.
[6] Section 213.758(2), F.S., refers to taxes, interest, penalties, surcharges, or fees pursuant to ch. 443, F.S., or described in s. 72.011(1), F.S., excluding the corporate income tax.
[7] Section 213.758(3), F.S., refers to taxes, interest, or penalties levied under ch. 443, F.S., or specified in s. 213.05, F.S., excluding the corporate income tax.
[8] Section 213.758(4)(a), F.S. DOR is permitted to charge a fee to perform these audits.
[9] Section 213.758(1)(a), F.S., defines an "involuntary transfer" as a transfer due to the foreclosure by a non-insider, that results from eminent domain or condemnation actions, pursuant to a bankruptcy proceeding, or to satisfy a debt to a financial institution.

Taxpayers who quit a business without paying all taxes due are prohibited from engaging in any business in Florida until the tax liability is paid. Transferees acquiring a business who fail to pay all taxes due face the same ban. In each of the previous cases, DOR may request the Department of Legal Affairs to seek an injunction to prevent further business activity until all taxes due have been paid, and the injunction may be granted without notice.

Sections 202.31 and 212.10, F.S.: Tax Liability for Communications Services and Sales and Use

Sections 202.31 and 212.10, F.S., govern the transfer of tax liability for communications services tax and sales and use tax, respectively. The procedures pursuant to those statutes are substantially similar to those in s. 213.758, F.S. However, ss. 202.31 and 212.10, F.S., do provide for misdemeanor criminal penalties for violations of the tax transfer provisions.[10]

III. Effect of Proposed Changes:

Section 1 amends s. 213.758, F.S., to clarify, consolidate and revise the statutes that deal with the transfer of tax liabilities.

Definitions
The bill creates definitions for the terms "business," "financial institution," "insider," "stock of goods," and "tax" for the purposes of s. 213.758, F.S., consistent with current administration. The bill defines "business" to require that a discrete division of a larger business be aggregated with all other divisions. The statutory definition of "insider" is expanded to include a manager of, a managing member of, or a person who controls a limited liability company or a relative thereof as defined in s. 726.102(11), F.S.

The bill also clarifies that a "transfer" includes the transfer of the assets of the business and that a transfer of more than 50 percent of a business, the assets of the business, or the stock of goods of the business is a transfer of the business.

Transfer of Tax Liabilities
This bill allows the transferee to take possession of a business without assuming the transferor's outstanding tax liabilities under either of the following two circumstances:

- the transferee receives a certificate of compliance from the transferor showing that the transferor has not received notice of audit, has filed all required tax returns, and has paid the tax due from those returns, and there are no insiders in common between the transferor and the transferee; or
- the Department of Revenue conducts an audit and finds that the transferor is not liable for any taxes. Either the transferee or transferor may request that the department conduct an audit, and, if requested, the department must complete the audit within 90 days if the audit is not a certified audit done pursuant to s. 213.285, F.S.

[10] Sections 202.31(5) and 212.10(5), F.S.

In addition, the bill provides that s. 213.758, F.S., does *not* impose liability on a transferee of a business, assets of a business or stock of goods of a business when:

- the transfer is an involuntary transfer; or
- the transferee is not an insider; and
    - The asset transferred is a 1- to 4-family residential real property, real property that has not been improved with any building, or owner-occupied commercial real property; and
    - No other assets of the business are included in the transfer.

The bill amends s. 213.758(6), F.S., to clarify that the maximum tax liability of the transferee is the fair market value or purchase price paid for the business, whichever is greater, net of any unassumed liens or liabilities to non-insiders.

Injunctions
Under the bill, a circuit court shall issue a temporary injunction to enjoin further business activity by the taxpayer on the grounds of failure to pay taxes if DOR has provided the taxpayer with 20 days' written notice. Under the current law and the bill, the Department of Legal Affairs is authorized to seek an injunction from a circuit court at the request of DOR. Current law does not require notice before a court issues an injunction.

For transferees, the bill permits the Department of Legal Affairs, at the request of DOR, to seek an injunction from a circuit court to enjoin further business activity by the transferee on the grounds of failure to pay taxes if:

- the assessment against the transferee is final and either the time for contesting the assessment under s. 72.011, F.S., has passed or such a contest was filed and resulted in a final and nonappealable judgment sustaining the assessment; and
- the DOR has provided at least 20 days' written notice of intention to seek an injunction.

Current law does not require a 20-day notice before a court issues an injunction against a transferee.

Section 2 amends s. 213.053, F.S., to correct a cross-reference.

Section 3 repeals s. 202.31, F.S. which relates to the transfer of communications services tax liability. With the creation of s. 213.758, F.S., in 2010 and the changes proposed in **Section 1** of the bill, this statute is no longer necessary. The repeal eliminates the misdemeanor penalty provisions for violations of this statute.

Section 4 repeals s. 212.10, F.S., which relates to the transfer of sales and use tax liability. With the creation of s. 213.758, F.S., in 2010 and the changes proposed in **Section 1** of the bill, this statute is no longer necessary. The repeal eliminates the misdemeanor penalty provisions for violations of this statute.

Section 5 provides for an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from enacting, amending, or repealing any general law if the anticipated effect is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10 (which is $1.88 million for FY 2011-12), are exempt.

The Revenue Estimating Conference has not reviewed this legislation for purposes of the 2012 legislative session. However, the Revenue Estimating Conference reviewed similar legislation in 2011 and estimated that the 2011 bill would have had an indeterminate negative fiscal impact.[11] It is unknown at this time if the bill would meet the exemption provided in subsection (d); however, the bill may be exempt from the mandates prohibition if the Legislature were to pass the bill by two-thirds of the membership of each chamber.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed this legislation for purposes of the 2012 legislative session. However, the Revenue Estimating Conference reviewed similar legislation in 2011 and estimated that the 2011 bill would have had an indeterminate negative fiscal impact.[12]

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[11] Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference for 2011 Regular Session – Transfer of Tax Liability* (March 7, 2011) *available at* http://edr.state.fl.us/content/conferences/revenueimpact/archives/2011/pdf/page128.pdf (last visited September 27, 2011)
[12] *Id.*

B. Private Sector Impact:

The bill clarifies the conditions under which a transferee may be liable for unpaid tax of a transferor.

C. Government Sector Impact:

According to the DOR, during the last five years, the department has averaged 20 audits regarding the transfer of tax liabilities annually.[13] Because the bill will limit the requirement for parties to a business transfer to request the Department to determine the transferor's liability by performing an audit, the number of audits performed by DOR is expected to decrease.[14]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[13] Department of Revenue, *Senate Bill 170 Bill Analysis* (Sep. 16, 2011) (on file with the Senate Committee on Community Affairs).
[14] *Id.*

152314

CA.CA.00502

Proposed Committee Substitute by the Committee on Community Affairs

A bill to be entitled

An act relating to the Miami-Dade County Lake Belt Mitigation Plan; amending s. 373.41492, F.S.; deleting references to a report by the Miami-Dade County Lake Belt Plan Implementation Committee; providing for the redirection of funds for seepage mitigation projects; requiring the proceeds of the water treatment plant upgrade fee to be transferred by the Department of Revenue to the South Florida Water Management District and to be deposited into the Lake Belt Mitigation Trust Fund; providing criterion when the transfer is not required; providing for the proceeds of the mitigation fee to be used to conduct mitigation activities that are approved by the Miami-Dade County Lake Belt Mitigation Committee; clarifying the authorized uses for the proceeds from the water treatment plant upgrade fee; providing an effective date.

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

Section 1. Section 1. Subsections (1), (2), (3), and (6) of section 373.41492, Florida Statutes, are amended to read:

373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.—

(1) The Legislature finds that the impact of mining within

the rock mining supported and allowable areas of the Miami-Dade County Lake Belt Plan adopted by s. 373.4149(1) can best be offset by the implementation of a comprehensive mitigation plan ~~as recommended in the 1998 Progress Report to the Florida Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee~~. The Lake Belt Mitigation Plan consists of those provisions contained in subsections (2)-(9). The per-ton mitigation fee assessed on limestone sold from the Miami-Dade County Lake Belt Area and sections 10, 11, 13, 14, Township 52 South, Range 39 East, and sections 24, 25, 35, and 36, Township 53 South, Range 39 East, shall be used for acquiring environmentally sensitive lands and for restoration, maintenance, and other environmental purposes. It is the intent of the Legislature that the per-ton mitigation fee ~~shall~~ not be a revenue source for purposes other than enumerated in this section ~~herein~~. Further, the Legislature finds that the public benefit of a sustainable supply of limestone construction materials for public and private projects requires a coordinated approach to permitting activities on wetlands within Miami-Dade County in order to provide the certainty necessary to encourage substantial and continued investment in the limestone processing plant and equipment required to efficiently extract the limestone resource. It is the intent of the Legislature that the Lake Belt Mitigation Plan satisfy all local, state, and federal requirements for mining activity within the rock mining supported and allowable areas.

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt Plan, effective October 1, 1999, a mitigation fee is imposed on

each ton of limerock and sand extracted by any person who engages in the business of extracting limerock or sand from within the Miami-Dade County Lake Belt Area and the east one-half of sections 24 and 25 and all of sections 35 and 36, Township 53 South, Range 39 East. The mitigation fee is imposed for each ton of limerock and sand sold from within the properties where the fee applies in raw, processed, or manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. The mitigation fee imposed by this subsection for each ton of limerock and sand sold shall be ~~12 cents per ton beginning January 1, 2007; 18 cents per ton beginning January 1, 2008;~~ 24 cents per ton ~~beginning January 1, 2009~~; and 45 cents per ton beginning close of business December 31, 2011. To pay for seepage mitigation projects, including groundwater and surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee, and to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County, a water treatment plant upgrade fee is imposed within the same Lake Belt Area subject to the mitigation fee and upon the same kind of mined limerock and sand subject to the mitigation fee. The water treatment plant upgrade fee imposed by this subsection for each ton of limerock and sand sold shall be 15 cents per ton ~~beginning on January 1, 2007~~, and the collection of this fee shall cease once the total amount of proceeds collected for this fee reaches the amount of the actual moneys necessary to design and construct the water treatment plant upgrade, as determined in an open, public solicitation process. Any limerock or sand

that is used within the mine from which the limerock or sand is extracted is exempt from the fees. The amount of the mitigation fee and the water treatment plant upgrade fee imposed under this section must be stated separately on the invoice provided to the purchaser of the limerock or sand product from the limerock or sand miner, or its subsidiary or affiliate, for which the fee or fees apply. The limerock or sand miner, or its subsidiary or affiliate, who sells the limerock or sand product shall collect the mitigation fee and the water treatment plant upgrade fee and forward the proceeds of the fees to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs. The proceeds of a fee imposed by this section include all funds collected and received by the Department of Revenue relating to the fee, including interest and penalties on a delinquent fee. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fee.

(3) The mitigation fee and the water treatment plant upgrade fee imposed by this section must be reported to the Department of Revenue. Payment of the mitigation and the water treatment plant upgrade fees must be accompanied by a form prescribed by the Department of Revenue.

(a) The proceeds of the mitigation fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund.

(b) Beginning July 1, 2012, the proceeds of the water treatment plant upgrade fee, less administrative costs, must be

transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund until:

1. A total of $20 million from the proceeds of the water treatment plant upgrade fee, less administrative costs, is deposited into the Lake Belt Mitigation Trust Fund; or

2. The quarterly pathogen sampling conducted as a condition of the permits issued by the department for rock mining activities in the Miami-Dade County Lake Belt Area demonstrates that the water in any quarry lake in the vicinity of the Northwest Wellfield would be classified as being in Bin 2 or higher as defined in the Environmental Protection Agency's Long Term 2 Enhanced Surface Water Treatment Rule.

(c) Upon the earliest occurrence of the criterion under subparagraph (b)1. or subparagraph (b)2., the proceeds of the water treatment plant upgrade fee, less administrative costs, must be transferred by the Department of Revenue to a trust fund established by Miami-Dade County, for the sole purpose authorized by paragraph (6)(a). ~~As used in this section, the term "proceeds of the fee" means all funds collected and received by the Department of Revenue under this section, including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fees.~~

(6)(a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of


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mining activities and ~~must~~ be ~~used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by~~ approved by the Miami-Dade County Lake Belt Mitigation ~~Plan Implementation~~ Committee ~~and adopted under s. 373.4149~~. Such mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands in the Everglades watershed, the purchase of mitigation credit from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area or the Everglades watershed. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, the Internal Improvement Trust Fund, the South Florida Water Management District, and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land under s. 373.4149 for mitigation due to rock mining. The proceeds of the water treatment plant upgrade fee deposited into the Lake Belt Mitigation Trust Fund shall be used solely to pay for seepage mitigation projects, including groundwater or surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee. The proceeds of the water treatment plant upgrade fee which are transmitted to a trust fund established by Miami-Dade County shall be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County. As used in this section, the terms "upgrade a water treatment plant" or "treatment plant upgrade" mean ~~means~~ those works necessary to treat or filter a surface water source or

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supply or both.

(b) Expenditures of the mitigation fee must be approved by an interagency committee consisting of representatives from each of the following: the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Fish and Wildlife Conservation Commission. In addition, the limerock mining industry shall select a representative to serve as a nonvoting member of the interagency committee. At the discretion of the committee, additional members may be added to represent federal regulatory, environmental, and fish and wildlife agencies.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 182
INTRODUCER:	Senator Garcia and others
SUBJECT:	Miami-Dade County Lake Belt Mitigation Plan
DATE:	September 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			EP	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill shifts from Miami-Dade County, for a limited time, existing revenue of the Lake Belt water treatment upgrade fee to the South Florida Water Management District to fund a seepage control project.

This bill substantially amends section 373.41492 of the Florida Statutes.

II. Present Situation:

Mitigation for Mining Activities Within the Miami-Dade County Lake Belt

The Miami-Dade County Lake Belt Area encompasses 77.5 square miles of environmentally sensitive land at the western edge of the Miami-Dade County urban area. The wetlands and lakes of the Lake Belt offer the potential to buffer the Everglades from the potentially adverse impacts of urban development.[1] The Northwest Wellfield, located at the eastern edge of the Lake Belt, is the largest drinking water wellfield in Florida and supplies approximately 40 percent of the potable water for Miami-Dade County.

Construction aggregates provide the basic materials needed for concrete, asphalt, and road base. Aggregate materials are located in various natural deposits around the state. Geologic conditions and other issues affect decisions in mine planning. These issues include the quality of the rock,

[1] SOUTH FLORIDA WATER MANAGEMENT DISTRICT, MIAMI DADE, http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center (last visited Sept. 23, 2011).

thickness of overburden, water table levels, and sinkhole conditions. Rock mined from the Lake Belt supplies one half of the limestone used annually in Florida. Approximately 50 percent of the land within the Lake Belt Area is owned by the mining industry, 25 percent is owned by government agencies, and the remaining 25 percent is owned by non-mining private landowners.[2]

The Florida Legislature recognized the importance of the Lake Belt Area to the citizens of Florida and mandated that a plan be prepared to address a number of concerns critical to the State in s. 373.4139, F.S. The Legislature established the Lake Belt Committee and assigned it the task of developing a long-term plan for the Lake Belt Area. Through a cooperative process involving government agencies, mining interests, non-mining interests, and environmental groups, the Lake Belt Committee completed the Miami-Dade County Lake Belt Plan.

Limestone operations in the Lake Belt are guided by the Lake Belt Mitigation Plan. Under the plan, the Lake Belt limestone companies pay a special mitigation fee to acquire, restore and preserve environmentally sensitive lands and fund other important environmental projects. The fee is collected from the mining industry by the Department of Revenue and transferred to the District's Lake Belt Mitigation Trust Fund. The Lake Belt limestone companies also pay a water treatment plant upgrade fee of 15 cents per ton. According to the Department of Environmental Protection, this fee was established to address the concern that the expansion of mining may cause the wellfield to be designated as "under the influence of surface water," which would mandate upgraded treatment. To date, this designation has not been made by the Department, and water quality sampling and studies conducted indicate that such a designation is unlikely.[3] Limestone operations in the Lake Belt require water quality certification from the state and a dredge and fill permit from the U.S. Army Corps of Engineers.

In 2008, Miami-Dade County retained an engineering consultant to plan and design the needed water treatment facilities. The consultant determined that previous estimates for such facilities failed to account for upgrades that would be needed to existing water plant facilities such that constructing the needed facilities would not be practical at the existing water plant site. The minimum design and construction cost for facilities that will meet the current surface water treatment costs is approximately $350 million. Future bond funding, in addition to the rock mining fees, is identified in the County's capital plan for this project. To date Miami-Dade County has received approximately $17.6 million in rock mining fees. About $11.2 million has been spent on planning and design, and about $6.3 million remains, of which $3 million is committed to the current design contract.[4]

Two seepage control projects are identified in the recent Environmental Impact Statement for mining in the Lake Belt. One is required by the recent state and federal mining permits and the other, while not required, is an important wetland enhancement project for Everglades National Park.

[2] *Id.*
[3] Department of Environmental Protection, Draft Bill Analysis for SB 514 (2011), on record with the Senate Committee on Community Affairs.
[4] Email from Miami Dade Water and Sewer Department, on file with the Senate Committee on Community Affairs.

A new one-mile long bridge is under construction that will allow a broad flow section into the Park in an area that has not seen comparable sheet flow since the trail was constructed almost 100 years ago. Unless the groundwater seepage from the Park is controlled, releasing additional flow to the Park will not be possible, and the benefits of the bridge will not be realized.

The Environmental Protection Agency's (EPA) Long Term 2 Enhanced Surface Water Treatment Rule

EPA has developed the Long Term 2 Enhanced Surface Water Treatment Rule (LT2 rule) to improve drinking water quality and provide additional protection from disease-causing microorganisms and contaminants that can form during drinking water treatment. The purpose of the LT2 rule is to reduce disease incidence associated with *Cryptosporidium* and other pathogenic microorganisms in drinking water.[5] The rule applies to all public water systems that use surface water or ground water that is under the direct influence of surface water. The rule bolsters existing regulations:

- Targeting additional *Cryptosporidium* treatment requirements to higher risk systems;
- Requiring provisions to reduce risks from uncovered finished water storage facilities; and
- Providing provisions to ensure that systems maintain microbial protection as they take steps to reduce the formation of disinfection byproducts.

This combination of steps, together with the existing regulations, is designed to provide protection from microbial pathogens while simultaneously minimizing health risks to the population from disinfection byproducts. "Bin classifications" indicate the concentration of pathogens in the water sample.[6]

III. Effect of Proposed Changes:

Section 1 amends s. 373.41492, F.S., to allow the mitigation fees for limerock mining to be applied to seepage mitigation projects, including groundwater and surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee. This would be an explicit authorization to use the funds for more than just upgrading water treatment plants.

The bill defines the phrase "proceeds of the fee," consistent with existing law, to mean all funds collected and received by the Department of Revenue under s. 373.41492, F.S., including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues and may equal only those administrative costs reasonably attributable to the fees.

Beginning July 1, 2012, the proceeds of the water treatment plant upgrade fee will be deposited into the Lake Belt Mitigation Trust Fund until:

[5] U.S. ENVIRONMENTAL PROTECTION AGENCY, WATER: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE, http://water.epa.gov/lawsregs/rulesregs/sdwa/lt2/basicinformation.cfm (last visited Sept. 26, 2011).

[6] 40 CFR § 141.710; U.S. ENVIRONMENTAL PROTECTION AGENCY, SOURCE WATER MONITORING GUIDANCE MANUAL FOR PUBLIC WATER SYSTEMS, 49 (Feb. 2006) *available at* http://www.epa.gov/ogwdw/disinfection/lt2/pdfs/guide_lt2_swmonitoringguidance.pdf.

- $20 million is placed in the trust fund, or
- pathogen sampling demonstrates that the water in any quarry lake in the vicinity of the Northwest Wellfield would be classified as being in Bin 2 or higher.

Once either of these qualifications is triggered, the proceeds would again be directed toward wetland mitigation.

Proceeds from the Lake Belt Mitigation Trust Fund shall be used to pay for seepage mitigation projects, including groundwater or surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee.

Proceeds from a trust fund established by Miami-Dade County shall be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield.

Section 2 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See government sector impact section.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill temporarily diverts rock mining fees away from drinking water treatment facilities. Even though the diversion is for a limited time, it may adversely impact Miami-Dade County's ability to design and construct the additional treatment facilities needed to protect the drinking water supply in the area. Miami-Dade is concerned that if contamination occurs and no filtration is available, the drinking water for one million people will be unsafe to drink for at least 18 months and up to three years while the facility is constructed. This fee is 15 cents per ton of extracted limerock and sand that is

subject to the fee. The South Florida WMD will receive the proceeds of the fee to deposit into the appropriate trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	PCS/SB 182 (152314)
INTRODUCER:	Community Affairs Committee
SUBJECT:	Miami-Dade County Lake Belt Mitigation Plan
DATE:	September 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			EP	
3.			BC	
4.				
5.				
6.				

I. Summary:

This proposed committee substitute (PCS) shifts from Miami-Dade County, for a limited time, existing revenue of the Lake Belt water treatment upgrade fee to the South Florida Water Management District to fund a seepage control project.

This PCS substantially amends section 373.41492 of the Florida Statutes.

II. Present Situation:

Mitigation for Mining Activities Within the Miami-Dade County Lake Belt

The Miami-Dade County Lake Belt Area encompasses 77.5 square miles of environmentally sensitive land at the western edge of the Miami-Dade County urban area. The wetlands and lakes of the Lake Belt offer the potential to buffer the Everglades from the potentially adverse impacts of urban development.[1] The Northwest Wellfield, located at the eastern edge of the Lake Belt, is the largest drinking water wellfield in Florida and supplies approximately 40 percent of the potable water for Miami-Dade County.

Construction aggregates provide the basic materials needed for concrete, asphalt, and road base. Aggregate materials are located in various natural deposits around the state. Geologic conditions and other issues affect decisions in mine planning. These issues include the quality of the rock,

[1] SOUTH FLORIDA WATER MANAGEMENT DISTRICT, MIAMI DADE, http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center (last visited Sept. 23, 2011).

thickness of overburden, water table levels, and sinkhole conditions. Rock mined from the Lake Belt supplies one half of the limestone used annually in Florida. Approximately 50 percent of the land within the Lake Belt Area is owned by the mining industry, 25 percent is owned by government agencies, and the remaining 25 percent is owned by non-mining private landowners.[2]

The Florida Legislature recognized the importance of the Lake Belt Area to the citizens of Florida and mandated that a plan be prepared to address a number of concerns critical to the State in s. 373.4139, F.S. The Legislature established the Lake Belt Committee and assigned it the task of developing a long-term plan for the Lake Belt Area. Through a cooperative process involving government agencies, mining interests, non-mining interests, and environmental groups, the Lake Belt Committee completed the Miami-Dade County Lake Belt Plan.

Limestone operations in the Lake Belt are guided by the Lake Belt Mitigation Plan. Under the plan, the Lake Belt limestone companies pay a special mitigation fee to acquire, restore and preserve environmentally sensitive lands and fund other important environmental projects. The fee is collected from the mining industry by the Department of Revenue and transferred to the District's Lake Belt Mitigation Trust Fund. The Lake Belt limestone companies also pay a water treatment plant upgrade fee of 15 cents per ton. According to the Department of Environmental Protection, this fee was established to address the concern that the expansion of mining may cause the wellfield to be designated as "under the influence of surface water," which would mandate upgraded treatment. To date, this designation has not been made by the Department, and water quality sampling and studies conducted indicate that such a designation is unlikely.[3] Limestone operations in the Lake Belt require water quality certification from the state and a dredge and fill permit from the U.S. Army Corps of Engineers.

In 2008, Miami-Dade County retained an engineering consultant to plan and design the needed water treatment facilities. The consultant determined that previous estimates for such facilities failed to account for upgrades that would be needed to existing water plant facilities such that constructing the needed facilities would not be practical at the existing water plant site. The minimum design and construction cost for facilities that will meet the current surface water treatment costs is approximately $350 million. Future bond funding, in addition to the rock mining fees, is identified in the County's capital plan for this project. To date Miami-Dade County has received approximately $17.6 million in rock mining fees. About $11.2 million has been spent on planning and design, and about $6.3 million remains, of which $3 million is committed to the current design contract.[4]

Two seepage control projects are identified in the recent Environmental Impact Statement for mining in the Lake Belt. One is required by the recent state and federal mining permits and the other, while not required, is an important wetland enhancement project for Everglades National Park.

[2] *Id.*
[3] Department of Environmental Protection, Draft Bill Analysis for SB 514 (2011), on record with the Senate Committee on Community Affairs.
[4] Email from Miami Dade Water and Sewer Department, on file with the Senate Committee on Community Affairs.

A new one-mile long bridge is under construction that will allow a broad flow section into the Park in an area that has not seen comparable sheet flow since the trail was constructed almost 100 years ago. Unless the groundwater seepage from the Park is controlled, releasing additional flow to the Park will not be possible, and the benefits of the bridge will not be realized.

The Environmental Protection Agency's (EPA) Long Term 2 Enhanced Surface Water Treatment Rule

EPA has developed the Long Term 2 Enhanced Surface Water Treatment Rule (LT2 rule) to improve drinking water quality and provide additional protection from disease-causing microorganisms and contaminants that can form during drinking water treatment. The purpose of the LT2 rule is to reduce disease incidence associated with *Cryptosporidium* and other pathogenic microorganisms in drinking water.[5] The rule applies to all public water systems that use surface water or ground water that is under the direct influence of surface water. The rule bolsters existing regulations:

- Targeting additional *Cryptosporidium* treatment requirements to higher risk systems;
- Requiring provisions to reduce risks from uncovered finished water storage facilities; and
- Providing provisions to ensure that systems maintain microbial protection as they take steps to reduce the formation of disinfection byproducts.

This combination of steps, together with the existing regulations, is designed to provide protection from microbial pathogens while simultaneously minimizing health risks to the population from disinfection byproducts. "Bin classifications" indicate the concentration of pathogens in the water sample.[6]

III. Effect of Proposed Changes:

Section 1 amends s. 373.41492, F.S., to allow the mitigation fees for limerock mining to be applied to seepage mitigation projects, including groundwater and surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee. This would be an explicit authorization to use the funds for more than just upgrading water treatment plants.

The PCS clarifies existing law that proceeds of the fee means all funds collected and received by the Department of Revenue under s. 373.41492, F.S., including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues and may equal only those administrative costs reasonably attributable to the fees.

Beginning July 1, 2012, the proceeds of the water treatment plant upgrade fee will be deposited into the Lake Belt Mitigation Trust Fund until:

- $20 million is placed in the trust fund, or

[5] U.S. ENVIRONMENTAL PROTECTION AGENCY, WATER: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE, http://water.epa.gov/lawsregs/rulesregs/sdwa/lt2/basicinformation.cfm (last visited Sept. 26, 2011).
[6] 40 CFR § 141.710; U.S. ENVIRONMENTAL PROTECTION AGENCY, SOURCE WATER MONITORING GUIDANCE MANUAL FOR PUBLIC WATER SYSTEMS, 49 (Feb. 2006) *available at* http://www.epa.gov/ogwdw/disinfection/lt2/pdfs/guide_lt2_swmonitoringguidance.pdf.

- pathogen sampling demonstrates that the water in any quarry lake in the vicinity of the Northwest Wellfield would be classified as being in Bin 2 or higher.

Once either of these qualifications is triggered, the proceeds would again be directed toward wetland mitigation. The PCS changes the allowed uses of the mitigation fee to require approval by the Miami-Dade County Lake Belt Mitigation Committee rather than simply requiring them to be used in a manner consistent with the recommendations submitted to the Legislature under s. 337.4149, F.S. The PCS allows modifications of the hydrology in the Everglades watershed in addition to the Miami-Dade Lake Belt Area.

Proceeds from the Lake Belt Mitigation Trust Fund shall be used to pay for seepage mitigation projects, including groundwater or surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee.

Proceeds from a trust fund established by Miami-Dade County shall be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield.

Section 2 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See government sector impact section.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The PCS temporarily diverts rock mining fees away from drinking water treatment facilities. Even though the diversion is for a limited time, it may adversely impact Miami-Dade County's ability to design and construct the additional treatment facilities needed to protect the drinking water supply in the area. Miami-Dade is concerned that if

contamination occurs and no filtration is available, the drinking water for one million people will be unsafe to drink for at least 18 months and up to three years while the facility is constructed. This fee is 15 cents per ton of extracted limerock and sand that is subject to the fee. The South Florida WMD will receive the proceeds of the fee to deposit into the appropriate trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

PCS (152314) by the Community Affairs Committee:
The PCS is largely the same as the original bill, except:

- The PCS changes the allowed uses of the mitigation fee to require approval by the Miami-Dade County Lake Belt Mitigation Committee rather than simply requiring them to be used in a manner consistent with the recommendations submitted to the Legislature under s. 337.4149, F.S.
- The PCS allows modifications of the hydrology in the Everglades watershed in addition to the Miami-Dade Lake Belt Area.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SPB 7002
INTRODUCER:	For consideration by the Community Affairs Committee
SUBJECT:	Laws Requiring Counties Municipalities to Spend Funds/Limiting Ability to Raise Revenue or Receive State Tax Revenue
DATE:	September 27, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman		**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill defines an "insignificant fiscal impact" for the purposes of Article VII, Section 18 of the Florida Constitution.

II. Present Situation:

This bill is the result of an interim report 2012-115, Insignificant Fiscal Impact. This report was designed to explain the exemption from the mandates provision of the Florida Constitution and present a possible clarification. The following is a discussion of the issues discussed in the report.

Article VII, Section 18 of the Florida Constitution (the "mandates" provision) restricts the state's ability to: (1) require local governments to spend money; (2) reduce local government authority to raise revenues; and (3) reduce local governments' share of state taxes. Sixteen state constitutions incorporate similar protections for local governments due to a concern that state-level mandates were resulting in dramatically inflated property taxes and placing local governments in significant financial distress.[1] The intent of the Florida mandates provision is to give local governments bargaining power on the subject of unfunded mandates.

[1] *See generally*, Joseph F. Zimmerman, *The State Mandate Problem*, STATE AND LOCAL GOV'T REV., 78-84 (Spring, 1987); FLORIDA ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, 1991 REPORT ON MANDATES AND MEASURES AFFECTING LOCAL GOVERNMENT FISCAL CAPACITY (Sept. 1991).

Article VII, Section 18, of the Florida Constitution

The mandate provision has two major components. First, it excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met; second, it prohibits the Legislature from enacting laws which reduce cities' and counties' revenue generating authority or percentage of state-shared revenues unless certain conditions are met. This provision applies only to general laws, as opposed to special laws, affecting cities and counties. It does not apply to other local governments such as special districts or school districts.

Insignificant Fiscal Impact - Legislative Guidance

The Florida Constitution contains a number of exemptions and exceptions from the prohibitions against mandates. The exemption that is the subject of this interim project is the exemption for laws having an "insignificant fiscal impact." The Florida Constitution does not define what constitutes an insignificant fiscal impact. However, joint Senate and House guidelines describe an insignificant fiscal impact in the following way:

> This exemption is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.
>
> For purposes of legislative application of Article VII, Section 18, the term "insignificant" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of $1.4 million or less is exempt.
>
> Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of $5 million statewide, but would generate $4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.[2]

Insignificant Fiscal Impact - Case Law

There has been very little case law addressing the issue of mandates. The First District Court of Appeals in *Lewis v. Leon County* struck down a law requiring local counties to fund a Regional Conflict Counsel.[3] However, the court at no point discussed the amount of the expenditure required by the act or the exemption for an insignificant fiscal impact. The court only noted that the law did require local governments to spend money and did not contain a finding of important state interest as required by the Florida Constitution.[4]

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[2] Senate President Margolis and Speaker of the House Wetherell, County and Municipality Mandates Analysis (1991).
[3] 15 So. 3d 777 (Fla. 1st DCA 2009).
[4] *Id.*

In 2009, in *City of Weston v. Crist,* a trial level court struck down a major growth management bill finding that the bill would require local governments to spend money and finding that the amount of money that would be spent would not be insignificant.[5] The decision was overturned on other grounds, and the statute was later rewritten. However, the court's discussion of what constitutes an insignificant fiscal impact did bring to the forefront the inherent ambiguity in that term and the possible need for legislative clarification.

The court decided that the law at issue violated the mandate provision of the Florida Constitution because certain local governments would be required to amend their comprehensive plans within two years. The court reasoned that an insignificant fiscal impact would be 10 cents per resident or $1.86 million dollars (thereby partially adopting the legislature's method of assessing an insignificant fiscal impact). The court decided that the cost of amending the comprehensive plan would be at least $15,000 per jurisdiction required to amend its comprehensive plan (the cost of comprehensive planning in actuality varies from jurisdiction to jurisdiction). The court determined that local governments would have to spend $3,690,000 to comply with the bill. This one-time cost, assessed over two years, falls just short of the court's threshold for a mandate. Therefore, it was evident that the court did not consider the fact that local governments had two years to adopt these mobility plans nor did the court consider any offsetting cost effects over the long term.[6] Under a standard that does not look at the annual cost, any cost, if considered over a long enough time period, would eventually trigger the 10 cents per capita number.

III. Effect of Proposed Changes:

The bill defines an insignificant fiscal impact as an annual amount equal to or less than 10 cents multiplied by the latest resident population estimate on April 1 by the Florida Demographic Estimating Conference for the applicable state fiscal year. In determining whether the fiscal impact of a law exceeds an insignificant fiscal impact, the average annual fiscal impact of the law, including any average annual revenues or savings that the law may create, must be taken into consideration.

Other Potential Implications:
Clarity in the law can assist the courts, the Legislature, and local governments determine whether a law is a mandate. This clarity may help prevent intergovernmental litigation, thereby saving taxpayer dollars.

Nevertheless, unlike the current legislative guidance documents, by placing this definition in statute, the Legislature will be precluding itself from arguing that larger fiscal impacts are insignificant.

[5] Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010) *rev'd on other grounds, Atwater v. City of Weston*, Case No. 1D10-5094 (Fla. 1st DCA 2011).
[6] *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill clarifies the meaning of insignificant fiscal impact for the purposes of the mandates provision of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FLORIDA DEPARTMENT of ECONOMIC OPPORTUNITY

Senate Committee on Community Affairs

Presented by: Jack Gaskins, Jr., Special District Information Program, Division of Community Development

Tuesday, October 4, 2011

Special District Basics

Special District Information Program

➢ Quick Summary:

- Administers the Uniform Special District Accountability Act
- Collects, disseminates, classifies, and distributes uniform special district information
- Does not create, approve, oversee, regulate, fund, or get involved in their policy issues
- Provides technical assistance
- Has limited enforcement authority

Introduction to Special Districts

➢ What are special districts?

- **Special districts are very similar to counties and municipalities:**
  - ❖ **Counties and municipalities are units of local general-purpose government operating in a limited geographical area.**
  - ❖ **Special districts are units of local special-purpose government operating in a limited geographical area.**
    - – **Limited, explicit authority – not implied authority - that is specified in its charter and / or the laws under which it operates.**
    - – **Governing board with policy-making powers (as opposed to an advisory function).**

Introduction to Special Districts

➢ Special districts are not:

- School Districts
- Community College Districts
- Municipal Service Taxing or Benefit Units (MSTU / MSBU)
- Seminole and Miccosukee Tribe Special Improvement Districts
- Boards providing electrical services that are political subdivisions of a municipality or part of a municipality

Introduction to Special Districts

➢ Generally:

- **The same accountability laws that apply to counties and municipalities also apply to special districts.**
- **The same accountability laws that apply to county and municipal governing board members also apply to special district governing board members.**
- **The oversight of special districts is very similar to the oversight of counties and municipalities.**
- **Counties, municipalities, and special districts are subject to enforcement provisions when they fail to comply with certain state financial reporting requirements.**

Introduction to Special Districts

- **For financial reporting and other purposes, special districts are classified as either:**
  - **Dependent**
  - **Independent**

Introduction to Special Districts

- **Dependent** special districts are under some control by a single county or municipality (one or more of the following):

  - **May have identical governing board members (but always a separate governing board)**
  - **May appoint all members to the special district's governing body**
  - **May remove any member at will during unexpired terms**
  - **May approve the special district's budget**
  - **May veto the special district's budget**

Introduction to Special Districts

- A special district that does not have any dependent characteristics is **independent.**
- Multi-county special districts are usually independent.

Introduction to Special Districts

- **Creating Special Districts:**
  - **Generally, the Florida Legislature creates independent special districts by special act.**
  - **Generally, counties and municipalities create dependent special districts by ordinance.**
- **Exceptions apply. For example, counties and / or municipalities can create independent:**
  - **Community Development Districts**
  - **County Health and Mental Health Care Districts**
  - **County Hospital Districts**
  - **County Children's Services Districts**

Introduction to Special Districts

➢Creation Methods

- **Local Ordinance (1,095)**
- **Special Act (346)**
- **General Law Authority (139)**
- **Rule of the Governor and Cabinet (53) – Community Development Districts larger than 1,000 acres**

Source: *Official List of Special Districts Online*, October 3, 2011

Introduction to Special Districts

➢ Dissolution / Merger Methods

- County / municipal ordinance to repeal or merge a special district created by county / municipal ordinance
- Special act to repeal or merge a special district created by special act
- Independent special district approved by referendum, then a referendum to dissolve / merge the district
- Independent special district with ad valorem authority, then same procedure required to grant that authority to dissolve or merge the district
- The dissolved special district's property and debt are transferred to the county or municipality in which the special district was located.

A "Snapshot" of Special Districts in Florida

- Every parcel in Florida is covered by at least one special district.
- Some of these special districts are very large and operate in multiple counties, such as the Water Management Districts.
- Other special districts serve a small neighborhood, helping residents maintain common areas using volunteer staff.
- Many special districts operate with very little funding (less than $3,000 a year), or no funding at all.

A "Snapshot" of Special Districts in Florida

- **Total Number: 1,633**

  - **Independent: 1,006**
  - **Dependent: 627**
  - **Single County: 1,563**
  - **Multicounty: 70**
  - **Total Active: 1,618**
  - **Total Inactive: 15**

Source: *Official List of Special Districts Online*, October 3, 2011

A "Snapshot" of Special Districts in Florida

- **Top five specialized functions (out of 70):**

1. **Community Development Districts: 578**
2. **Community Redevelopment Agencies: 204**
3. **Drainage and Water Control Districts: 86**
4. **Housing Authorities: 93**
5. **Fire Control and Rescue Districts: 67**

Source: *Official List of Special Districts Online*, October 3, 2011

A "Snapshot" of Special Districts in Florida

➢Governing Boards:

- **Elected (874)**
- **Appointed By a Single County or Single Municipality (246)**
- **Identical to a County or Municipality (242)**
- **Appointed (136)**
- **Governor Appoints (66)**
- **Appointed / Elected (41)**
- **Other / Combination (28)**

Source: ***Official List of Special Districts Online*****, October 3, 2011**

A "Snapshot" of Special Districts in Florida

➢ Revenue Sources:

- Non Ad Valorem (791)
- Ad Valorem (212)
- Tax Increment Financing (204)
- User Fees (171)
- Federal Government (84)
- Other (59)
- None (46)
- Not Specified (34)
- Sales and Leases (24)
- County (22)
- State (16)
- Grants (13)
- Investments (9)
- Bond Issuer Fees (7)
- Tolls (7)
- Donations (6)
- Agreement (5)
- Private Enterprise (4)
- Municipality (3)
- Sales Surtax (1)

Source: *Official List of Special Districts Online*, October 3, 2011

Why are special districts created?

- Special districts are created for the private and public sectors to finance, construct, operate, and maintain capital infrastructure, facilities, and services.

- Special districts often generate their own revenue to pay for projected growth (such as providing additional services, facilities, and infrastructure) without requiring other all taxpayers - who don't benefit from the special district's services - to pay.

Why are special districts created?

- Special districts can provide for a governing board of appointed or elected members who have the expertise to govern the special district's specialized function.

- Special districts allow municipal and county governing boards to focus on general-purpose government issues.

Why are special districts created?

- Special districts provide for a local special-purpose governmental agency with funding, employment, and missions separate from local general-purpose government.

- Special districts can provide services when growth and development issues transcend the boundaries, responsibilities, and authority of individual municipalities and counties (multi-jurisdictional / regional and multi-county districts).

Why are special districts created?

- Special districts can provide local governmental services - often in response to citizen demand - that a municipality or county is unable or unwilling to provide.

- Special districts provide opportunities for citizens to get involved in the governance of their community since it's possible for them to serve on the district's governing board and it's more convenient for citizens to attend governing board meetings, which are usually held near their homes.

Why are special districts created?

- Special districts protect property values by assuring property owners that their roads, water and sewer systems, and other essential facilities and services will continue to be maintained.

- Special districts save money for affected citizens by selling tax-exempt bonds, purchasing essential goods and services tax-free, and participating in state programs and initiatives, such as state-term contracting.

Why are special districts created?

- Special districts maintain the financial integrity of the special district by limiting its liability to civil lawsuits and providing state technical assistance and oversight in the event of a financial emergency.

- Special districts ensure accountability of public resources, since special districts and their governing boards members are held to the same high standards as municipalities and counties and their governing boards.

How are special districts held accountable?

- **Various statutes (about 40) as applicable. Examples:**
  - Drainage and Water Control: *Chapter 298, Florida Statutes*
  - Community Development Districts: *Chapter 190, Florida Statutes*
  - Fire Control and Rescue: *Chapter 191, Florida Statutes*
  - Port Facilities: *Chapter 315, Florida Statutes*
- **Creation document (charter) requirements:**
  - Purpose
  - Powers
  - Functions and duties
  - Boundaries
  - Revenue sources
  - Governing board membership, organization, and compensation

How are special districts held accountable?

- **The Uniform Special District Accountability Act (Chapter 189, F.S.) – minimum standards of accountability and conduct for all special districts.**
  - Financial reporting
  - Cooperation / coordination with state and local agencies
  - Regular public meeting schedule
  - Comply with Government-in-the-Sunshine / ethics laws
  - Creation, merger, inactive, and dissolution procedures
  - Charter requirements (purpose, powers, functions, etc.)
  - Adopt an annual budget; post on web site
  - Spend funds only as authorized by the adopted budget

How are special districts held accountable?

- **Provide for and file an Annual Financial Audit Report with the Florida Auditor General***
  - **Auditor selection committee**
  - **Prepared by an independent certified public accountant in accordance with the Rules of the Auditor General**
  - **Delivered to the special district's governing board**
  - **Filed with the Auditor General within 45 days, or 9 months after the fiscal year end, which ever comes first.**

***Threshold:** Revenues or combined expenditures and expenses exceed $100,000 or revenues or combined expenditures and expenses fall between $50,000 and $100,000 and the district has not had a financial audit for the previous two fiscal years.

How are special districts held accountable?

- **Prepare and file an Annual Financial Report**
  - **All special districts must report their revenues, expenditures, and long-term liabilities to the Department of Financial Services no later than 9 months after the fiscal year end. Online Reports:**
    - https://apps.fldfs.com/LocalGov/Reports

How are special districts held accountable?

- **Comply with other requirements - as applicable:**
  - Retirement system reporting to the Department of Management Services
  - Bond financing and surplus fund reporting to the State Board of Administration
  - Public facilities reporting to counties and municipalities (for local comprehensive planning purposes)
  - Budget / tax levy / financial information to counties / municipalities as requested
  - Records management reports to the Department of State

How are special districts held accountable?

- Truth-in-Millage Compliance Package Report to the Department of Revenue
- Board member ethics and financial disclosure documents to the Local Supervisor of Elections / Commission on Ethics
- Notification of a financial emergency condition to the Governor's Office (Chief Inspector General) and the Joint Legislative Auditing Committee
- Public Deposit Reports to the Department of Financial Services

The oversight of special districts

- Board members
- Citizens
- Ethics Commission investigates ethics complaints
- The Local State Attorney's Office investigates Government-in-the-Sunshine complaints
- Certified Public Accountants report suspected illegal activity to the special district's governing board or directly to the Florida Department of Law Enforcement

The oversight of special districts

- **Oversight Review Process - Counties and municipalities may review any special district within their boundaries to make recommendations to the Legislature.**

- **The Auditor General performs desk audits to make sure the audits comply with auditing standards, report financial emergency conditions, track findings, and may perform audits of any governmental entity in Florida, including special districts.**

- **The Joint Legislative Auditing Committee may investigate any matter within the scope of an audit conducted by the Auditor General, and use its powers of subpoena.**

The oversight of special districts

- **Counties and municipalities monitor their dependent special districts and can take action such as:**
  - **Removing / replacing district board members**
  - **Not approving the district's budget**
  - **Vetoing the district's budget**
  - **Amending the district's charter**
  - **Dissolving the district**

The oversight of special districts

- **Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act**
  - **The Governor's Office (Chief Inspector General) monitors special districts meeting a financial emergency condition and provides technical assistance to help the special district resolve the financial emergency.**

The oversight of special districts

➢ Noncompliance Status Reports

- **The Special District Information Program receives special district noncompliance status reports from five state agencies and any county or municipality that list those special districts that did not comply with statutory reporting requirements.**

The oversight of special districts

- **Example - Two very important financial reports:**

  1. **The Annual Financial Report (Department of Financial Services)**
  2. **The Annual Financial Audit Report (Auditor General)**

- **The Special District Information Program:**
  - **Receives noncompliance status report from the Auditor General and Department of Financial Services:**
    - Mails a certified technical assistance to help the special district come into compliance
    - Requires compliance within 60 days.

The **oversight** of special districts

Number of Special Districts in Noncompliance Receiving Technical Assistance Letters							
Report	**04/05**	**05/06**	**06/07**	**07/08**	**08/09**	**09/10**	**10/11**
Annual Financial Report	89	127	91	103	132	101	119
Annual Financial Audit Report	25	36	43	36	51	41	34

Enforcement

- **If they don't comply after 60 days:**
  - **The Special District Information Program can declare the district inactive, which requires dissolution by the entity that created it (usual method if the Program determines the special district is no longer in operation)**
  - **The Joint Legislative Auditing Committee meets**
    - ❖ Determines whether to initiate enforcement, based on individual circumstances
    - ❖ If enforcement is justified, directs state agencies to initiate enforcement

Enforcement

➢ Counties and Municipalities:

- **The Committee directs the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction until the county or municipality complies with its financial reporting requirements.**

➢ Special Districts:

- **The process is different, since special districts do not get their funds through the Department of Revenue and Department of Financial Services.**

Enforcement

- **Instead, the Committee directs the Program to initiate enforcement through circuit court:**
  - **The Program files a petition for writ of certiorari.**
  - **A hearing is scheduled before a judge in Leon County.**
  - **Unless the court determines a material error occurred (the district did in fact file the report and the list from the Joint Legislative Auditing Committee was incorrect), the court will issue a writ of certiorari ordering the special district to produce the missing reports by a specified date.**

Uniform Special District Information

➢ Official List of Special Districts Online

- All special districts must file their creation document and boundary map, as amended, and registered agent and office information with us so we can formally classify them as independent or dependent and make uniform information about them publically available.
- More than 685 state and local agencies use the list to monitor special districts for compliance purposes, gather financial information, and coordinate activities.
- Citizens and the private sector (e.g., real estate, financial, insurance) use the list to find contact and other information.

Technical Assistance for Special Districts

- **The Florida Special District Handbook Online**
  - Reporting requirements
  - Ethics
  - Government-in-the-Sunshine
  - Bond Financing
  - Due dates by agency and by month
  - Links to online forms and reports
  - Direct contact information by specialty
  - and much more . . .

Questions?

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