The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Monday, February 21, 2011
TIME: 1:45 —3:45 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 376** Gaetz (Similar H 493)	Tax on Sales, Use, and Other Transactions; Provides definitions related to the tourist development tax. Requires the owner of or the person operating transient accommodations to separately state the amount of the tourist development tax collected and the consideration charged on a receipt, invoice, or other documentation. Exempts certain unrelated persons from the requirement to separately state the amount of the tourist development tax. Provides that the proceeds of the tourist development tax are county funds, etc. CA 02/08/2011 Temporarily Postponed CA 02/21/2011 BC RC	
2	**SB 490** Jones (Similar H 257)	Medical Expense/Pretrial Detainee/Sentenced Inmate; Provides that the responsibility for paying the expenses of medical care, treatment, hospitalization, and transportation for a person who is ill, wounded, or otherwise injured during or as a result of an arrest for a violation of a state law or a county or municipal ordinance is the responsibility of the person receiving the medical care, treatment, hospitalization, or transportation. Removes provisions establishing the order by which medical providers receive reimbursement for the expenses incurred in providing the medical services or transportation, etc. CA 02/21/2011 HR BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 506** Bogdanoff (Similar H 287)	Economic Development; Authorizes the board of county commissioners of a charter county to call and hold a referendum to determine whether to grant economic development ad valorem tax exemptions. Revises the language of ballot questions relating to the authority to grant economic development tax exemptions. Provides for application of a provision limiting the calling of another referendum within a certain time period, etc. CA 02/21/2011 CM BC	
4	**SB 478** Thrasher (Similar H 355, Compare H 161, S 382)	Property Taxation; Tolls the statute of limitations relating to proceedings involving tax lien certificates or tax deeds during the period of an intervening bankruptcy. Revises, updates, and consolidates provisions of ch. 197, F.S., relating to definitions, tax collectors, lien of taxes, returns and assessments, unpaid or omitted taxes, discounts, interest rates, Department of Revenue responsibilities, tax bills, judicial sales, prepayment of taxes, etc. CA 02/21/2011 BC	
5	**SB 480** Wise	Florida Endowment for Vocational Rehabilitation; Removes a provision that requires the State Board of Administration to invest and reinvest moneys in the endowment fund for the Florida Endowment for Vocational Rehabilitation. Requires that a specified percent of the remainder of all civil penalties received by a county court pursuant to ch. 318, F.S., be remitted to the Department of Revenue (DOR) on a monthly basis. Requires that a specified percent of the additional fine assessed for violating traffic regulations protecting mobility-impaired persons be remitted to the DOR on a monthly basis, etc. CA 02/21/2011 HE GO BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**SB 396** Bennett	Building Construction and Inspection; Conforms provisions to changes made by the act. Redefines “sustainable building rating” to include the International Green Construction Code. Expands the categories of persons who may be certified as qualified for a license by endorsement as a home inspector. Revises requirements for selecting a member of the Florida Building Commission, etc. CA 02/21/2011 RI BC	
7	Presentation by Janet Bowman, Nature Conservancy on Growth Management recommendations: "Planning for Quality Growth and Economic Prosperity for Florida's Future."		

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 376
INTRODUCER:	Senator Gaetz
SUBJECT:	Tax on Sales, Use, and Other Transactions
DATE:	January 13, 2011 REVISED:

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

I. Summary:

SB 376 provides that the state transient rentals tax, local tourist impact tax, local tourist development taxes, local convention development taxes, and municipal resort tax are imposed on the amount received by a person operating transient rental accommodations – not on the payments received by unrelated persons facilitating the booking of reservations of such accommodations. The bill requires the owner or person operating transient rental accommodations to separately state the tax from the rental charged on receipts, invoices, or other documents for transient accommodations.

The bill also allows compensation for county governments that provide information to the Department of Revenue (DOR) that leads to the collection of taxes, or registration of a noncompliant taxpayer.

This bill substantially amends the following sections of the Florida Statutes: 125.0104, 125.0108, 212.03, 212.0305, and 213.30.

This bill substantially amends ss. 1 and 3, of chapter 67-930, of the Laws of Florida, as amended.

This bill may require a two-thirds vote of the membership of each house of the Legislature for passage.

II. Present Situation:

Taxation of Transient Rentals

Transient rentals are rentals or leases of accommodations for a period of 6 months or less. The term "accommodation" includes stays in hotels, apartment houses, roominghouses, tourist or trailer camps, mobile home parks, recreational vehicle parks, or real property.[1]

Under current law, transient rentals are potentially subject to the following taxes:

1. Local Option Tourist Development Taxes: Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(c), F.S., provides that the local option tourist development tax is levied on the "total consideration charged for such lease or rental."
    - The tourist development tax may be levied at the rate of 1 or 2 percent.[2] Currently, 60 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.[3]
    - An additional tourist development tax of 1 percent may be levied.[4] Currently 43 counties levy this tax and only 56 counties are currently eligible to levy this tax.[5]
    - A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.[6] Currently 35 counties levy this additional tax and all 67 counties are eligible to levy this tax.[7]
    - A high tourism impact county may levy an additional 1 percent on transient rental transactions.[8] Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax.[9]
    - An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.[10] Out of 65 counties eligible to levy this tax, only 20 do.[11]

2. Local Option Tourist Impact Tax: The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total consideration charged. Only Monroe County is eligible and does levy this tax in areas designated as areas of critical state concern.[12]

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[1] These accommodations are defined in s. 212.02(10), F.S. *See also* Rule 12A-1.061(2)(f), F.A.C.
[2] Section 125.0104(3)(c), F.S.
[3] Office of Economic and Demographic Research, 2011 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties, available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/2011LOTTrates.pdf (last visited on Jan. 13, 2011). This chart is provided under the Related Issues section of this analysis.
[4] Section 125.0104(3)(d), F.S.
[5] *See* fn. 3, supra.
[6] Section 125.0104(3)(l), F.S.
[7] *See* fn. 3, supra.
[8] Section 125.0104(3)(m), F.S.
[9] *See* fn. 3, supra.
[10] Section 125.0104(3)(n), F.S.
[11] *See* fn. 3, supra.
[12] Id.

3. Local Convention Development Tax: The convention development tax under s. 212.0305, F.S., is charged on the total consideration charged for the transient rental. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII, of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3 percent (Volusia County).[13] No county authorized to levy this tax can levy more than 2 percent of the tourist development tax, excluding the professional sports franchise facility tax.[14]

4. Municipality Resort Tax: Certain municipalities may levy and collect a municipal resort tax at a rate of up to 4 percent on transient rental transactions.[15] The tourist development tax may not be levied in any municipality imposing the municipal resort tax. Currently only three municipalities in Miami-Dade County are eligible to impose the tax (Bal Harbour, Miami Beach, and Surfside).

5. State Transient Rentals Tax: The transient rentals tax under s. 212.03, F.S., is levied in the amount of 6 percent of the total rental charged for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.

In general, the local taxes are adopted by ordinance that must be approved by a voter referendum in the county or area where the tax is to be levied. Local taxes on transient rentals are required to be remitted to DOR by the person receiving the consideration, unless a county has adopted an ordinance providing for local collection and self-administration of the tax.[16] The use of the proceeds from each tax may only be used as set forth in the authorizing statute.

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

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

[13] Id.
[14] Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.
[15] Chapter 67-930, L.O.F., as amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.
[16] This is also known as "self-administering."
[17] Section 212.03(7), F.S. *See also* ss. 125.0104(3)(a), 125.0108(1)(b), 212.0305(3)(a), F.S.
[18] Section 212.18(3)(a), F.S.
[19] Rule 12A-1.061(7), F.A.C.

In addition to the Certificate of Registration, each newly registered dealer also receives a Resale Certificate for Sales Tax from DOR. The resale certificate is renewed annually for dealers that have an active sales tax account, and expires on December 31 each year.[20] An annual resale certificate allows registered dealers to make tax-exempt purchases or rentals of property or services for resale. Examples include the re-rental of transient rental property and the resale of tangible personal property. An annual resale certificate may not be used to make tax-exempt purchases or rentals of property or services that:

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

Online Rental Accommodation Intermediaries[22]

There are a number of internet websites that specialize in offering reservations for transient rental accommodations. These websites are generally operated by independent third party intermediaries who act either as an "agent" or "merchant" for the transient rental facility.[23]

A. Agent Business Model

The agent business model is the general practice used by classical travel agencies. When an internet intermediary acts as an "agent", the intermediary is solely acting as a middle-man between the customer and the accommodation owner to reserve a room. Generally, the customer reserves a room with a credit card, and pays the hotel directly during check-out, at which point taxes are charged. At the time of the online reservation, the customer is typically advised that taxes may or may not be included in the total cost listed on the website. After the transaction, the agent receives a commission from the hotel owner, based on the retail rate set by the hotel. Under the agency business model, the room rate is subject to tax without any reduction for the commission paid to the agent. Agents do not arrange to purchase room inventory at the hotel in advance of the customer's transaction.

B. Merchant Business Model

When an internet intermediary acts as a "merchant", he/she enters into a contract with a hotel owner to offer rooms to the public. Under this method, the accommodation owner agrees to make a certain number of rooms available for reservation at a wholesale rate, which is not disclosed to the public.[24] In return, the merchant agrees to pay the owner the wholesale rate plus an additional amount to cover the hotel's estimate of projected state or local taxes. The merchant's website advertises the retail price they want to charge with disclosures for separate

[20] Section 212.18(3)(c), F.S.

[21] Florida Department of Revenue, Annual Resale Certificate for Sales Tax (Guidelines), available online at http://dor.myflorida.com/dor/taxes/resale.html (last visited Jan. 13, 2011).

[22] The information from this section was obtained from the following interim reports: Comm. on Government Efficiency Appropriations, The Florida Senate, *Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and to Hotel Reward Points Programs* (Interim Project 2005-131) (Nov. 2004); and Comm. on Finance and Tax, The Florida Senate, *Application of the State Sales Tax and the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet* (Issue Brief 2009-320) (Oct. 2008).

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

[24] The negotiated rate is also referred to as the "discounted" or "negotiated" rate/price.

charges labeled as "taxes and service fees".[25] Since the merchant's "taxes and service fees" charges are lumped together, consumers do not know how much they are paying in taxes and how much they are paying in fees.[26] Once a customer decides to rent an accommodation through the merchant's internet intermediary service, the merchant initiates a charge to the customer's credit card for the full retail rate established by the merchant plus the disclosed line items. In return the customer receives confirmation of the reservation from the merchant. After the customer's stay, the accommodation owner sends the merchant an invoice for the room and the merchant pays the owner the wholesale room rate and applicable taxes due on the wholesale amount. If no invoice is sent, the merchant may keep the money.[27]

The general concern associated with on-line accommodation reservations facilitated by internet intermediaries has surfaced as a result of two main factors: 1) the increase in reservations of accommodations through websites; and 2) tax laws were adopted before the existence of internet intermediaries.

Transient Rentals Taxes and Online Rental Accommodations

There has been dispute as to the proper amount against which state and local transient rentals taxes can be levied, specifically whether they are only levied against the "wholesale" price (the negotiated/discounted rate paid by the intermediary to the hotel owner) or the full "retail" price (the total rate charged to the customer by the intermediary).

A. Internet Intermediaries' Position

Internet intermediaries argue that the tourist development tax is measured by the amount paid to the accommodation owner/operator for the right to use the transient accommodation (wholesale rate); and not by the full retail rate. The intermediaries state that the facilitation fee, which is generally the difference between the retail rate and the wholesale rate, is not subject to the tourist development tax because it is not an amount that is paid to the hotel owner. [28] They further argue that the 'taxable incident' is not the isolated receipt of the rental payment, but the exercise of the privilege – the assemblage of activities consistent with ownership. Under this line of reasoning, the fees that are received for facilitating booking, processing reservation applications, or provide a similar services, are not subject to tax when the receiving company lacks an ownership interest in the accommodation. This argument extends to the tax treatment provided for other customer charges, variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees."

B. Local Governments' Position

Local governments argue that the tourist development tax should be levied against the full retail rate that is charged by the internet intermediaries to the customer, not just the wholesale price that is paid to the hotel owner. Local governments contend that intermediaries acting as

[25] Since the tax paid by the internet intermediary is based on the wholesale rate and not the retail rate, the fee portion is much larger than it might seem.

[26] The rationale given by internet intermediaries for not breaking out taxes and fees is to prohibit other on-line merchants from knowing what type of deals they received from the accommodation owners; which could be obtained simply by subtracting the amount withheld for taxes. The standard facilitation fee on such internet room rates is 25 percent.

[27] For a detailed description of the merchant model, see, *Columbus, Georgia v. Expedia*, (Civil Action No. SU-06-CV-1974-7) (Superior Court, Muscogee County, Ga., Sept. 22, 2008).

[28] A facilitation fee generally involves money received by the intermediary to facilitate booking, process reservation applications, or provide similar services.

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

C. When Taxes Should Be Remitted

There is also dispute as to when the transient rentals tax is due. Internet intermediaries argue that the transient rentals tax should be remitted by the hotel or facility, as owner of the accommodation, and shall therefore be due once the wholesale/negotiated room charge is forwarded to the owner after the consumer's hotel stay. On the other hand, local governments argue that the transient rentals tax is due at the time the money is paid by the consumer to the intermediary, not when the accommodation owner is later paid the wholesale/negotiated rate.

Litigation in Florida[29]

A. Orange County v. Expedia, Inc. et al

Orange County is one of the counties in Florida that self-administers their local tourist development tax.[30] In 2008, Orange County brought a lawsuit against internet intermediaries Expedia and Orbitz to determine whether the local tourist development tax is due "on the difference between the wholesale price and the retail price they receive for the rooms when they re-sell them."[31] The trial court dismissed the case, ruling that the county must first exhaust administrative remedies, by completing audits to estimate taxes due. Thereafter, the appellate court reversed the trial court's ruling and remanded the case for further proceedings stating that the county is entitled to know whether it can lawfully assess the tourist development tax before attempting to audit the companies.

On January 20, 2011, the Ninth Judicial Circuit Court denied a motion for summary judgment filed by Orange County,[32] and held that the "facts on summary judgment . . . do not unequivocally demonstrate that the entirety of the transactions here are within the intendment of the TDT" (tourist development tax).[33] The Ninth Circuit further ordered that no additional motions be filed until the parties conduct a status conference hearing to discuss future contemplated filings and other necessary activities necessary to the case.

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[29] Lawsuits in other states "are based on the specific language of each jurisdiction's taxing scheme and on the variety of causes of action pled…." *Orange County v. Expedia, Inc. et al.,* 985 So.2d 622, 630 (5th DCA, 2008), rehearing denied, *Expedia, Inc. v. Orange County,* 999 So.2d 644 (Fla. 2008) (unpublished disposition).

[30] Self-administering means that the county has adopted an ordinance providing for local collection and administration of the tax.

[31] *Orange County*, at 2.

[32] A "motion for summary judgment" is "a [p]rocedural device available for prompt and expeditious disposition of controversy without trial when there is no dispute as to either a material fact or inferences to be drawn from undisputed facts, or if only question of law is involved. BLACK'S LAW DICTIONARY 1435 (6th ed. 1990). The moving party must prove that there is "no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." *Volusia County v. Aberdeen at Ormond beach, L.P.*, (Fla. 2000). In deciding a motion for summary judgment, "the trial judge must draw every possible inference against the moving party and in favor of the party opposing the motion." *Orange County v. Expedia* (Case No. 48-2006-CA-2104-O) (Fla. 9th Cir. Ct. 2011) (citing Padovano, West Florida Civil Practice, Sec. 13-2).

[33] *Orange County v. Expedia* (Case No. 48-2006-CA-2104-O) (Fla. 9th Cir. Ct. 2011) (emphasis added).

B. Additional Florida Cases

There are currently several cases pending in Florida between counties and various internet intermediaries addressing the levy of transient rentals taxes on online hotel accommodations provided through internet intermediary services.[34] The following are a few cases that are pending in the 2nd Judicial Circuit in Leon County:

- *Orbitz LLC vs. Broward County* (Case No. 37 2009 CA 000126) is a consolidated case led by Orbitz LLC that involves various internet intermediaries who are suing Broward County Florida for the assessment of Broward's tourist development tax.[35]

- *Orbitz LLC vs. Miami-Dade County* (Case No. 2009 CA 005006) is part of another set of cases involving a dispute between various internet intermediaries and Miami-Dade County for the assessment of both the tourist development tax and the convention development tax.[36]

- *Leon County vs. Expedia Inc*. (Case No. 37 2009 CA 004319) & (Case No. 37 2009 CA 004882): In this case, a number of counties and tax collectors filed an action for declaratory and equitable relief for a mandatory injunction against various internet intermediaries for the payment of transient rentals tax and any local option sales taxes levied on the total rental charged for hotel accommodations. A notice for trial was filed on May 26, 2010.[37]

The Florida Attorney General has also filed an action for declaratory judgment against Expedia and Orbitz asking whether the internet companies' failure to remit the appropriate amount of transient rentals taxes on hotel room rentals is in violation of Florida law.[38]

In August 2010, Monroe County entered into a settlement agreement on behalf of 32 counties[39] in a federal class-action suit against certain online travel companies. As a result of the settlement

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[34] *See Anne Gannon v. Hotels.com, L.P.* (Case No. 50 2009 CA 025919 XXXXMB)(Fla. 15th Cir. Ct. 2009). *See also Brevard County v. Priceline.org et al* (Case No. 6-09-cv-1695-GAP-GJK)(M.D. Fla. filed Oct. 2, 2009).

[35] Leon County Clerk of Courts Website, *Orbitz LLC vs. Broward County* (Case No. 37 2009 CA 000126), available at http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real_case.case_id='61797026' (last visited on Jan. 14, 2011).

[36] Leon County Clerk of Courts Website, *Orbitz LLC vs. Miami-Dade County* (Case No. 2009 CA 005006), available at http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real_case.case_id='81922577' (last visited on Jan. 14, 2011).

[37] Leon County Clerk of Courts Website, *Leon County v. Expedia Inc.*, (Case No. 2009 CA 004319), docket available at http://www.clerk.leon.fl.us/index.php?section=2&server=image&page=high_profile/index.asp?year=2009 (last visited on Jan. 14, 2011) (The plaintiffs in this case include: Leon County, Leon County Tax Collector Doris Maloy, Flagler County, Lee County, Manatee County, Pinellas County, Pinellas County Tax Collector Diane Nelson, Polk County, Polk County Tax Collector Joe Tedder, St. Johns County, Escambia County, Charlotte County, Walton County, Hillsborough County, Hillsborough Tax Collector Doug Belden, Pasco County, Alachua County, Nassau County, Okaloosa County, Seminole County, and Wakulla County).

[38] Leon County Clerk of Courts Website, *Dep't. of Legal Affairs vs. Expedia Inc.* (Case No. 37 2009 CA 004304), available at http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real_case.case_id='84428357' (last visited on Jan. 14, 2011).

[39] The class action suit represented the following counties: Baker, Bradford, Citrus, Clay, Collier, Columbia, Duval, Franklin, Gadsden, Gilchrist, Glades, Hamilton, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lake, Levy, Madison, Martin, Miami-Dade, Monroe, Okeechobee, Putnam, St. Lucie, Santa Rosa, Sarasota, Sumter, Suwannee, and Taylor. The 15 defendants included: Expedia, Inc., Hotels.com, L.P., Hotwire, Inc., Hotels.com, and TravelNow.com, Inc.

order, the online travel companies were required to pay $6.5 million to the counties, and in return were released from any obligation to pay or remit tourist development taxes on the full retail price for hotel accommodations.[40] The participating counties agreed to dismiss all current claims against the online travel companies with prejudice, and are further precluded from suing Expedia, Travelocity and Orbitz for two years, and Priceline for three years.

III. Effect of Proposed Changes:

This bill requires that the state transient rentals tax, local tourist development taxes, local tourist impact taxes, local convention development taxes, and municipal resort taxes are imposed on the amount received by the owner of or the person operating transient rental accommodations – not the payments received by unrelated persons facilitating the booking of reservations of such accommodations.

The following terms are defined in sections 1, 2, 3, 4 and 6 of the bill:

- The terms *"consideration," "rental,"* and *"rents"* means "the amount received by the owner of or the person operating a transient accommodation for the use of any living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with, a hotel, apartment house, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium." Section 3 of the bill, amending s. 212.03, F.S., also provides this definition for the term "rental payments" and does not define the term "consideration". Section 6 of the bill, amending ch. 67-930, Laws of Florida, only uses this definition for the term "rent".
- The terms *"consideration," "rental" and "rents"* (and *"rental payments"* for section 3 of the bill) do not include payments received by "unrelated persons" from a lessee, tenant, or customer for facilitating the booking of reservations for or on behalf of the lessee, tenant, or customers at a hotel, apartment house, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium in this state."
- A *"person operating transient accommodations"* means "the person who conducts the daily affairs of the physical facilities that furnish transient accommodations and who is responsible for providing any of the services commonly associated with operating those facilities, including providing physical access, regardless of whether the commonly associated services are provided by an unrelated person."
- The term *"unrelated person"* is defined as "a person who is not related to the owner or the person operating transient accommodations within the meaning of s. 267(b) or s. 707(b) of the Internal Revenue Code of 1986, as amended."

Section 1 amends s. 125.0104(3), F.S. (Local Option Tourist Development Taxes), to define the terms "consideration," "rental," and "rents", and the terms "person operating transient accommodations" and "unrelated persons" as provided above. This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other

(the "Expedia parties"); priceline.com incorporated and Travelweb LLC (the "Priceline parties"); Travelocity.com LP and Site59.com (the "Travelocity parties"); and Orbitz, LLC and Trip Network Inc. d/b/a Cheaptickets.com (the "Orbitz parties").

[40] *Monroe County v. Priceline, Inc. et al.* Master Settlement Agreement (Case No. 09-10004-CIV-MOORE/SIMONTON)(S.D. Fla. 2010) (on file with the Senate Committee on Community Affairs).

documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

Section 2 amends s. 125.0108, F.S. (Local Tourist Impact Tax), to define the terms "consideration," "rental," and "rents", and the terms "person operating transient accommodations" and "unrelated persons" as provided above. This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

Section 3 amends s. 212.03(1)(b), F.S. (State Transient Rentals Tax), to define the terms "rent", "rental," "rentals," and "rental payments", and the terms "person operating transient accommodations" and "unrelated persons" as provided above. The section also amends s. 212.03(2), F.S., to provide that the state transient rentals tax is charged by the owner of, or the person operating transient accommodations subject to the tax imposed under the chapter. The tax is due on the amount of rent received at the time the person operating transient accommodations receives the rental payment.

The owner of or the person operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations the tax from the rental charged on the receipt. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

Section 4 amends s. 212.0305(3)(a), F.S. (Local Convention Development Tax), to define "consideration," "rental," and "rents", and the terms "person operating transient accommodations" and "unrelated persons" as provided above. This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

Section 5 amends s. 213.30(1), F.S., to provide authority for the Department of Revenue (DOR) to compensate a county government that provides information to the department that leads to:

- The punishment of, or the collection of taxes, penalties, or interest from, any person related to the state transient rentals tax in s. 212.03, F.S. The amount of payment to a county may not exceed 10 percent of any tax, penalties, or interest collected as a result of the information.
- The identification and registration of a taxpayer not already in compliance with the state transient rentals tax registration requirements. The amount of payment made to any person providing information that results in the registration of the noncompliant taxpayer shall be $100. The reward shall be paid only if the noncompliant taxpayer is:

- Engaged in a bona fide taxable activity; and
- Found by DOR to have an unpaid tax liability.

Currently, s. 212.30, F.S., permits the Executive Director of DOR to compensate persons who provide information to the department that leads to the punishment or collection of taxes from any person or to the identification and registration of a noncompliant taxpayer.[41] This program is known as the DOR Rewards Program. The statute provides the conditions under which compensation may be paid. Employees of DOR or any other state or federal agency may not be compensated.

Section 6 amends ss. 1 and 3 of chapter 67-930, Laws of Florida, as amended by chapters 93-286 and 94-344, Laws of Florida, (Municipal Resort Tax), to define the terms "rent", "person operating transient accommodations" and "unrelated persons" as provided above. This section also provides that the municipal resort tax shall be collected by the owner or the person operating transient accommodations at the time of payment of the rent or the retail sales price.

The bill states that it shall be the duty of every *owner or person operating the transient accommodations*, to collect from the person paying the rent or the retail sales price, for the use of the city or town, the tax imposed and levied pursuant to this section, and to report and pay over to the city or town all such taxes imposed, levied and collected, in accordance with the accounting and other provisions of the enacted ordinance.

This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

This section provides an exception to eligible cities' and towns' (Miami Beach, Bal Harbour, and Surfside) authority to impose a municipal resort tax on the retail sale price of alcoholic beverages for beer and malt beverages.

Section 7 states that this act is clarifying and remedial in nature and does not provide a basis for assessments or refunds of tax for periods before July 1, 2011. The bill also states that this act does not affect any lawsuit existing on July 1, 2011, related to the taxes imposed by the provisions of law amended by this act.

Section 8 provides that this act shall take effect on July 1, 2011.

[41] Between 2007 and 2010, DOR received 3,898 rewards cases and collected $18.6M as a result of the rewards program. Of these cases, 728 rewards have been paid out, with the total amount paid equaling approximately $1.1M. This information was obtained via email from Lynne Moeller, Florida Department of Revenue (Feb. 4, 2011) (on file with the Senate Committee on Community Affairs).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article, VII, section 18(b), of the Florida Constitution, provides that "except upon a approval by two-thirds of members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February1, 1989".[42] Since this bill would reduce a county or municipality's authority to raise revenue in the aggregate, it will require a two-thirds vote of the membership of each house of the Legislature for passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill would prevent local governments from levying certain taxes on payments received by unrelated persons facilitating the booking of accommodation reservations.

At this time, the Revenue Estimating Conference (REC) has not reviewed the fiscal impact for SB 376. However, the REC did review similar legislation (2010 SB 2436) that was filed during the 2010 Regular Session. On March 23, 2010, the REC determined that the 2010 legislation would have had a cash impact for FY 2010-2011 of -$22.7 million on the tourist development tax, but found the recurring impact on both state and local revenues to be indeterminate.[43]

B. Private Sector Impact:

This bill clarifies that transient rentals taxes are levied upon the amount of payment received by the owner or person operating the transient rental facility.

This bill also requires the owner or person operating the transient accommodation to separately state the amount of tax collected and the consideration charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations.

[42] FLA. CONST. art. VII, s. 18(b).
[43] Senate Committee on Commerce, *Senate Bill 2436 Committee Analysis*, 9 (March 23, 2010) (on file with the Senate Committee on Community Affairs).

C. Government Sector Impact:

The Department of Revenue (DOR) has indicated that this bill will cost the Department $19,070 in non-recurring expenses for the 2010-2011 FY as a result of printing and mailing Tax Information Publications (TIPs) to transient rental sales and use tax dealers and counties.[44]

This bill provides an exception to eligible cities' and towns' (Miami Beach, Bal Harbour, and Surfside) authority to impose a municipal resort tax on the retail sale price of alcoholic beverages for beer and malt beverages.

Counties that provide information to DOR, that leads to the punishment of, or the collection of taxes, penalties or interest related to state transient rentals tax, or to the identification and registration of a taxpayer who is not in compliance with state transient rentals tax registration requirements, may be entitled to compensation by DOR in an amount not to exceed 10 percent of the taxes, penalties, or interest collected as a result of such information.

See Tax/Fee Issues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The following table represents the current transient rentals tax rates in all 67 Florida Counties:

2011 Local Option Taxes on Transient Rental Transactions

				Tourist Development Taxes					Convention Development Taxes		
County		Current Tax Rate	Tourist Impact Tax (1%)	Original Tax (1 or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Consolidated County Convention Tax (2%)	Charter County Convention Tax (3%)	Special District, Special, & Subcounty Convention Tax (3%)
Alachua	*	5		2	1	1	1				
Baker	*	2		2							
Bay	*	5		2	1	1	1				
Bradford		4		2	1	1					
Brevard	*	5		2	1	1	1				
Broward	*	5		2	1	1	1				
Calhoun		0									
Charlotte	*	5		2	1	1	1				
Citrus		3		2	1						
Clay	*	3		2	1						

[44] Department of Revenue, *Senate Bill 376 Fiscal Analysis* (Jan. 24, 2011) (on file with the Senate Committee on Community Affairs).

2011 Local Option Taxes on Transient Rental Transactions

				Tourist Development Taxes					Convention Development Taxes		
County		Current Tax Rate	Tourist Impact Tax (1%)	Original Tax (1 or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Consolidated County Convention Tax (2%)	Charter County Convention Tax (3%)	Special District, Special, & Subcounty Convention Tax (3%)
Collier	*	4		2	1	1					
Columbia		3		2	1						
De Soto		0									
Dixie		0									
Duval	*	6		2		1	1		2		
Escambia	*	4		2	1	1					
Flagler		4		2	1	1					
Franklin		2		2							
Gadsden		2		2							
Gilchrist		2		2							
Glades		2		2							
Gulf	*	4		2	1	1					
Hamilton		3		2	1						
Hardee		0									
Hendry		3		2	1						
Hernando	*	3		2	1						
Highlands		2		2							
Hillsborough	*	5		2	1	1	1				
Holmes		2		2							
Indian River	*	4		2	1	1					
Jackson		4		2	1	1					
Jefferson		2		2							
Lafayette		0									
Lake	*	4		2	1	1					
Lee	*	5		2	1	1	1				
Leon	*	5		2	1	1	1				
Levy		2		2							
Liberty		0									
Madison		3		2	1						
Manatee	*	5		2	1	1	1				
Marion	*	2		2							
Martin	*	4		2	1	1					
Miami-Dade	*	6		2		1				3	
Monroe	*	5	1	2	1			1			
Nassau	*	4		2	1	1					
Okaloosa	*	5		2	1	1	1				
Okeechobee		3		2	1						
Orange	*	6		2	1	1	1	1			
Osceola	*	6		2	1	1	1	1			
Palm Beach	*	5		2	1	1	1				
Pasco		2		2							
Pinellas	*	5		2	1	1	1				
Polk	*	5		2	1	1	1				
Putnam	*	4		2	1	1					
Saint Johns	*	4		2	1	1					
Saint Lucie	*	5		2	1	1	1				
Santa Rosa	*	4		2	1	1					
Sarasota	*	4.5		2	1	1	0.5				
Seminole	*	5		2	1	1	1				
Sumter		2		2							
Suwannee	*	2		2							
Taylor	*	3		2	1						

2011 Local Option Taxes on Transient Rental Transactions

				Tourist Development Taxes					Convention Development Taxes		
County		Current Tax Rate	Tourist Impact Tax (1%)	Original Tax (1 or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Consolidated County Convention Tax (2%)	Charter County Convention Tax (3%)	Special District, Special, & Subcounty Convention Tax (3%)
Union		0									
Volusia	*	6		2		1					3
Wakulla	*	2		2							
Walton	*	4.5		2	1	1	0.5				
Washington		3		2	1						
# Eligible to Levy		67	1	67	56	67	65	5	1	1	1
# Levying		60	1	60	43	35	20	3	1	1	1

[45]

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[45] Chart provided by the Office of Economic and Demographic Research, 2011 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties, available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/2011LOTTrates.pdf (last visited on Jan. 13, 2011) (**Note:** County names that are followed by an asterisk represent those counties that self-administer these taxes and boxed areas indicate those counties that are eligible to impose the particular tax prescribed in the table. As noted in the Present Situation section of this analysis, three municipalities in Miami-Dade County (Bal Harbour, Miami Beach, and Surfside) are eligible to impose the Municipal Resort Tax).

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment

Delete line 398
and insert:
of the physical facilities that furnish transient accommodations

741410

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment

Delete line 596
and insert:
beverages sold at retail for

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 490
INTRODUCER:	Senator Jones
SUBJECT:	Medical Expenses of Pretrial Detainees or Sentenced Inmates
DATE:	February 10, 2011 REVISED:

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

I. Summary:

SB 490 limits county or municipal medical costs of an in-custody pretrial detainee or sentenced inmate at 110 percent of the Medicare allowable rate (up to 125 percent of the Medicare rate if the third-party provider reports a negative operating margin) if no formal written agreement exists between the county or municipality and the third-party medical care provider. The bill exempts payments to physicians for emergency services provided within a hospital emergency department from the maximum allowable rate.

The bill requires that before a third-party provider can seek reimbursement from a county or municipal general fund, it must show that a "good faith effort" was made to collect payment for medical care expenses from an in-custody pretrial detainee or sentenced inmate.

The bill specifies responsibility of the governmental body for payment of any in-custody medical costs ceases upon release of the in-custody pretrial detainee or sentenced inmate.

The bill also changes the language that states that the responsibility of paying for an injury that occurred as a result of arrest is on the person receiving care (current law uses the language "at the time of arrest").

This bill substantially amends sections 901.35 and 951.032 of the Florida Statutes.

II. Present Situation:

Financial Responsibility for Medical Expenses

Pre-trial detainees have a constitutional right to "reasonable and adequate nourishment and medical care,"[1] but the cost of the medical care is the primary responsibility of the person receiving the medical care.[2] A medical services provider shall recover the expenses of medical care, treatment, hospitalization, and transportation (hereinafter referred to simply as "medical care") for a person ill, wounded, or otherwise injured during or at the time of arrest for any violation of state law or a county or municipal ordinance from the following sources in the following order:

(1) Insurance of the person receiving the medical care;
(2) The person receiving medical care;
(3) A financial settlement for the medical care.[3]

When reimbursement from these sources is unavailable, the cost of medical care shall be paid from the general fund of the county in which the person was arrested. If the arrest was for violation of a municipal ordinance then the municipality shall pay the medical service provider.[4] Section 951.032, F.S., articulates the local government's rights to reimbursement from the person seeking medical attention.[5]

The injury or illness need not be caused by the arrest.[6] The responsibility for payment of medical costs exists until the arrested person is released from the custody of the arresting agency. The rates medical service providers can charge local governments are not capped.[7] At least one Florida appellate court has held that the costs of medical services are not among the costs covered by the constitutional provision that prohibits compelling persons charged with a crime to pay costs before a judgment of conviction has become final.[8]

A county detention facility or municipal detention facility incurring expenses for providing medical care, treatment, hospitalization, or transportation may seek reimbursement for the expenses incurred in the following order:

- From the prisoner or person receiving care, including authorizing a lien against a prisoner's cash account for medical care, treatment, hospitalization, or transportation by deducting the cost from the prisoner's cash account.

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[1] *Williams v. Ergle*, 698 So. 2d 1294 (Fla. 5th DCA 1997).
[2] Section 901.35, F.S.
[3] *Id.*
[4] *Id.*
[5] *See Williams v. Ergle*, 698 So. 2d 1294, (Fla. 5th DCA 1997) (stating that pretrial detainees are prisoners for the purposes of state statutes allowing recovery of certain medical expenses from prisoners).
[6] *See North Brevard County Hospital District v. Brevard County Bd. of County Commissioners*, 899 So. 2d 1200, 1202-03 (Fla. 5th DCA 2005) ("One cannot fault Brevard County or the trial court in its attempt to circumvent section 901.35. The implications of the statute can be financially devastating to a local government in view of the ever increasing cost of medical care, especially when the Legislature has not placed a cap on the liability of government.") (citing Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004)); Fla. Atty. Gen. Op. 85-6, (Feb. 4, 1985).
[7] Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004).
[8] *Williams v. Ergle*, 698 So.2d 1294 (Fla. 5th DCA 1997) (citing Art. I, s. 19, Fla. Const.).

- From an insurance company, health care corporation, or other source if the prisoner or person is covered by an insurance policy or subscribes to a health care corporation or other source for those expenses.[9]

Section 951.23, F.S. provides the following relevant definitions:

"County prisoner" means a person who is detained in a county detention facility by reason of being charged with or convicted of either felony or misdemeanor.[10]

"Municipal prisoner" means a person who is detained in a municipal detention facility by reason of being charged with or convicted of violation of municipal law or ordinance.

"County detention facility" means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.

"Municipal detention facility" means a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

Medicare Rates

The Social Security Act, 42 U.S.C. § 1395, addresses Medicare. Medicare is health insurance for people age 65 or older, people under age 65 with certain disabilities, and people of any age with End-Stage Renal Disease (ESRD) (permanent kidney failure requiring dialysis or a kidney transplant). Medicare consists of Part A (hospital insurance), Part B (medical insurance), and Part D (prescription drug coverage).

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare and Medicaid Services (CMS) develops annual fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies. Other Medicare providers are paid via a prospective payment system (PPS). The PPS is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services). The CMS uses separate PPSs for reimbursement to acute inpatient hospitals, home health agencies, hospices, hospital outpatient departments, inpatient psychiatric facilities, inpatient rehabilitation facilities, long-term care hospitals, and skilled nursing facilities.

Medicare rates are generally higher than Medicaid rates, but could be lower than rates set by a medical services provider. In 2008, the General Appropriations Implementing Bill, chapter 2008-153, Laws of Florida, capped medical payment rates the Department of Corrections could pay to

[9] Section 951.32, F.S.
[10] Note that case law has held that pretrial detainees are "prisoners" for purposes of state statutes allowing recovery of subsistence costs and certain medical expenses from prisoners. *Williams v. Ergle*, 698 So. 2d 1294 (Fla. 5th DCA 1997).

a hospital, or a health care provider providing services at a hospital. Payments were capped at 110 percent of the Medicare allowable rate for inmate medical care when no contract existed between the department and a hospital, or a health care provider providing services at a hospital. Hospitals reporting an operating loss to the Agency for Health Care Administration, however, were capped at 125 percent of the Medicare allowable rate.

In 2009, s. 945.6041, F.S., created by chapter 2009-63, Laws of Florida, codified the payment caps. Section 945.6041, F.S., also made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap. The Department of Corrections has saved $20 million in the year after payment caps were implemented.[11] Department of Corrections' expenditures from the Inmate Health Services appropriation category, from which hospital and physician services are paid, totaled $170 million in FY 2008-09.

Indigent Health Care

Federal[12] and state law, as well as hospital collections policies, manage the way that medical care providers handle indigent patients. The Florida Health Care Responsibility Act[13] places the ultimate financial obligation for the out-of-county hospital care of qualified indigent patients on the county in which the indigent patient resides.[14] This part of chapter 154, F.S., defines "qualified indigent person" or "qualified indigent patient" as:

> a person who has been determined pursuant to s. 154.308 to have an average family income, for the 12 months preceding the determination, which is below 100 percent of the federal nonfarm poverty level; who is not eligible to participate in any other government program that provides hospital care; who has no private insurance or has inadequate private insurance; and who does not reside in a public institution as defined under the medical assistance program for the needy under Title XIX of the Social Security Act, as amended.[15]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 901.35(1), F.S., to specify that except as provided in 951.032, F.S., a person is responsible for paying any medical care expenses if he or she is ill, wounded, or otherwise injured during or *as a result of* an arrest for any state law or county or municipal ordinance. This specification, "as a result of an arrest," replaces current language, "at the time of an arrest." The bill removes all language regarding how a medical care service provider can recover medical care expenses from arrestees from s. 901.35(2), F.S., and adds it to s. 951.032, F.S., (which relates to how county and municipal detention facilities recover medical costs from prisoners).

Section 2 of the bill amends s. 951.032, F.S., by replacing each use of the term "prisoner" with the term "in-custody pretrial detainee or sentenced inmate." However, the process by which

[11] Senate Policy and Steering Committee on Ways and Means, *CS/CS/CS/SB 218 Bill Analysis* (April 8, 2010).
[12] Title XIX of the Social Security Act, 42 U.S.C §§ 1396 et seq.
[13] Sections 154.301-154.331, F.S.
[14] Section 154.302, F.S.
[15] Section 154.304, F.S.

county and municipal facilities recover medical care expenses from such persons remains unchanged.

The bill moves language regarding how a medical care service provider can recover medical care expenses from s. 901.35, F.S., to s. 951.032, F.S. This language specifies that a third-party provider shall recover the expenses of medical care from an in-custody pretrial detainee or sentenced inmate from the following sources in the following order:

(1) Insurance of the person receiving the medical care;
(2) The person receiving medical care; or
(3) A financial settlement for the medical care.

The bill requires the third-party provider to make a "good faith effort" to recover the payment before it can seek reimbursement from the general fund of a county or municipality in which a person was arrested. A "good faith effort" is described as one that is consistent with that provider's usual policies and procedures related to the collection of fees from indigent patients who are not in the custody of a county or municipal detention facility.

The bill requires that, in the absence of a formal written agreement, payments made from county or municipal general funds for an in-custody pretrial detainee or sentenced inmate's medical care will be made at 110 percent of the Medicare allowable rate. However, payments can be increased to 125 percent of the Medicare allowable rate if the third-party provider reports a negative operating margin for the previous year to the Agency of Health Care Administration through hospital-audited financial data.

The bill exempts payments to physicians licensed under ch. 458, F.S., or ch. 459, F.S., for emergency services provided within a hospital emergency department from the maximum allowable rate.

The bill specifies that the responsibility of a governmental body (a county or municipality) for payment of medical costs ceases upon release of the in-custody pretrial detainee or sentenced inmate.[16]

An in-custody pretrial detainee or sentenced inmate who has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source must assign such benefits to the health care provider.

Section 3 of the bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[16] This applies even if those costs were incurred while the pretrial detainee or sentenced inmate was in custody. *See Jones v. Jenne*, 2008 WL 2323890 (S.D. Fla. 2008) (interpreting similar language in s. 901.35, F.S.).

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:

Providers of medical care, treatment, hospitalization, and transportation may receive decreased revenue when providing services to arrested parties when (1) the person receiving the services cannot provide for payment of the costs and (2) the provider does not have a formal written agreement with the county or municipality in which the person was arrested.

C. Government Sector Impact:

This bill would act as a cost savings measure for counties and municipalities by capping the cost of medical services provided to persons ill, wounded, or otherwise injured during or at the time of arrest at the allowable Medicare rate.

VI. Technical Deficiencies:

Line 154 of the bill provides that a third-party provider must show a good faith effort was made to obtain reimbursement from the sources listed in subsection (1), but it should probably read subsection (3). The sources in subsection (1) relate how a county or municipal detention facility may seek reimbursement for medical care expenses. Subsection (3) details how a third-party provider can recover medical care expenses.

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:	SB 506
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Economic Development
DATE:	February 11, 2011 REVISED:

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

I. Summary:

This bill provides new definitions for the terms "new business" and "expansion of existing business" for purposes of the ad valorem tax exemption for economic development provided in Article VII, section 3(c), of the Florida Constitution. The bill allows the board of county commissioners of a charter county to hold a referendum to grant such exemption upon receiving a petition in a charter county signed by the requisite number of electors prescribed in the county charter, including charters that require the signatures of less than 10 percent of the electors.

The bill also revises the current ballot language required in a referendum that determines whether an entity may grant an economic development exemption and the information that must be included in an application for such exemption. The bill provides economic criteria that the board or governing authority must consider in approving or denying the exemption and grants counties and municipalities with discretion to determine which new jobs should be incentivized by granting an economic development exemption.

The bill further allows counties and municipalities to enter into a written tax exemption agreement after approving an economic development exemption that includes certain criteria and requirements, and which authorizes the board or governing authority to revoke the exemption under certain circumstances.

This bill substantially amends sections 196.012 and 196.1995 of the Florida Statutes.

II. Present Situation:

Property Tax Assessments

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1] Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property's just valuation.[2]

Article VII, section 4, of the Florida Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.[3] The State Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.[4]

Article VII, sections 3 and 6, of the Florida Constitution permits a number of tax exemptions. These include but are not limited to exemptions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. Section 196.195, F.S., outlines the statutory criteria that a property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture.[5] An application for exemption for the religious, literary, scientific or charitable use of property may not be granted until the property appraiser, or value adjustment board on appeal, determines that the applicant is nonprofit.[6] Counties and municipalities are authorized by the Florida Constitution to grant economic development ad valorem tax exemptions for new and expanding businesses. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

Economic Development Ad Valorem Tax Exemption

Article VII, section 3(c), of the Florida Constitution, allows counties and municipalities to grant economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law.[7] Section 196.012, F.S., defines the terms "new business" and "expansion of an existing business" as follows:

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[1] *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).
[2] *See* s. 193.011(1)-(8), F.S.
[3] Section 196.185, F.S.
[4] *See* FLA. CONST. art. VII, s. 4(d) & (g) (stating that the assessed value of homestead property may not increase over the prior year's assessment more than 3 percent or the percentage change in the Consumer Price Index, and levies for non-school tax purposes, the assessment of residential real property and non-residential real property may not increase more than 10 percent over the prior year.).
[5] *See* s. 196.195(2)(a)-(e), F.S., for the list of statutory criteria that the property appraiser must consider.
[6] Section 196.195(4), F.S.
[7] FLA. CONST. art. VII, s. 3(c).

(15) "New business" means:

(a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant;

2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15 (5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; or

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

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

(c) A business that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an economic development ad valorem tax exemption from the county under s. 196.1995.[8]

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

(a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or

2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site colocated with a commercial or industrial operation owned by the same business, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.

(b) Any business located in an enterprise zone or brownfield area that increases operations on a site colocated with a commercial or industrial operation owned by the same business.[9]

[8] Section 196.012(15), F.S.
[9] Section 196.012(16), F.S.

The economic ad valorem tax exemption may only be granted through a county or municipal ordinance that is previously approved by the electors of the participating county or municipality.[10] The exemption applies to improvements to real property made by or for the use of a new or expanding existing business as well as to the tangible personal property of such businesses. The amount or limit on the exemption as well as the period of time for which the exemption may be granted is determined be general law. Pursuant to Article VII, section 3(c), of the Florida Constitution, the authority granting an ad valorem tax exemption shall expire 10 years after it is approved by the electors and may be renewed as provided by general law.

Section 196.1995, F.S., provides the statutory criterion that implements the constitutional tax exemption for economic development. Pursuant to this section, a board of county commissioners or municipal governing authority shall call a referendum to determine whether to grant an economic development ad valorem tax exemption under Article VII, section (3)(c), of the Florida Constitution, if one of the following occurs:

- The board of county commissioners or municipal governing authority votes to hold the referendum; or
- The board of county commissioners or municipal governing authority receives a petition signed by 10 percent of the registered electors in the respective jurisdiction, calling to hold such referendum.[11]

A.) Referendum

A referendum determining whether to grant an economic development ad valorem tax exemption under Article VII, section 3(c), of the Florida Constitution, may only be called once in any 12-month period.[12]

Subsections (2) and (3) of s. 196.1995, F.S., provides the specific ballot language that must be used in a county or municipal referendum to determine whether its respective jurisdiction may grant a property tax exemption for economic development.[13] Subsection (3) of s. 196.1196, F.S., also allows counties and municipalities to limit the effect of the referendum to new businesses and expansions of existing businesses that are located in an enterprise zone or brownfield area, as defined in s. 376.79(4), F.S. This subsection provides a separate ballot language format that must be followed should a county or municipality vote to limit the referendum to an enterprise zone or brownfield area.

B.) Amount of Exemption

If a majority of the voters approve the economic development exemption, then the board of county commissioners or municipal governing authority has the discretion to provide the exemption by ordinance. Subsection (5), of s. 196.1995, F.S., permits a county or municipal ordinance to exempt up to:

- 100 percent of the assessed value from ad valorem taxation for all improvements to real property made by or for the use of a new business and for all tangible property of such new business, or

[10] FLA. CONST. art. VII, s. 3(c).
[11] Section 196.1995(1)(a)(b), F.S.
[12] Section 196.1995(4), F.S.
[13] *See* s. 196.1995(2), F.S., for the specific ballot language format.

- 100 percent of the assessed value of all added improvements to real property that are made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business.[14]

The ad valorem tax exemption only applies to taxes that are levied by the county or municipality granting the exemption, and does not apply to "taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution." [15]

C.) Exemption Application

Any person, firm, or corporation may file a written application with the board of county commissioners or municipal governing authority to receive an economic development ad valorem tax exemption.[16] The application shall request the adoption of an ordinance granting the exemption and must include the following information:

- The name and location of the new business or the expansion of an existing business;
- A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements;
- A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;
- Proof, to the satisfaction of the board of county commissioners or the governing authority of the municipality, that the applicant is a new business or an expansion of an existing business, as defined in s. 196.012(15) or (16), F.S.; and
- Other information deemed necessary by the department.[17]

The board of county commissioners or municipal governing authority must deliver a copy of the application to the county property appraiser, who shall report the following information:

- The total revenue available to the county or municipality for the current fiscal year from ad valorem tax sources, or an estimate of such revenue if the actual total revenue available cannot be determined;
- Any revenue lost to the county or municipality for the current fiscal year by virtue of exemptions previously granted under this section, or an estimate of such revenue if the actual revenue lost cannot be determined;
- An estimate of the revenue which would be lost to the county or municipality during the current fiscal year if the exemption applied for were granted had the property for which the exemption is requested otherwise been subject to taxation; and
- A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in s. 196.012 (15) or (16), F.S., or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser,

[14] *See* s. 196.1995(5), F.S. Note, that "[p]roperty acquired to replace existing property shall not be considered to facilitate a business expansion". *Id.*
[15] Section 196.1995(5), F.S.
[16] Section 196.1995(8), F.S.
[17] Section 196.1995(8)(a)-(e), F.S.

> the department shall provide to him or her such information as it may have available to assist in making such determination.[18]

D.) Ordinance

A county or municipal ordinance granting an economic development ad valorem tax exemption must be adopted in the same manner that the respective entity adopts other ordinances, and must include the following information:

- The name and address of the new business or expansion of an existing business to which the exemption is granted;
- The total amount of revenue available to the county or municipality from ad valorem tax sources for the current fiscal year, the total amount of revenue lost to the county or municipality for the current fiscal year by virtue of economic development ad valorem tax exemptions currently in effect, and the estimated revenue loss to the county or municipality for the current fiscal year attributable to the exemption of the business named in the ordinance;
- The period of time for which the exemption will remain in effect and the expiration date of the exemption; and
- A finding that the business named in the ordinance meets the requirements of s. 196.012(15) or (16), F.S.[19]

Charter Counties

Article VII, section 1(g), of the Florida Constitution provides that:

> Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.[20]

Although a non-charter county can be established through general law, a county charter can only be adopted, amended, or repealed through a special election by the electors in that county. Unless otherwise provided in a county charter or special law, the electors of each county must elect the following constitutional officers for a four-year term: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of circuit court.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 196.012, F.S., to redefine the terms "new business" and "expansion of an existing business."

[18] Section 196.1995(9)(a)-(d), F.S.
[19] Section 196.1995(10)(a)-(d), F.S.
[20] FLA. CONST. art. VIII, s. 1(g).
[21] FLA. CONST. art. VIII, s. 1(d).

Section 2 amends s. 196.1995, F.S., to amend the current statutory criteria administering the economic development ad valorem tax exemption. Specifically, the bill requires the board or governing body to call a referendum determining whether to grant an ad valorem tax exemption for economic development if the board of a charter county receives a petition or initiative signed by the required percentage of registered electors as provided in the procedures established in the county's charter for the enactment of ordinances or for approval of charter amendments. The bill provides that this provision also applies to counties whose county charter requires signatures from less than 10 percent of its registered electors, which petition or initiative calls for the holding of such referendum.

This section also amends the statutorily required ballot question that must be used in such referendums to apply to new businesses and expansions of existing businesses that are expected to create new, full-time jobs and have been evaluated as being of economic interest to the community. The bill states that the board of county commissioners does not need to call or hold another referendum, if a referendum is called or held on or before the effective date of any amendment to s. 196.1995, F.S.

The bill revises the information that must be included in an application for an economic development tax exemption to include the number of jobs the applicant expects to create along with the average and median wage of the jobs and whether the jobs are full-time or part-time, as well as the expected time schedule for job creation.

The bill also provides economic criteria that the board or governing authority must consider when deciding whether to grant an economic development tax exemption, which includes:

- Total number of new jobs to be created by the applicant.
- Average wage and median wage of the new jobs.
- Capital investment to be made by the applicant.
- Whether the business or operation qualifies as an industry that the board or governing authority may target.
- Environmental impact of the proposed business or operation.
- Extent to which the applicant intends to source its supplies and materials within the applicable jurisdiction.

The bill states Legislature intent to vest counties and municipalities with as much discretion as legally permissible to determine which new jobs should be incentivized through the granting of these exemptions, and clarifies that an exemption may not exceed 10 years as provided in the Florida Constitution.

The bill allows the county or city to enter into a written tax exemption agreement with an applicant upon approval of an exemption application. The bill states that the written tax exemption agreement may include performance criteria and that it must be consistent with the requirements of s. 196.1995, F.S., and other applicable laws. The written agreement must require the applicant to report the actual number of new, full-time jobs created and their actual average and median wage, at a specific time before the exemption expires. The written agreement may also grant the county or city with the power to revoke, in whole or in part, the tax exemption, if the applicant fails to meet the expectations and representations described in subsection (8), of s. 196.1995, F.S.

Section 3 provides that this act shall take effect on July 1, 2011.

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:

None.

B. Private Sector Impact:

Non-profit organizations will be able to apply for the economic development ad valorem tax exemption provided in Article VII, section 3(c), of the Florida Constitution.

Applicants applying for an economic development tax exemption will be required to include additional information in their tax exemption applications.

C. Government Sector Impact:

Counties and municipalities will be provided more discretion in granting economic development ad valorem tax exemptions. Counties and municipalities will also be authorized to enter into written tax exemption agreements with approved applicants and as a result of such, may revoke an exemption if an applicant fails to meet the expectations and representations provided in s. 196.1995 (8), F.S.

The Florida Department of Revenue will need to amend Form DR-418 (Economic Development Ad Valorem Property Tax Exemption), to include the new information requirements in s. 196.1995, F.S., provided as a result of this bill.

VI. Technical Deficiencies:

Section 1 of the bill deletes the references to businesses located in an enterprise zone or brownfield area in the existing definitions for “new business” and “expansion of an existing business”; however, Section 2 of the bill still provides the ballot language for city or county referendums that limit the outcome of the referendum to businesses located in an enterprise zone or brownfield area.

VII. Related Issues:

According to the Department of Revenue, 15 counties in the State of Florida offer the economic development exemption totaling approximately $747.7 million. The Department further indicated that 33 cities throughout the state offer the economic development exemption totaling approximately $154.9 million.[22]

The following information addresses the number of *counties* in Florida that currently offer the economic development tax exemption:

2010	
County Name	ECON DEV EXEMPTION 196.1995
Bay	$ 232,133,541.00
Brevard	$ 28,762,380.00
Calhoun	$ 517,421.00
Dade	$ 67,568,325.00
Escambia	$ 279,392,755.00
Gulf	$ 362,894.00
Hardee	$ 27,542,457.00
Hendry	$ 2,246,960.00
Jackson	$ 49,419,465.00
Liberty	$ 30,932,427.00
Madison	$ 598,608.00
Palm Beach	$ 7,424,114.00
Saint Lucie	$ 17,756,979.00
Santa Rosa	$ 2,613,424.00
Washington	$ 441,581.00
Statewide	$ 747,713,331.00

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[22] Email from Lynne Moeller of the Florida Department of Revenue, to Dana Gizzi of the Senate Committee on Community Affairs (Feb. 18, 2011) (on file with the Senate Committee on Community Affairs).
[23] *Id.*

The following information addresses the number of *cities* in Florida that currently offer the economic development tax exemption:

2010		
County Name	City Name	ECON DEV EXEMPTION 196.1995 & LIC CHILD CARE FACILITY 196.095
BAY	LYNN HAVEN	$ 3,807,978.00
	PANAMA CITY	$ 43,122,287.00
BREVARD	COCOA	$ 308,770.00
	MELBOURNE	$ 14,238,900.00
	PALM BAY	$ 1,580,720.00
	ROCKLEDGE	$ 1,024,310.00
	TITUSVILLE	$ 227,960.00
DADE	HIALEAH	$ 4,694,901.00
	MIAMI	$ 31,283,502.00
	MIAMI BEACH	$ 7,284,508.00
	MIAMI GARDENS	$ 3,609,474.00
	MIAMI SPRINGS	$ 1,184,696.00
	PALMETTO BAY	$ 146,580.00
ESCAMBIA	PENSACOLA	$ 8,091,198.00
HENDRY	CLEWISTON	$ 503,640.00
	LA BELLE	$ 193,900.00
HERNANDO	BROOKSVILLE	$ 4,552,157.00
HOLMES	BONIFAY	$ 277,180.00
LEE	FORT MYERS	$ 1,293,033.00
LEON	TALLAHASSEE	$ 2,221,482.00
OSCEOLA	KISSIMMEE	$ 333,600.00
PALM BEACH	PAHOKEE	$ 103,870.00
SAINT LUCIE	FORT PIERCE	$ 820,100.00
	PORT ST. LUCIE	$ 9,432,416.00
SARASOTA	SARASOTA	$ 252,400.00
TAYLOR	PERRY	$ 287,880.00
VOLUSIA	DAYTONA BEACH	$ 9,279,779.00
	DELAND	$ 680,296.00
	HOLY HILL	$ 778,086.00
	ORANGE CITY	$ 1,492,211.00
	ORMOND BEACH	$ 1,525,775.00
	SOUTH DAYTONA	$ 293,751.00
WASHINGTON	SUNNY HILLS	$ 16,000.00
Statewide		$ 154,943,340.00

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VIII. Additional Information:

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

None.

[24] *Id.*

B. Amendments:

None.

753744

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Ring) recommended the following:

Senate Amendment

Delete lines 66 - 70
and insert:
(b) Any business located in an enterprise zone or brownfield area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.
(c) A business that is situated on property annexed into

304270

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Ring) recommended the following:

Senate Amendment

Delete lines 74 - 99
and insert:
(16) "Expansion of an existing business" means:
(a) The expansion of an existing business or nonprofit organization, other than its relocation to another community, which results in a net increase of new, full-time jobs for which the board or governing authority wishes to provide incentives through ad valorem tax exemptions granted pursuant to s. 196.1995; or
~~1. A business establishing 10 or more jobs to employ 10 or~~

304270

~~more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or~~

~~2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site colocated with a commercial or industrial operation owned by the same business, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.~~

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

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 478
INTRODUCER:	Senator Thrasher
SUBJECT:	Property Taxation
DATE:	February 11, 2011
REVISED:	

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

I. Summary:

This bill revises, updates and consolidates provisions of chapter 197 of the Florida Statutes relating to tax collections, sales and liens. The bill tolls the statute of limitations relating to proceedings involving tax lien certificates or tax deeds to the period of intervening bankruptcy. The bill amends requirements for tax deed applications and the purchase of tax certificates to provide definitions and include interest, fees, and costs in the face value of the certificate. The bill provides for electronic notice, programs, sales, and fees. The bill also authorizes tax collectors to issue certificates of correction to the tax rolls for uncollectable personal property accounts. The bill consolidates provisions relating to the payment of deferred taxes.

This bill substantially amends chapter 197 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 95.051(1)(h), 197.146, 197.2421, 197.2423, 197.332(2), 197.4725, and 197.603.

This bill repeals the following sections of the Florida Statutes: 197.202, 197.242, 197.304, 197.3041, 197.3042, 197.3043, 197.3044, 197.3045, 197.3046, 197.3047, 197.307, 197.3072, 197.3073, 197.3074, 197.3075, 197.3076, 197.3077, 197.3078, and 197.3079.

II. Present Situation:

Property Tax Assessments

Chapters 193-195, Florida Statutes, address property assessment procedures. Local property appraisers assess all real and tangible personal property located within the county. The

assessment process begins by determining the property's just value; property appraisers are required to utilize the factors outlined in s. 193.011, F.S., to determine the property's just valuation as of January 1 of each year.

Article VII, s. 4, of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1] The State Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.[2]

Article VII, of the State Constitution, also limits the amount by which assessed value may increase in a given year for certain classes of property, and permits a number of tax exemptions. These include exemptions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

The property appraiser's assessment roll must be completed and submitted to the executive director of the Department of Revenue for approval by July 1 of each year, unless good cause is shown for extension.[3] As provided by ch. 195, F.S., the Department of Revenue has general supervision of the assessment and valuation of the property. Taxpayers receive a Notice of Proposed Property Taxes (TRIM notice) in August of each year. This notice provides the taxable value of the property and the millage rate[4] necessary to fund each taxing authority's proposed budget, based on the certified tax rolls submitted by the property appraiser.

Chapter 194, F.S., provides that taxpayers have the right to appeal the property appraiser's assessment at an informal conference with the property appraiser by filing a petition to the Value Adjustment Board[5] (VAB) within 25 days after the TRIM notice is mailed, or to contest the assessment in circuit court. Following decisions by the VAB, the appraiser submits a revised certified tax roll to each taxing authority.

Locally-elected governing boards prepare a tentative budget for operating expenses following certification of the tax rolls by the tax collector. The millage rate is then set based on the amount

[1] *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).
[2] Section 196.185, F.S.
[3] Section 193.1142, F.S.
[4] The millage rate is the rate at which the property is taxed and is set by county commissioners based on how much revenue is needed for operating expenses. *See* s. 200.069, F.S. *See also* Florida Department of Revenue website, *Local Government Property Tax Process*, available at http://dor.myflorida.com/dor/property/taxpayers/pdf/ptoinfographic.pdf (last visited on Nov. 3, 2010).
[5] The Value Adjustment Board for each county consists of two elected governing members of the county, one of whom shall be elected chairperson and the other a member of the school board, as well as two citizen members: one, appointed by the governing body, who must own a homestead within the county and one, appointed by the school board, who must own a business that occupies commercial space located within the school district. *See* s. 194.015, F.S.

of revenue which needs to be raised in order to cover those expenses. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls. The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to end of said hearing.[6] The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original certification of value is more than 1% for municipalities, counties, school boards, and water management districts, or more than 3% for other taxing authorities.

Economic Development Ad Valorem Tax Exemption

Section 196.1995, F.S., authorizes the board of county commissioners of any county or the governing authority of any municipality to call a referendum to determine whether its respective jurisdiction may grant an economic development tax exemption under s. 3, Art. VII of the State Constitution. It prescribes the procedure for the referendum, and, upon a majority favorable vote, authorizes the governing body of the county or municipality to exempt up to 100 percent of the assessed value of all improvements to real property made by or for the use of a new business and all tangible personal property of such new business, or up to 100 percent of the added improvements to real property and net increases in tangible personal property of an expanding business. Property acquired to replace existing property is not considered a business expansion, and the exemption applies only to the taxes levied by the unit of government granting the exemption, and does not apply to taxes levied for the payment of bonds. The exemption remains in effect for up to 10 years for any particular facility, regardless of any change in the authority of the county or municipality to grant the exemption.

The authority to grant an exemption expires 10 years after the date it was approved in an election, but such authority may be renewed for another 10-year period by a referendum.

Tax Collections, Sales and Liens

Chapter 197, Florida Statutes, governs tax collections, sales and liens. Pursuant to s.197.322, F.S., the tax collector will mail a tax notice to each taxpayer within 20 days of receipt of the certified ad valorem tax roll and the non-ad valorem assessment rolls, stating the amount due and advising the taxpayer of discounts provided for early payment.[7] This normally occurs around November 1. Taxes that are not paid by April 1 following the year in which they were assessed are considered delinquent.[8] On April 30, the tax collector sends an additional tax notice to each taxpayer whose payment has not been received notifying that taxpayer that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.[9]

[6] Section 200.065, F.S.
[7] Section 197.322 (1), F.S. *See also* s. 187.222, F.S. Taxpayers who elect to prepay their taxes by installment "based upon the estimated tax equal to the actual taxes levied upon the subject property in the prior year".
[8] Section 197.333, F.S.
[9] Section 197.343, F.S.

On or before June 1 or 60 days after the date of delinquency, tax collectors are required to hold tax certificate auctions to sell tax certificates on properties with delinquent taxes which "shall be struck off to the person who will pay the taxes, interest, cost and charges and will demand the lowest rate of interest under the maximum rate of interest".[10] Tax certificates that are not sold are issued to the county at the maximum interest rate (18%). The sale of the tax certificate acts as first lien on the property that is superior to all other liens; but it does not convey any property rights to the investor.[11]

A property owner can redeem a tax certificate anytime before a tax deed is issued or the property is placed on the list of lands available for sale. The person redeeming or purchasing the tax certificate is required to pay the investor or county "all taxes, interest, costs, charges, and [any] omitted taxes" and a $6.25 fee to the tax collector.[12]

The tax certificate holder is entitled to apply for a tax deed on the property on or after April 1 of the second year following the sale of the certificate and before the expiration of seven years from issuance, by filing the certificate with the county tax collector and paying all other tax certificates held on the same property, any current taxes that are due, and certain additional fees and costs. The tax collector is authorized to collect a tax application fee of $75 at the time of application for the tax deed.[13]

If the property is not sold at the public tax deed auction held by the clerk of the circuit court, then it will be placed on the List of Lands available for sale.[14] Property that is placed on the list of lands available for sale, and is not sold three years after the public auction escheats to county in which the property is located, free and clear of all liens.[15] A tax certificate that is not redeemed or for which a tax deed has not been applied for after a period of seven years is considered to be null and void.

Tax Deferrals

Chapter 197, F.S., also provides certain instances in which a taxpayer can delay paying a portion of his or her combined taxes to a future date. Sections 197.252-197.3079, F.S., allow individual tax deferrals for taxpayers who are entitled to exemptions for homestead, recreational and commercial working waterfront, and affordable rental housing property. To qualify for a tax deferral, these classified property owners are required to file an annual tax deferral application with the county tax collector on or before January 31, following the year the property was assessed.

[10] Section 197.432(5), F.S.
[11] Section 197.122, F.S., *see also* s. 197.432, F.S.
[12] Section 197.472, F.S.
[13] Section 197.502, F.S.
[14] Section 197.542, F.S., "If the certificate holder is not the successful bidder, he/she is reimbursed all monies paid, plus interest earned from the monies received from the successful bidder." *Tax Deed & Foreclosure Sales: Tax Deed Sales*, Walton, Florida Clerk of Courts website, available at http://www.clerkofcourts.co.walton.fl.us/public_records/tax_deed_and_foreclosure_sale_information_area.html (last visited on Feb. 11, 2010).
[15] Section 197.502(8), F.S.

III. Effect of Proposed Changes:

Section 1 creates paragraph (h) in s. 95.051(1), F.S., to toll the statute of limitations for proceedings related to tax lien certificates or tax deeds under chapter 197, F.S., by the period of an intervening bankruptcy.

Section 2 amends s. 197.102(1) F.S., to provide the following definitions:

- "Awarded" means the time when the tax collector or a designee determines and announces verbally or through the closing of the bid process in an electronic auction that a buyer has placed the winning bid at a tax certificate sale.
- "Proxy bidding" means a method of bidding by which a bidder authorizes an agent, whether an individual or an electronic agent, to place bids on his or her behalf.
- "Random number generator" means a computational device that generates a sequence of numbers that lack any pattern and is used to resolve a tie when multiple bidders have bid the same lowest amount. The generator assigns a number to each of the tied bidders and randomly determines which one is the winning bid.
- The bill revises the definitions of "tax certificate" and "tax notice" to include an electronic tax certificate and an electronic tax bill.

The bill clarifies that the definitions listed in subsection (2) in 197.102, F.S., shall apply when a local government uses the methods listed in s. 197.3632, F.S., to levy, collect, or enforce a non ad-valorem assessment.

Section 3 amends s. 197.122, F.S., to clarify that an act of omission or commission on the part of the property appraiser, tax collector, board of county commissioners, clerk of circuit court, county comptroller; or their deputies or assistants; or by a newspaper that may publish the advertisement of a tax sale, does not defeat the payment of taxes.

The bill clarifies that tax payments also include the payment of interest, fees and any costs due. It clarifies that the sale or conveyance of real property that is being sold for nonpayment of taxes is not valid if the property is redeemed before the clerk of court receives full payment for a tax deed, including all recording fees and documentary stamps. This section also makes additional technical revisions.

Section 4 amends s. 197.123, F.S., to clarify that the tax collector must notify the property appraiser if a taxpayer has filed an erroneous or incomplete personal property statement or has failed to disclose all of the property subject to taxation.

Section 5 creates s. 197.146, F.S., to provide that a tax collector may issue a certificate of correction for the current tax roll or any prior tax rolls if the tax collector determines that a tangible personal property account is uncollectable. The tax collector must notify the property appraiser that the account is invalid, and the assessment may not be certified for a future tax roll.

This section states that an uncollectable account includes, but is not limited to, an account originally assessed but that cannot be found to seize and sell for the payment of taxes, and other personal property of the owner for which a tax warrant may be levied.

Section 6 amends s. 197.162, F.S., to make technical corrections. It changes the title of the section to "Tax discount payment periods" and adds the specification that discounts will apply only to payments made before delinquency, and specifically includes the zero percent discount in the periods covered.

Section 7 amends s. 197.172, F.S., to delete outdated language and to clarify that interest on tax certificates shall be calculated from the first day of the month, including interest on deferred payment tax certificates, which is currently calculated as provided in s. 197.262, F.S.

Section 8 amends s. 197.182, F.S., making numbering and grammatical changes and shortening the time a demand for reimbursement can be made from 24 to 12 months because of a payment made in error for delinquent taxes. It creates a new subsection (5) to state that a request for reimbursement on erroneous payments for taxes that have *not* become delinquent must be made within 18 months. It raises the minimum amount of an automatic refund for overpayment from $5 to $10 (a refund for less than $10 may be requested by the taxpayer) and changes the time period for a tax collector to automatically refund a payment made in error from 4 years to 12 months. The amount of a refund that does not have to be forwarded to the Department is increased from $400 to $2,500.

It states that a tax collector may send notice of denial of a refund electronically or by postal mail, and clarifies that electronic transmission may only be used with the express consent of the property owner and if such electronic notice is returned as undeliverable, a second notice must be sent. However, for purposes of this section, the original electronic transmission constitutes the official mailing. The procedure for apportioning payment among taxing authorities is reworded.

Section 9 amends s. 197.222, F.S., to make grammatical changes and remove the requirement that the application be made on forms supplied by the department. A section is added that requires the tax collector to send a quarterly statement with the discount rates to those participating in the prepayment installment plan schedule as provided by the Department.

Section 10 amends s. 197.2301, F.S., which provides a procedure for voluntary payment of taxes when the tax roll cannot be certified for collection of taxes before January 1 of the current tax year. The bill makes grammatical changes and provides that if there is an underpayment or overpayment of tax of less than $10, the taxpayer is not required to send an additional bill or automatically make a refund. The current law provision is that an underpayment or overpayment of less than $5 does not require an additional billing or automatic payment of refund.

Section 11 creates s. 197.2421, F.S., to combine all property tax deferral provisions into one subsection. The authorized property tax deferral programs are: homestead tax deferral, recreational and commercial working waterfront deferral, and affordable rental housing deferral.

Section 12 creates s. 197.2423, F.S., providing the procedures for tax collectors to approve or deny property tax deferral applications.

Section 13 renumbers section 197.253, F.S., as section 197.2425, F.S., and amends procedures to appeal the denial of an application for a tax deferral. The filing date is changed from 20 to 30 days after receiving the disapproval notice.

Section 14 amends s. 197.243, F.S., removing "Act" from the title.

Section 15 amends s. 197.252(1), F.S., to remove language stating that the amount of the tax deferral is for the amounts that would have been covered had the tax certificate been sold. It deletes language in subsections (3) and (5) which is inserted in sections 11 and 12 of the bill.

It amends subsection (2) to clearly state the eligibility requirements for the approval of a homestead tax deferral application.

It amends subsection (3) to require the property appraiser to notify the tax collector of a change in ownership or that the homestead exemption has been denied on property that has been granted a tax deferral.

It removes subsection (4) which provides that the interest accruing on deferred tax is one-half of 1 percent plus the average yield to maturity of the long term fixed income portion of the Florida Retirement System and may not exceed 7 percent.

Section 16 renumbers s. 197.303, F.S., as s. 197.2524, F.S., and includes procedures for the tax deferral of affordable rental housing property.

Section 17 renumbers s. 197.3071, F.S., as s. 197.2526, F.S., to provide specifically for tax deferral eligibility of affordable rental housing property.

Section 18 amends s. 197.254, F.S., to remove the language requiring the notice of the right to deferral to be printed on the back of the notice envelope specified in s. 197.322(3), F.S., and remove the specification of the form of the notice, but keeps the requirement that taxpayers be notified.

Section 19 amends s. 197.262, F.S., removing the requirement for the tax collector to notify the local governing body of taxes that are deferred, and limits the amount of interest on tax certificates to 7 percent.

Section 20 amends s. 197.263, F.S., moving language from subsection (2) and placing it in subsection (1). It provides that if there is a change in ownership to a surviving spouse and the spouse is eligible to maintain the tax deferral, the spouse may continue the deferral.

Language in subsection (2) which requires all deferred taxes to be due and payable when there is a change in ownership is removed and subsequent subsections are renumbered.

Subsection (3) requires the tax collector to notify the owner when the total amount of the deferral exceeds 85 percent of the just value, rather than the assessed value, to state that such portion of the taxes become due and payable within 30 days after the notice is sent.

Section 21 amends s. 197.272, F.S., and requires that any payment less than the total amount due must be made in full year increments.

Section 22 amends s. 197.282, F.S., adding "non-ad valorem assessments" to the distribution by the tax collector. This section also removes the requirement that the tax collector provide a description of the property and the amount of taxes or interest collected for such property.

Section 23 amends s. 197.292, F.S., with minor wording and numbering changes.

Section 24 amends s. 197.301, F.S., including "non-ad valorem assessments" in the total amount due and penalty amount calculated pursuant to the uniform method prescribed in s. 197.3632, F.S.

Section 25 amends s. 197.312, F.S., making minor wording and numbering changes.

Section 26 amends s. 197.322, F.S., making minor wording and numbering changes and allowing notices to be sent electronically, specifying procedures for electronic delivery.

Section 27 amends s. 197.332(1), F.S., by adding language allowing tax collectors to use electronic means and to contract for services to carry out their duties, but specifies that the liability of tax collectors is not diminished when using contracted services or products. It allows the tax collector to include the costs of contracted serves in proceedings to recover taxes, interests, and costs.

It creates subsection (2) to allow the tax collector to establish one or more branch offices by acquiring title to real property, or by lease agreement; to hire staff and equip the branch offices to conduct state business, or county business if authorized by resolution of the county governing body pursuant to section 1(k), Art. VIII, State Constitution.

It requires the department to rely on the tax collector's determination that the branch office is necessary and shall base its approval of the tax collector's budget in accordance with the procedures of s. 195.087(2), F.S.

Section 28 amends s. 197.343, F.S., providing that the additional tax notice can be sent electronically with express consent of the property owner, stating specific procedures for electronic transmission. The requirement for a duplicate tax notice to be mailed to a condominium or mobile-home owner's homeowner association is removed.

Section 29 amends s. 197.344, F.S., making minor wording changes and removing all references to the mailing of notices and replaces the word "mail" with the word "send". Provides that notices may be sent electronically or by postal mail, specifying procedures for electronic delivery.

Section 30 amends s. 197.3635, F.S., removing subsection (2) that requires the form to have a clear partition between ad valorem taxes and non-ad valorem assessments. It removes the size requirements of the partition and makes minor wording and numbering changes.

Section 31 amends s. 197.373, F.S., to make minor wording changes and change the 15 day notice requirement to 45 days for partial payment of taxes.

Section 32 amends s. 197.402, F.S., making minor wording changes to subsection (1) and adding language to subsection (2) to provide that if the deadline falls on a Saturday, Sunday, or legal holiday, it is extended to the next working day.

It specifies that for certificate sales that commence on or before June 1, all certificates shall be effective as of the first day of the sale and interest shall be paid on the certificate to include the month of June.

Section 33 amends s. 197.403, F.S., making minor wording changes and removing the requirement for the affidavit to be in the form prescribed by the department.

Section 34 amends s. 197.413, F.S., making minor wording changes to subsections (5) and (10). It provides for the tax collector to give notices to delinquent taxpayers and changes the fee from $2 to $10. It also deletes the $8 fee that the tax collector is entitled to for each warrant issued.

Section 35 amends s. 197.414, F.S., removing the requirement that the record be kept in a form prescribed by the department, clarifying that the warrant register may be kept in paper or electronic form.

Section 36 amends s. 197.4155, F.S., making minor wording changes to subsections (1) and (2). It removes the limitation that the installment program be available to delinquent taxpayers whose delinquent personal property taxes exceed $1,000.

Section 37 amends s. 197.416, F.S., making minor wording changes and removing redundant language forbidding an action in any court after the 7-year limitation period.

Section 38 amends s. 197.417, F.S., amending the minimum time period that the tax collector is required to advertise the time and place for the sale of personal property after seizure from 15 to 7 days. It reduces the number of notices to be posted from three to two and removes the courthouse location as one of the required public places to post notice. It authorizes one notice to be posted on the Internet, and requires a description and photograph of the property be available for a sale conducted electronically. It removes the immediate payment requirement.

Section 39 amends s. 197.432, F.S., making minor wording changes and adds a statement to subsection (1) that electronic means, including proxy bidding, can be used in the certificate sale.

Subsection (3) is worded to state that the tax collector may not issue a tax certificate if the real property taxes are paid before awarding a certificate. After a certificate is awarded, the delinquent taxes, interest, costs, and charges are paid by the redemption of the tax certificate.

Subsection (4) increases the amount in which a tax certificate is automatically struck to the county, rather than sold at public auction, from $100 to $250, and makes clarifying amendments.

Subsection (5) is created to provide that any tax certificate that has not been sold on property for which a tax deed application is pending shall be struck to the county.

Subsection (6) provides for the use of random number generators, stating that the tax collector can determine the winning bidder amongst multiple bidders by random number generators or by selecting the first bidder.

Subsection (7) provides for electronic notice of when certificates are ready and provides that any refund for a payment requested by the tax collector in error must be refunded 15 business days after the payment.

Subsection (8) provides requirements for reoffering certificates for sale before and after adjournment of the sale.

Subsection (9) permits the official record of awarded tax certificates to be maintained electronically.

The bill makes technical amendments in current subsections (10) and (11).

Current subsections (12), (13) and (16) are deleted and replaced in other sections of the bill. Subsection (12) provided that all tax certificates issued to the county for lands located in the county shall be held by the county tax collector. Subsection (13) provided that all delinquent real property taxes may be paid after the delinquency date but prior to the certificate sale by paying all costs, charges and interest. Subsection (16) provided for the conduct of tax certificate sales by electronic means.

Subsection (12) of the bill provides that the tax collector is entitled to a five percent commission included in the face value of the certificate for certificates that are not struck to the county, and that the tax collector cannot receive any commission for certificates struck to the county until the certificate is redeemed or purchased by an individual. If a tax deed is issued to the county, the tax collector cannot receive any commission until the property is sold and conveyed by the county.

Section 40 amends s. 197.4325, F.S., making minor wording changes and changing references to "check" to "payment." Subsection (1)(b), requiring the tax collector to retain a copy of the cancelled tax receipt and dishonored check, is deleted. The bill substantially shortens the tax collector's requirements upon receiving a dishonored payment in subsection (2).

Section 41 amends s. 197.442, F.S., making minor wording changes throughout subsection (2).

Section 42 amends s. 197.443, F.S., making minor wording changes. It provides that tax certificate corrections or cancellations that have been ordered by a court or that do not result from changes made in the assessed value on a tax roll certified to the tax collector are required to be made by the tax collector with no order from the department. It allows the certificate to be amended as a result of payments received due to an intervening bankruptcy or receivership.

Section 43 amends s. 197.462, F.S., making minor wording changes. It removes the requirement that the tax collector endorse a tax certificate in subsection (2).

Section 44 amends s. 197.472, F.S., making minor word changes and clarifying that in order to redeem a certificate that is in the tax deed application status, the redeeming party must pay the

face amount plus all interest, costs, and charges. The bill also deletes current subsection (5) and clarifies the procedural requirements for a tax collector to issue a redemption receipt and certificate. The bill specifies that provisions of subsection (4) do not apply to collections relating to fee timeshare real property.

Section 45 creates s. 197.4725, F.S., providing a separate section for the purchase of *county-held* tax certificates at any time after a certificate is issued and before a tax deed application is made. The redemption procedures in this section essentially mirror those provided in s. 197.472, F.S. It provides that the interest earned shall be calculated at 1.5 percent per month, or a fraction thereof.

Section 46 amends s. 197.473, F.S., providing that unclaimed redemption moneys are considered unclaimed as defined in s. 717.113, F.S., and must be remitted to the state instead of the board of county commissioners. It removes the provision that all claims for the unclaimed redemption moneys are barred after two years.

Section 47 amends s. 197.482, F.S., making minor wording changes. It removes references to the Act of the 1973 legislature and provisions pertaining to the Murphy Act.

Section 48 amends s. 197.492, F.S., which requires the tax collector to provide a report to the board of county commissioners separately showing the discounts, errors, double assessments, and insolvencies for which a credit is to be given. The bill makes minor wording changes throughout, and clarifies that the credit is given for discounts, errors, double assessments, and insolvencies **relating to tax collections**. It allows the report to be submitted in electronic format, and removes the provision requiring the board to review and investigate the tax collector's report. It deletes language that the board shall charge the tax collector, if he or she has taken credit as an insolvent item, any personal property tax due by a solvent taxpayer.

Section 49 amends s. 197.502, F.S., providing clarifying changes and authorizing the reimbursement of any fee for an electronic tax deed application service and removes the requirement for affixation of the tax collector's seal. The bill deletes language in this section stating that the application may be made on the entire parcel of property or any part thereof capable of being readily separated. The bill further deletes the requirement that a statement declaring that all outstanding certificates have been paid be affixed with the tax collector's seal.

Section 50 amends s. 197.542, F.S., making minor wording changes. It removes archaic language regarding the sale at public outcry, and requires all delinquent tax amounts accrued after filing an application to be included in the minimum bid. It changes the highest bidder deposit from $200 dollars to the greater of 5 percent of bid or $200. It requires that the sale process be repeated until the property is sold and the clerk receives full payment, or until the clerk does not receive any bids other than that of the certificate holder.

Section 51 amends s. 197.582, F.S., making minor wording changes and providing that the clerk should include payment of tax certificates not incorporated in the tax deed application and any omitted taxes, in the distribution of the excess proceeds.

Section 52 amends s. 197.602, F.S., to specify the expenses that are required to be reimbursed when a party successfully challenges a tax deed and directs the court to determine the amount of reimbursement.

Section 53 amends s. 192.0105, F.S., making minor wording and numbering changes and removing the requirement to send notice by first class mail. The bill adds language to provide that property owners are held to know that property taxes are due and payable annually and that they have a duty to ascertain the amount of current and delinquent taxes that are due from the applicable officials.

It also states that taxpayers do not have a right to discounts for early partial payments as defined in s. 197.374, F.S., and clarifies that the taxpayer has the right to redeem the tax certificates any time before full payment for a tax deed is made to the clerk and that certificate holder is not permitted to contact the taxpayer for 2 years after April 1 of the year the certificate is issued.

Sections 54- 55 replaces cross references to s. 197.253, F.S., with s. 197.2425, F.S., to incorporate the amendments in section 13 of the bill.

Section 56 changes the cross reference to s. 197.432(10), F.S., to s. 197.432(11), F.S, to incorporate the amendments in section 39 of the bill.

Section 57 creates section 197.603, F.S., which declares a legislative findings and intent that the Legislature has a strong interest in ensuring due process and public confidence in the collection of property taxes. The tax collectors shall be supervised by the Department of Revenue pursuant to s. 195.002(1), F.S. The new section also states that the Legislature intends that property tax collection be free from influence or appearance of influence of the local governments who levy property taxes and receive property tax payments.

Section 58 repeals sections 197.202, 197.242, 197.304, 197.3041, 197.3042, 197.3043, 197.3044, 197.3045, 197.3046, 197.3047, 197.307, 197.3072, 197.3073, 197.3074, 197.3075, 197.3076, 197.3077, 197.3078, 197.3079, of the Florida Statutes.

Section 59 provides an effective date of July 1, 2011.

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:

This bill increases the overpayment amount that may be retained by a tax collector absent a request from the taxpayer, from $5 to $10, and changes the highest bidder deposit for tax deed sales from $200 to the greater of 5% of the bid or $200.

B. Private Sector Impact:

Indeterminate at this time.

C. Government Sector Impact:

This bill is expected to reduce the tax collectors' mailing costs, and could provide other efficiencies by allowing greater flexibility and use of technology.

This bill provides implications for rulemaking by the Department of Revenue.[16]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Revenue made the following comments:

- The provision for the 30 day time frame from receipt of notice relating to the appeal of a denied tax deferral in section 13 of the bill, conflicts with s. 194.011(3)(d), F.S., (this section is not amended in the bill), which provides for 30 days from *mailing* of the notice. Section 194.011(3)(d), F.S., discusses the denial of a property tax exemption.
- The language providing that tax collectors shall be supervised by the department in the legislative intent section of the bill (section 57) is unclear, since the bill does not provide additional detail in the form of amendments to other sections of law.
- The department also recommended the following technical amendments:
  - Strike comma and insert "and" on page 39, line 1111 of the bill.
  - Insert "of" between "Art. VIII" and "the" on page 41, line 1189 of the bill.[17]

VIII. Additional Information:

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

None.

[16] Department of Revenue, *SB 478 Agency Analysis*, at 23-24 (Feb. 3, 2011) (on file with the Senate Committee on Community Affairs).
[17] *Id.* at 23-25.

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:	SB 480
INTRODUCER:	Senator Wise
SUBJECT:	Florida Endowment for Vocational Rehabilitation
DATE:	February 15, 2011 REVISED:

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

I. Summary:

The bill removes the State Board of Administration's (SBA) requirement to invest and reinvest moneys in the endowment fund of the Florida Endowment for Vocational Rehabilitation. The bill also removes the requirement for transmitting moneys in the endowment fund for deposit in the foundation's operating account. The bill removes the threshold in law for the endowment fund principal.

The bill provides for remitting the following to the Department of Revenue (DOR) for deposit in the endowment fund:

- Two percent of the remainder of all civil penalties received by a county court pursuant to Chapter 318, F.S.;

For additional fines levied under s. 318.18(3)(f), F.S., for injury to a pedestrian or property:[1]

- 60% of the additional fine related to assisting mobility-impaired persons; and
- 40% must be distributed pursuant to s. 318.21(1) and (2), F.S.

This bill substantially amends section 413.615 of the Florida Statutes.

[1] Note that this is the same distribution scheme in current law under s. 318.21(5), F.S.

II. Present Situation:

Federal law

The federal Rehabilitation Services Administration (RSA) provides leadership and fiscal resources to assist state and other agencies to provide vocational rehabilitation (VR), independent living, and other services to individuals with disabilities.[2] To be eligible to participate in the federal VR program and other rehabilitation services, states must submit to the RSA a state plan for VR services to be administered by a designated state agency.[3] In Florida, the Department of Education (DOE) is the designated state agency.[4]

The Florida Endowment for Vocational Rehabilitation

Created by the Florida Legislature in 1990,[5] the Florida Endowment Foundation for Vocational Rehabilitation, parent organization of The Able Trust, is a non-profit public/private partnership with a goal of assisting Floridians with disabilities in achieving employment. The Trust receives its funding from a perpetual endowment, grants, gifts and support from the public and corporate sectors. The Trust supports non-profit vocational rehabilitation programs throughout Florida with fund-raising, grant-making and public awareness of disability issues. The Able Trust supports a diversity of projects, including on-the-job coaching, supported employment, job skills-training, job development, employer outreach, Americans with Disabilities Act facility compliance, skills evaluation and programs leading to employment. The positive impact of The Able Trust's grant awards has been felt by non-profit agencies serving people with various disabilities, community colleges and individuals with documented disabilities.[6]

Civil Penalties for Traffic Infractions

Civil penalties imposed under Chapter 318, F.S., for traffic infractions are collected by the clerk of the court and distributed pursuant to s. 318.21, F.S. Section 318.21(1) and (2), F.S., specifies that the following amounts of all civil penalties imposed under Chapter 318, F.S., and collected by the clerk of court are to be remitted monthly to the Department of Revenue for deposit as follows:

- $1 from every civil penalty goes to the Child Welfare Training Trust Fund.
- $1 from every civil penalty goes to the Juvenile Justice Training Trust Fund.
- Of the remaining civil penalties:
    - 20.6 percent goes to general revenue, except that the first $300,000 shall be deposited into the Grants and Donations Trust Fund in the Justice Administrative Commission;
    - 7.2 percent goes to the Emergency Medical Services Trust Fund;
    - 5.1 percent goes to the Additional Court Cost Clearing Trust Fund;
    - 8.2 percent goes to the Brain and Spinal Cord Injury Rehabilitation Trust Fund;

[2] Office of Special Education and Related Services, U.S. Department of Education. *See* http://www2.ed.gov/about/offices/list/osers/rsa/index.html.
[3] 29 U.S.C. § 721.
[4] s. 413.201, F.S.
[5] Section 413.615, F.S.
[6] *See* The Able Trust, About the Able Trust, *available at* http://www.abletrust.org/about/.

- 2 percent goes to the endowment fund of the Florida Endowment Foundation for Vocational Rehabilitation.

Section 318.18(3)(f), F.S., imposes an additional fine of up to $250 if a violation of a traffic regulation to assist mobility-impaired persons[7] results in an injury to the pedestrian or damage to the property of the pedestrian. Section 318.21(5), F.S., requires the additional fine to be distributed as follows:

- 60 percent is remitted to the Department of Revenue for deposit in the Florida Endowment Foundation for Vocational Rehabilitation.
- 40 percent is distributed as provided in ss. 318.21(1) and (2), F.S.

The State Board of Administration

The State Board of Administration (SBA or the Board) is composed of the Governor as chair, the Chief Financial Officer, and the Attorney General. The board must invest all the funds in the System Trust Fund, as defined in a specified provision,[8] and all other funds specifically required by law to be invested by the Board pursuant to the specified statutory provisions to the fullest extent that is consistent with the cash requirements, trust agreement, and investment objectives of the fund.[9] The SBA is currently charged with investing and reinvesting moneys of the endowment fund in accordance with the provisions of ss. 215.44 and 215.53, F.S. Moneys in the endowment in excess of the endowment fund principal, or such lesser amount as may be requested in writing by the foundation, shall be annually transmitted to the foundation and are deposited in the foundation's operating account. The board shall use the moneys in the operating account, by whatever means, to provide for:

- Planning, research, and policy development for issues related to the employment and training of disabled citizens, and publication and dissemination of such information as may serve the objectives of this section.
- Promotion of initiatives for disabled citizens.
- Funding of programs which engage in, contract for, foster, finance, or aid in job training and counseling for disabled citizens or research, education, demonstration, or other activities related thereto.
- Funding of programs which engage in, contract for, foster, finance, or aid in activities designed to advance better public understanding and appreciation of the field of vocational rehabilitation.
- Funding of programs, property, or facilities which aid, strengthen, and extend in any proper and useful manner the objectives, work, services, and physical facilities of the division, in accordance with the purposes of this section.

Under current law, the endowment fund principal must be $1 million for the 2000-2001 fiscal year and must be increased by five percent in each subsequent fiscal year.[10]

[7] Section 316.1303, F.S.
[8] Section 215.444(2), F.S.
[9] Section 768.28, F.S.
[10] Section 413.615(4), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 413.615, F.S., to remove the SBA's requirement to invest and reinvest moneys in the foundation's endowment fund. The bill would also remove the requirement for transmitting moneys in the endowment fund in excess of the endowment fund principal, or a lesser amount as requested by the foundation, for deposit in the foundation's operating account. The bill removes the threshold in law for the endowment fund principal.

The bill provides that 2% of the remainder of all civil penalties collected under provisions of Chapter 318, F.S., are to be remitted to the Department of Revenue for distribution to the Florida Endowment Foundation for Vocational Rehabilitation. The bill further provides that additional fines collected for violation of traffic regulations to assist mobility-impaired persons[11] due to pedestrian injury or property damage[12] are to be remitted to the Department of Revenue for distribution as follows:

- 60% to the Florida Endowment Foundation for Vocational Rehabilitation; and
- 40% as provided in subsection 318.21(1) and (2), F.S.[13]

Section 2 provides an effective date.

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:

None.

B. Private Sector Impact:

None.

[11] Section 316.1303, F.S.
[12] Section 318.18(3)(f), F.S.
[13] Note that this is the same distribution scheme in current law under s. 318.21(5), F.S.

C. Government Sector Impact:

The bill allows the board of the foundation to consolidate all of its investments under its own investment committee. The fiscal impact of terminating the SBA's role in investing and reinvesting the funds for the Florida Endowment for Vocational Rehabilitation is indeterminate.

VI. Technical Deficiencies:

The bill refers to 2% of the "remainder of the funds" but does not specify that it is the remainder of the funds remaining after the distribution in s. 318.21(1), F.S. The Department of Revenue recommends replacing line 36 with "received by a county court pursuant to chapter 318 after distribution pursuant to s. 318.21(1) shall be" as a clarifying amendment.

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.

640042

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete line 36
and insert:
received by a county court pursuant to chapter 318 and after distribution pursuant to s. 318.21(1) shall be

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 9
and insert:
received by a county court and after distribution

640042

pursuant to ch. 318, F.S.,

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 396
INTRODUCER:	Senator Bennett
SUBJECT:	Building Construction and Inspection
DATE:	February 14, 2011 REVISED:

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

I. Summary:

This bill redefines the term "sustainable building rating" to include the International Green Construction Code (IGCC) and makes conforming changes thereto. The bill also expands the categories of persons who may be certified as qualified for licensure by endorsement as a home inspector and amends the membership composition requirements for the Florida Building Commission.

This bill substantially amends the following sections of the Florida Statutes: 255.252, 255.253, 255.257, 255.2575, 468.8314, and 553.74.

II. Present Situation:

The Florida Building Code

The purpose and intent of the Florida Building Codes Act located in part IV, of ch. 553, F.S., is "to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single unified state building code," known as the Florida Building Code.[1] Section 553.72, F.S., defines the Florida Building Code as a "single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state" of which establish minimum standards that shall be enforced by authorized state and local government enforcement agencies.

[1] Section 553.72(1), F.S.

Florida Building Commission

The Florida Building Commission is established in ch. 553, F.S., within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.[2] The Commission is responsible for adopting and enforcing the Florida Building Code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare. [3] The Commission is required to update the Florida Building Code triennially based upon the "code development cycle of the national model building codes, . . ."[4] Pursuant to s. 553.73, F.S., the Commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the building code.[5]

Section 553.79(9), F.S., allows state agencies whose enabling legislation authorizes the enforcement of the Florida Building Code, to enter into agreements with other governmental units in order to delegate their code enforcement powers, and to utilize public funds for permit and inspection fees so long as the fees are not greater than the fees charged to others.

Home Inspector License

In 2007, the Legislature created the home inspection services licensing program under part XV, ch. 468, F.S.,[6] to provide, in part, for the licensure and regulation of private home inspectors by the Department of Business and Professional Regulation (Department). The program provides licensing and continuing education requirements, including certificates of authorizations for corporations offering home inspection services to the public.

Section 468.8311(4), F.S., defines the term "home inspection services" to mean:

> a limited visual examination of one or more of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.[7]

Any person who wishes to be licensed as a home inspector must apply to the Department for certification after he or she satisfies the statutory examination requirements provided in s. 468.8313, F.S.

Prior to practicing as a home inspector in Florida, s. 468.8313, F.S., requires an applicant to:

- Pass the required examination,
- Be of good moral character, and

[2] *See* s. 553.74(1)(a)-(w), F.S.
[3] Sections 553.73 and 553.74, F.S.
[4] Florida Building Commission, *Report to the 2009 Legislature*, at 2 (January 2009) (on file with the Florida Senate Committee on Regulated Industries).
[5] *See* ss. 553.76, 553.775, and 553.73(7), F.S., respectively.
[6] Section 2, ch. 2007-235, L.O.F.
[7] Section 468.8311(4), F.S.

- Complete a course study of at least 120 hours that covers all of the following components of the home:
    - Structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure. [8]

An applicant for licensure must also submit to a criminal background check and maintain a commercial general liability insurance policy in an amount of not less than $300,000.[9] Section 468.8314, F.S., provides that the Department shall certify any applicant for licensure who satisfies the examination requirements of s. 468.8313, F.S., and who passes the licensing exam, unless he or she has engaged in disciplinary actions as prescribed in s. 468.832, F.S.[10] This section also allows the Department to certify an applicant by endorsement if he or she:

- Is of good moral character;
- Holds a valid home inspector license in another state or territory of the United States, whose educational requirements are substantially equivalent to those required herein; and
- Has passed a substantially similar national, regional, state, or territorial licensing examination.[11]

Florida home inspector licensees are required to complete at least 14 hours of continuing education every two years prior to his or her application for license renewal.[12]

Energy Efficiency

The Florida Energy Conservation and Sustainable Buildings Act, located in ch. 255, F.S., declares an important state interest in promoting the construction of energy-efficient and sustainable buildings.[13] To further this notion, s. 255.252, F.S., provides that it shall be the policy of the state, that buildings constructed and financed by the state and the renovation of existing state facilities be designed and constructed to comply with:

- The United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- The Green Building Initiative's Green Globes rating system,
- The Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.[14]

These rating systems have been defined in s. 255.253(7), F.S., to mean "sustainable building rating".

As pertains to buildings occupied by state agencies, section 255.257, F.S., requires all state agencies to adopt the United States Green Building Council (USGBC) Leadership in Energy and

[8] *See* s. 468.8313(2), F.S.
[9] Sections 468.8313(6) and 468.8322, F.S.
[10] Section 468.8314(2), F.S.
[11] Section 468.8314(3), F.S.
[12] Section 468.8316(1), F.S.
[13] Section 255.2575(1), F.S.
[14] Section 255.252(3)-(4), F.S.

Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services for all new buildings and renovations to existing buildings.

Section 255.2575, F.S., further provides that:

> "all county, municipal, school district, water management district, state university, community college, and Florida state court buildings shall be constructed to meet the United States Green Building Council (USCBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services."

International Green Construction Code (IGCC)

The International Green Construction Code (IGCC) establishes baseline green and sustainability "regulations for new and existing traditional and high-performance buildings related to energy conservation, water efficiency, building owner responsibilities, site impacts, building waste, and materials and other considerations."[15] The IGCC is sponsored and endorsed by the International Code Council (ICC), the American Institute of Architects, ASTM International, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the U.S. Green Building Council (USGBC), and the Illuminating Engineering Society (IES).[16]

The ICC recently revealed the latest version of the IGCC, Public Version 2.0, in December of 2010. [17] The ICC provides that the new code complements existing rating systems and guidelines by providing minimum baseline requirements along with a "jurisdictional electives" section of the code that allows jurisdictions to customize the codes beyond its baseline provisions.[18] The IGCC acts as a model code that becomes law after it is adopted by the state or local government entity that governs construction standards. To date, Rhode Island is the only state to adopt the ICGG as part of their Rhode Island Green Buildings Act in 2010.[19] The new Act "applies to any public project that is owned, leased or controlled by the State of Rhode Island."[20]

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[15] The International Code Council (ICC), The International Green Construction Code (ICGG) Brochure, *IGCC: A New Approach for Safe & Sustainable Construction*, available online at http://www.iccsafe.org/cs/IGCC/Documents/Media/IGCC_Flyer.pdf (last visited on Feb. 15, 2011).
[16] *Id.*
[17] News Release, The International Code Council (ICC), *Code Council Releases New IGCC Public Version 2.0* (Dec. 8, 2010) (on file with the Senate Committee on Community Affairs). Note that the initial public version of the code was released on March 15, 2010, after an eight month drafting period.
[18] The International Code Council (ICC) website, *see supra* fn. 14. *See also* News Release, The International Code Council (ICC), *New Construction Code Unveiled* (March. 15, 2010) (on file with the Senate Committee on Community Affairs).
[19] News Release, The International Code Council (ICC), *Rhode Island Recognized by International Code Council as First State to Adopt Green Construction Code* (Oct. 19, 2010) (on file with the Senate Committee on Community Affairs).
[20] *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 255.252, F.S., to conform subsections (3) and (4) to changes made by the bill. Specifically, this section substitutes the term "sustainable building rating" for the individually listed rating systems that are defined to mean "sustainable building rating" in section 2 of the bill.

Section 2 amends s. 255.253(7), F.S., to redefine the term "sustainable building rating" to include the International Green Construction Code (IGCC).

Section 3 amends s. 255.257, F.S., to conform subsection (4) to changes made by the bill. Specifically, this section substitutes the term "sustainable building rating" for the individually listed rating systems that are defined to mean "sustainable building rating" in section 2 of the bill.

Section 4 amends s. 255.2575, F.S., to conform subsection (2) to changes made by the bill. Specifically, this section substitutes the term "sustainable building rating" for the individually listed rating systems that are defined to mean "sustainable building rating" in section 2 of the bill.

Section 5 amends s. 468.8314(3), F.S., to allow individuals with the following certifications and/or licenses to meet Florida home inspector licensure requirements by endorsement:

- Possesses a one and two family dwelling inspector certification issued by the International Code Council or the Southern Building Code Congress International;
- Has been certified as a one and two family dwelling inspector by the Florida Building Code Administrators and Inspectors Board under part XII, of ch. 468, F.S.; or
- Possesses a Division I contractor license under part I, of ch. 489, F.S.

Section 6 amends s. 553.74(1)(v), F.S., to revise the membership requirements of the Florida Building Commission for the participating member who is a representative of the green building industry, to include "a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED)."

Section 7 provides that this act shall take effect on July 1, 2011.

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:

None.

B. Private Sector Impact:

Division I Contractors and one and two family dwelling inspectors will be permitted to be licensed as home inspectors by endorsement. The Florida Department of Business and Professional Regulation estimates that there are currently over 40,000 Division I Contractors and over 1,000 one and two family dwelling inspectors certified and licensed in the state of Florida.[21]

C. Government Sector Impact:

State agencies will be required to adopt the International Green Construction Code (IGCC) as a sustainable building rating system for all new buildings and renovations to existing buildings. In addition, all county, municipal, school district, water management district, state university, community college, and state court buildings will be required to comply with the International Green Construction Code (IGCC) as part of the sustainable building rating system.

The Florida Department of Business and Professional Regulation estimated that there will be between 8,000 and 10,000 new licenses as a result of this bill, generating an increase in licensing revenue. Based on the projection of 8,000 additional biennial licenses, the Department estimates that this bill will generate $2,640,000 in revenue for FY 2011-12 and $1,640,000 in revenue for FY 2013-14.[22]

The Department also states that this bill will cause a projected 13,513 additional calls to the Call Center per year, resulting in the need for an additional FTE, Regulatory Specialist II. The FTE, Regulatory Specialist II is estimated to cost the Department $51,202 per year.[23]

VI. Technical Deficiencies:

None.

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[21] Florida Department of Revenue, *SB 396 Legislative Analysis*, at 2 (Jan. 28, 2011)(on file with the Senate Committee on Community Affairs).
[22] *Id.* at 3. (The Department states that applications cost $125, new licenses cost $200, and renewal licenses cost $200 each.)
[23] *Id.*

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.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (d) is added to subsection (16) of section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(16) FLORIDA BUILDING COMMISSION.—

(d) Rule proceedings relating to updates and modifications of the Florida Building Code pursuant to s. 553.73 are exempt from ss. 120.54(3) and 120.541(3).

Section 2. Subsections (3) and (4) of section 255.252,

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Florida Statutes, are amended to read:

255.252 Findings and intent.—

(3) In order for ~~that such~~ energy-efficiency and sustainable materials considerations to become a function of building design and a model for future application in the private sector, it is ~~shall be~~ the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating ~~the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the department~~. It is further the policy of the state, if ~~when~~ economically feasible, to retrofit existing state-owned buildings in a manner that minimizes ~~which will minimize~~ the consumption of energy used in the operation and maintenance of such buildings.

(4) In addition to designing and constructing new buildings to be energy-efficient, it is ~~shall be~~ the policy of the state to operate and maintain state facilities in a manner that minimizes ~~which will minimize~~ energy consumption and maximizes ~~maximize~~ building sustainability, and to operate ~~as well as ensure that~~ facilities leased by the state ~~are operated~~ so as to minimize energy use. It is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating ~~the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's~~

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~~Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the department~~. State agencies are encouraged to consider shared savings financing of ~~such~~ energy-efficiency and conservation projects, using contracts that ~~which~~ split the resulting savings for a specified period of time between the state agency and the private firm or cogeneration contracts and that ~~which~~ otherwise permit the state to lower its net energy costs. Such energy contracts may be funded from the operating budget.

Section 3. Subsection (7) of section 255.253, Florida Statutes, is amended to read:

255.253 Definitions; ss. 255.251-255.258.—

(7) "Sustainable building rating" means a rating established by the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the International Green Construction Code (IGCC), the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the department.

Section 4. Subsection (4) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(4) ADOPTION OF STANDARDS.—

(a) All state agencies shall adopt a sustainable building rating system ~~the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating~~

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~~system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the department~~ for all new buildings and renovations to existing buildings.

(b) No state agency shall enter into new leasing agreements for office space that does not meet Energy Star building standards, except when ~~determined by~~ the appropriate state agency head determines that no other viable or cost-effective alternative exists.

(c) All state agencies shall develop energy conservation measures and guidelines for new and existing office space where state agencies occupy more than 5,000 square feet. These conservation measures shall focus on programs that may reduce energy consumption and, when established, provide a net reduction in occupancy costs.

Section 5. Subsection (2) of section 255.2575, Florida Statutes, is amended to read:

255.2575 Energy-efficient and sustainable buildings.—

(2) All county, municipal, school district, water management district, state university, community college, and ~~Florida~~ state court buildings shall be constructed to comply with a sustainable building rating system ~~meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services~~. This section applies ~~shall~~

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~~apply~~ to all county, municipal, school district, water management district, state university, community college, and ~~Florida~~ state court buildings the architectural plans of which are commenced after July 1, 2008.

Section 6. Subsection (1) of section 468.8316, Florida Statutes, is amended to read:

468.8316 Continuing education.—

(1) The department may not renew a license until the licensee submits proof satisfactory to the department that during the 2 years before ~~prior to his or her~~ application for renewal the licensee ~~has~~ completed at least 14 hours of continuing education. Of the 14 hours, at least 2 hours must be in hurricane mitigation training that includes hurricane mitigation techniques and compliance with the uniform mitigation verification inspection form developed under s. 627.711(2). The department shall adopt rules establishing criteria for approving continuing education providers and courses ~~course content shall be approved by the department by rule~~.

Section 7. Paragraph (f) of subsection (1) and subsection (3) of section 468.8319, Florida Statutes, are amended to read

468.8319 Prohibitions; penalties.—

(1) A person may not:

(f) Perform or offer to perform any repairs to a home on which the inspector or the inspector's company has prepared a home inspection report. This paragraph does not apply to~~:~~

~~1.~~ a home warranty company that is affiliated with or retains a home inspector to perform repairs pursuant to a claim made under a home warranty contract.

~~2. A certified contractor who is classified in s.~~

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~~489.105(3) as a Division I contractor. However, the department may adopt rules requiring that, if such contractor performs the home inspection and offers to perform the repairs, the contract for repairs provided to the homeowner discloses that he or she has the right to request competitive bids.~~

~~(3) This section does not apply to unlicensed activity as described in paragraph (1)(a), paragraph (1)(b), or s. 455.228 that occurs before July 1, 2011.~~

Section 8. Paragraph (b) of subsection (1) of section 468.8323, Florida Statutes, is amended to read:

468.8323 Home inspection report.—Upon completion of each home inspection for compensation, the home inspector shall provide a written report prepared for the client.

(1) The home inspector shall report:

(b) If not self-evident, a reason why the system or component reported under paragraph (a) is significantly deficient or near the end of its service life.

Section 9. Subsections (1) and (2) of section 468.8324, Florida Statutes, are amended to read:

468.8324 Grandfather clause.—

(1) A person who performs home inspection services ~~as defined in this part~~ may qualify for licensure ~~by the department~~ as a home inspector under this part if the person submits an application to the department postmarked on or before July 1, 2012 ~~March 1, 2011~~, which shows that the applicant:

(a) Is certified as a home inspector by a state or national association that requires, for such certification, successful completion of a proctored examination on home inspection services and completes at least 14 hours of verifiable education

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on such services; or

(b) Has at least 3 years of experience as a home inspector at the time of application and has completed 14 hours of verifiable education on home inspection services. To establish the 3 years of experience, an applicant must submit at least 120 home inspection reports prepared by the applicant.

~~(2)~~ The department may investigate the validity of a home inspection report submitted under paragraph (b) ~~(1)(b)~~ and, if the applicant submits a false report, may take disciplinary action against the applicant under s. 468.832(1)(e) or (g).

(2) A person who performs home inspection services may qualify for licensure as a home inspector under this part if the person submits an application to the department postmarked on or before July 1, 2012, which shows that the applicant:

(a) Possesses certification as a one- and two-family dwelling inspector issued by the International Code Council or the Southern Building Code Congress International;

(b) Has been certified as a one- and two-family dwelling inspector by the Florida Building Code Administrators and Inspectors Board under part XII of this chapter; or

(c) Possesses a Division I contractor license under part I of chapter 489.

Section 10. Subsection (18) of section 489.103, Florida Statutes, is amended to read:

489.103 Exemptions.—This part does not apply to:

(18) Any one-family, two-family, or three-family residence constructed or created by Habitat for Humanity International, Inc., or its local affiliates. Habitat for Humanity

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International, Inc., or its local affiliates, must:

(a) Obtain all necessary building permits.

(b) Obtain all required building code inspections.

(c) Provide for supervision of all work by an individual with construction experience.

Section 11. Subsection (3) of section 489.105, Florida Statutes, is amended to read

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is ~~shall~~ only ~~be~~ responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the subsequent paragraphs of this subsection. For the purposes of regulation under this part, "demolish" applies only to demolition of steel tanks over 50 feet in height; towers over 50 feet in height; other structures over 50 feet in height, other than buildings or residences over three stories tall; and buildings or residences over three stories tall. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(r) ~~(d)-(q)~~:

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who

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may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which ~~commercial or residential buildings~~ do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

(d) "Sheet metal contractor" means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing, or design, if ~~when~~ not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air-handling systems, including the setting of air-handling equipment and reinforcement of same, the balancing of air-handling systems, and any duct cleaning and equipment sanitizing

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that ~~which~~ requires at least a partial disassembling of the system.

(e) "Roofing contractor" means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if ~~when~~ not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair, waterproof, stop leaks, or extend the life of the roof. The scope of work of a roofing contractor also includes required roof-deck attachments and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement.

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if ~~when~~ not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if ~~only to the extent~~ such duct work is performed by the contractor as ~~is~~ necessary to ~~make~~ complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that ~~which~~ requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if ~~when~~ not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure

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and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor ~~shall~~ also includes ~~include~~ any excavation work incidental thereto, but does ~~shall~~ not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring.

(g) "Class B air-conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if ~~when~~ not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as ~~is~~ necessary to ~~make~~ complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that ~~which~~ requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if ~~when~~ not prohibited by law, piping and

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insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor ~~shall~~ also includes ~~include~~ any excavation work incidental thereto, but does ~~shall~~ not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring.

(h) "Class C air-conditioning contractor" means a contractor whose business is limited to the servicing of air-conditioning, heating, or refrigeration systems, including any duct cleaning and equipment sanitizing that ~~which~~ requires at least a partial disassembling of the system, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. Only a ~~No~~ person who was ~~not previously~~ registered or certified as a Class C air-conditioning contractor as of October 1, 1988, shall be so registered or certified after October 1, 1988. However, the board shall continue to license and regulate those Class C air-conditioning contractors who held Class C licenses before ~~prior to~~ October 1, 1988.

(i) "Mechanical contractor" means a contractor whose

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services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if ~~when~~ not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if ~~only to the extent~~ such duct work is performed by the contractor as ~~is~~ necessary to ~~make~~ complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that ~~which~~ requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if ~~when~~ not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor ~~shall~~ also includes ~~include~~ any excavation work incidental thereto, but does ~~shall~~ not include any work such as

potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring.

(j) "Commercial pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that ~~which~~ requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does ~~shall~~ not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is ~~shall~~ not ~~be~~ required for the cleaning of the pool or spa in a ~~any~~ way that does not affect the structural integrity of the pool or spa or its associated equipment.

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(k) "Residential pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of a ~~any~~ residential swimming pool, or hot tub or spa, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that ~~which~~ requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does ~~shall~~ not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is ~~shall~~ not ~~be~~ required for the cleaning of the pool or spa in a ~~any~~ way that does not affect the structural integrity of the pool or spa or its associated equipment.

(l) "Swimming pool/spa servicing contractor" means a contractor whose scope of work involves, but is not limited to, the repair and servicing of a ~~any~~ swimming pool, or hot tub or

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spa, whether public or private, or otherwise, regardless of use. The scope of work includes the repair or replacement of existing equipment, any cleaning or equipment sanitizing that ~~which~~ requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of ~~any~~ repair or renovation. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does ~~shall~~ not require licensure unless the usage involves construction, modification, substantial or complete disassembly, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is ~~shall~~ not ~~be~~ required for the cleaning of the pool or spa in a ~~any~~ way that does not affect the structural integrity of the pool or spa or its associated equipment.

(m) "Plumbing contractor" means a contractor whose contracting business consists of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if ~~when~~ not

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prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if ~~when~~ not prohibited by law, design the following without obtaining an ~~any~~ additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities; venting systems; public or private water supply systems; septic tanks; drainage and supply wells; swimming pool piping; irrigation systems; or solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines; and water and sewer plants and substations. The scope of work of the plumbing contractor also includes the design, if ~~when~~ not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if ~~to the extent~~ authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in ~~such~~ a manner that complies ~~as to comply~~ with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies ~~shall apply~~ to private property and public property, including ~~shall include~~ any excavation work incidental thereto, and includes ~~shall include~~ the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to

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the work but which is specified ~~herein~~ as being the work of a trade other than that of a plumbing contractor. ~~Nothing in~~ This definition does not ~~shall be construed to~~ limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6), and does not~~. Nothing in this definition shall be construed to~~ require certification or registration under this part of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater.

(n) "Underground utility and excavation contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and excavation contractor may install empty underground conduits in rights-of-

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way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter if~~, provided that~~ each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and ~~that~~ the installation of ~~any~~ such conduit does not include installation of any conductor wiring or connection to an energized electrical system. An underground utility and excavation contractor may ~~shall~~ not install ~~any~~ piping that is an integral part of a fire protection system as defined in s. 633.021 beginning at the point where the piping is used exclusively for such system.

(o) "Solar contractor" means a contractor whose services consist of the installation, alteration, repair, maintenance, relocation, or replacement of solar panels for potable solar water heating systems, swimming pool solar heating systems, and photovoltaic systems and any appurtenances, apparatus, or equipment used in connection therewith, whether public, private, or otherwise, regardless of use. A contractor, certified or registered pursuant to ~~the provisions of~~ this chapter, is not required to become a certified or registered solar contractor or to contract with a solar contractor in order to provide ~~any~~ services enumerated in this paragraph that are within the scope of the services such contractors may render under this part.

(p) "Pollutant storage systems contractor" means a contractor whose services are limited to, and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if ~~when~~ not prohibited by law, and use materials and items used in the installation, maintenance,

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extension, and alteration of, pollutant storage tanks. Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(q) "Glass and glazing contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, attach, maintain, repair, fabricate, alter, extend, or design, in residential and commercial applications without any height restrictions, all types of windows, glass, and mirrors, whether fixed or movable; swinging or sliding glass doors attached to existing walls, floors, columns, or other structural members of the building; glass holding or supporting mullions or horizontal bars; structurally anchored impact-resistant opening protection attached to existing building walls, floors, columns, or other structural members of the building; prefabricated glass, metal, or plastic curtain walls; storefront frames or panels; shower and tub enclosures; metal fascias; and caulking incidental to such work and assembly.

(r) ~~(q)~~ "Specialty contractor" means a contractor whose scope of work and responsibility is limited to a particular phase of construction established in a category adopted by board rule and whose scope is limited to a subset of the activities described in one of the paragraphs of this subsection.

Section 12. Paragraphs (b) and (c) of subsection (4) of section 489.107, Florida Statutes, are amended to read:

489.107 Construction Industry Licensing Board.—

(4) The board shall be divided into two divisions, Division I and Division II.

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(b) Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the board; one of the members appointed pursuant to paragraph (2)(j); and one of the members appointed pursuant to paragraph (2)(k). Division II has jurisdiction over the regulation of contractors defined in s. 489.105(3)(d)-(q) ~~489.105(3)(d)-(p)~~.

(c) Jurisdiction for the regulation of specialty contractors defined in s. 489.105(3)(r) ~~489.105(3)(q)~~ shall lie with the division having jurisdiction over the scope of work of the specialty contractor as defined by board rule.

Section 13. Paragraph (g) of subsection (2) of section 489.141, Florida Statutes, is amended to read:

489.141 Conditions for recovery; eligibility.—

(2) A claimant is not qualified to make a claim for recovery from the recovery fund, if:

(g) The claimant has contracted with a licensee to perform a scope of work described in s. 489.105(3)(d)-(r) ~~489.105(3)(d)-(q)~~.

Section 14. Subsection (1) of section 514.028, Florida Statutes, is amended to read:

514.028 Advisory review board.—

(1) The Governor shall appoint an advisory review board which shall meet as necessary or at least quarterly, to recommend agency action on variance request, rule and policy development, and other technical review problems. The board shall be comprised of ~~the following~~:

(a) A representative from the office of licensure and

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certification of the department.

(b) A representative from the county health departments.

(c) Three representatives from the swimming pool construction industry.

(d) A representative ~~Two representatives~~ from the public lodging industry.

(e) A representative from a county or local building department.

Section 15. Subsection (15) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(15) An agency or local government may not require that existing mechanical equipment on the surface of a roof be installed in compliance with ~~the requirements of~~ the Florida Building Code until the equipment is required to be removed or replaced, or the roof is replaced or recovered.

Section 16. Paragraph (v) of subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and shall be located within the Department of Community Affairs for administrative purposes. Members shall be appointed by the Governor subject to confirmation by the Senate. The commission shall be composed of 25 members, consisting of the following:

(v) One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a

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professional who is accredited under Leadership in Energy and Environmental Design (LEED) ~~LEED-accredited professional~~.

Any person serving on the commission under paragraph (c) or paragraph (h) on October 1, 2003, and who has served less than two full terms is eligible for reappointment to the commission regardless of whether he or she meets the new qualification.

Section 17. Subsection (5) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(5) Statewide approval of products, methods, or systems of construction may be achieved by one of the following methods. One of these methods must be used by the commission to approve the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components as established by the commission by rule. Products advertised, sold, offered, provided, distributed, or marketed as hurricane, windstorm, or impact protection from wind-borne debris during a hurricane or windstorm must be approved in accordance with s. 553.842 or s. 553.8425.

(a) Products for which the code establishes standardized testing or comparative or rational analysis methods shall be approved by submittal and validation of one of the following reports or listings indicating that the product or method or system of construction was ~~evaluated to be~~ in compliance with the Florida Building Code and that the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code:

1. A certification mark or listing of an approved

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certification agency, which may be used only for products for which the code designates standardized testing;

2. A test report from an approved testing laboratory;

3. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity; or

4. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a professional engineer or architect, licensed in this state.

A product evaluation report or a certification mark or listing of an approved certification agency which demonstrates that the product or method or system of construction complies with the Florida Building Code for the purpose intended is ~~shall be~~ equivalent to a test report and test procedure ~~as~~ referenced in the Florida Building Code. An application for state approval of a product under subparagraph 1. must be approved by the department after the commission staff or a designee verifies that the application and related documentation are complete. This verification must be completed within 10 business days after receipt of the application. Upon approval by the department, the product shall be immediately added to the list of state-approved products maintained under subsection (13). Approvals by the department shall be reviewed and ratified by the commission's program oversight committee except for a showing of good cause that a review by the full commission is necessary. The commission shall adopt rules providing means to cure deficiencies identified within submittals for products

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approved under this paragraph.

(b) Products, methods, or systems of construction for which there are no specific standardized testing or comparative or rational analysis methods established in the code may be approved by submittal and validation of one of the following:

1. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity indicating that the product or method or system of construction was ~~evaluated to be~~ in compliance with the intent of the Florida Building Code and that the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code; or

2. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a professional engineer or architect, licensed in this state, who certifies that the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code.

Section 18. Subsections (3), (4), and (5) of section 553.909, Florida Statutes, are amended to read:

553.909 Setting requirements for appliances; exceptions.—

(3) Commercial or residential swimming ~~pool pumps or water~~ heaters manufactured on or after July 1, 2011, for installation in this state must ~~shall~~ comply with the requirements of the Florida Energy Efficiency Code for Building Construction ~~this subsection~~.

~~(a) Natural gas pool heaters shall not be equipped with~~

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~~constantly burning pilots.~~

~~(b) Heat pump pool heaters shall have a coefficient of performance at low temperature of not less than 4.0.~~

~~(c) The thermal efficiency of gas-fired pool heaters and oil-fired pool heaters shall not be less than 78 percent.~~

~~(d) All pool heaters shall have a readily accessible on-off switch that is mounted outside the heater and that allows shutting off the heater without adjusting the thermostat setting.~~

(4)~~(a)~~ Residential swimming pool filtration pumps and pump motors manufactured and sold on or after July 1, 2011, for installation in this state must comply with the requirements of the Florida Energy Efficiency Code for Building Construction ~~in this subsection~~.

~~(b) Residential filtration pool pump motors shall not be split-phase, shaded-pole, or capacitor start-induction run types.~~

~~(c) Residential filtration pool pumps and pool pump motors with a total horsepower of 1 HP or more shall have the capability of operating at two or more speeds with a low speed having a rotation rate that is no more than one-half of the motor's maximum rotation rate.~~

~~(d) Residential filtration pool pump motor controls shall have the capability of operating the pool pump at a minimum of two speeds. The default circulation speed shall be the residential filtration speed, with a higher speed override capability being for a temporary period not to exceed one normal cycle or 24 hours, whichever is less; except that circulation speed for solar pool heating systems shall be permitted to run~~

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~~at higher speeds during periods of usable solar heat gain.~~

(5) Portable electric spas manufactured and sold on or after July 1, 2011, for installation in this state must comply with the requirements of the Florida Energy Efficiency Code for Building Construction ~~spa standby power shall not be greater than 5(V2/3) watts where V = the total volume, in gallons, when spas are measured in accordance with the spa industry test protocol~~.

Section 19. Paragraph (a) of subsection (2) of section 627.711, Florida Statutes, is amended to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(2)(a) The Financial Services Commission shall develop by rule a uniform mitigation verification inspection form that shall be used by all insurers when submitted by policyholders for the purpose of factoring discounts for wind insurance. In developing the form, the commission shall seek input from insurance, construction, and building code representatives. Further, the commission shall provide guidance as to the length of time the inspection results are valid. An insurer shall accept as valid a uniform mitigation verification form signed by the following authorized mitigation inspectors:

1. A home inspector licensed under s. 468.8314 ~~who has completed at least 3 hours of hurricane mitigation training which includes hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam. Thereafter, home inspectors licensed under s. 468.8314 must complete at least 2 hours of continuing education, as part of the existing licensure renewal~~

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~~requirements each year, related to mitigation inspection and the uniform mitigation form~~;

2. A building code inspector certified under s. 468.607;

3. A general, building, or residential contractor licensed under s. 489.111;

4. A professional engineer licensed under s. 471.015;

5. A professional architect licensed under s. 481.213; or

6. Any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a uniform mitigation verification form.

Section 20. Section 633.027, Florida Statutes, is amended to read:

633.027 Buildings with light-frame truss-type construction; notice requirements; enforcement.—

(1) As used in this section, the term "light-frame truss-type construction" means a type of construction where the primary structural elements are formed by a system of repetitive wood or steel framing members, and includes:

(a) Open-web steel joist construction having a web member that measures less than 2 1/2 inches in width; and

(b) Conventional light-frame wood and engineered lumber having a web member that measures less than 2 inches by 8 inches, if used in roof or floor structural elements.

(2)~~(1)~~ The owner of a ~~any~~ commercial or industrial structure, or any multiunit residential structure of three units or more, that uses light-frame truss-type construction shall identify ~~mark~~ the structure with a sign or symbol approved by the State Fire Marshal in a manner sufficient to warn persons conducting fire control and other emergency operations of the

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existence of light-frame truss-type construction in the structure. The signs or symbols may be installed at the principal entrances of locations where similarly designed structures exist, in clear view of arriving emergency apparatus.

(3) ~~(2)~~ The State Fire Marshal shall adopt rules necessary to implement the provisions of this section, including, but not limited to:

(a) The dimensions and color of such sign or symbol.

(b) The time within which commercial, industrial, and multiunit residential structures that use light-frame truss-type construction must ~~shall~~ be identified ~~marked~~ as required by this section.

(c) The location at ~~on~~ each commercial, industrial, and multiunit residential structure that uses light-frame truss-type construction where such sign or symbol must be posted.

(4) ~~(3)~~ The State Fire Marshal, and local fire officials in accordance with s. 633.121, shall enforce the provisions of this section. Any owner who fails to comply with the requirements of this section is subject to penalties as provided in s. 633.161.

Section 21. Section 682.04, Florida Statutes, is amended to read:

682.04 Appointment of arbitrators by court.—If an agreement or provision for arbitration subject to this chapter ~~law~~ provides a method for the appointment of arbitrators or an umpire, such ~~this~~ method must ~~shall~~ be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator or umpire who has been appointed fails to act and his or her successor has not been ~~duly~~ appointed, the court, on application of a party to such

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agreement or provision shall appoint one or more arbitrators or an umpire. An arbitrator or umpire so appointed shall have like powers as if named or provided for in the agreement or provision. If an agreement or provision for arbitration requires a party to follow an association or industry established arbitration program where approved arbitrators are chosen from within the program, either party may select one independent arbitrator who has been deemed an arbitrator by the court.

Section 22. Section 682.11, Florida Statutes, is amended to read:

682.11 Fees and expenses of arbitration.—Unless otherwise provided in the agreement or provision for arbitration, the arbitrators' and umpire's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. If a party selects an independent arbitrator pursuant to s. 682.04, the independent arbitrators' expenses and fees shall be paid by that party. If the party prevails, the independent arbitrators' expenses and fees may be included in the award.

Section 23. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to building construction and inspection; amending s. 120.80, F.S.; exempting certain rule proceedings relating to the Florida

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Building Code from certain provisions of ch. 120, F.S.; amending s. 255.252, F.S.; conforming provisions to changes made by the act; amending s. 255.253, F.S.; redefining the term "sustainable building rating" to include the International Green Construction Code; amending ss. 255.257 and 255.2575, F.S.; requiring that state agencies, local governments, and the court system adopt a sustainable building rating system for new and renovated buildings; amending s. 468.8316, F.S.; revising the continuing education requirements for licensed home inspectors; amending s. 468.8319, F.S.; deleting an exemption for certain contractors from the prohibition against performing repairs on a home that has a home inspection report; deleting an obsolete provision; amending s. 468.8323, F.S.; clarifying a provision relating to the contents of a home inspection report; amending s. 468.8324, F.S.; providing alternative criteria for obtaining a home inspector's license; amending s. 489.103, F.S.; clarifying an exemption from construction contracting regulation relating to Habitat for Humanity; amending s. 489.105, F.S.; adding the term "glass and glazing contractors" to the definition of the term "contractor"; amending ss. 489.107 and 489.141, F.S.; conforming cross-references; amending s. 514.028, F.S.; revising the composition of the advisory review board relating to public swimming pools and bathing facilities; amending s. 553.73, F.S.; revising requirements relating to the installation of

883 mechanical equipment on a roof; amending s. 553.74,
884 F.S.; revising requirements for selecting a member of
885 the Florida Building Commission; amending s. 553.842,
886 F.S.; providing for the approval of certain windstorm
887 products; amending s. 553.909, F.S.; revising the
888 requirements for certain pool-related equipment;
889 amending s. 627.711, F.S.; revising requirements
890 relating to home inspectors conducting hurricane
891 mitigation inspections; amending s. 633.027, F.S.;
892 defining the term "light-frame truss-type
893 construction"; revising requirements relating to the
894 requirements for such construction; amending s.
895 682.04, F.S.; providing for the selection of an
896 arbitrator under certain circumstances; amending s.
897 682.11, F.S.; providing for the payment of an
898 arbitrator selected by a party; providing an effective
899 date.

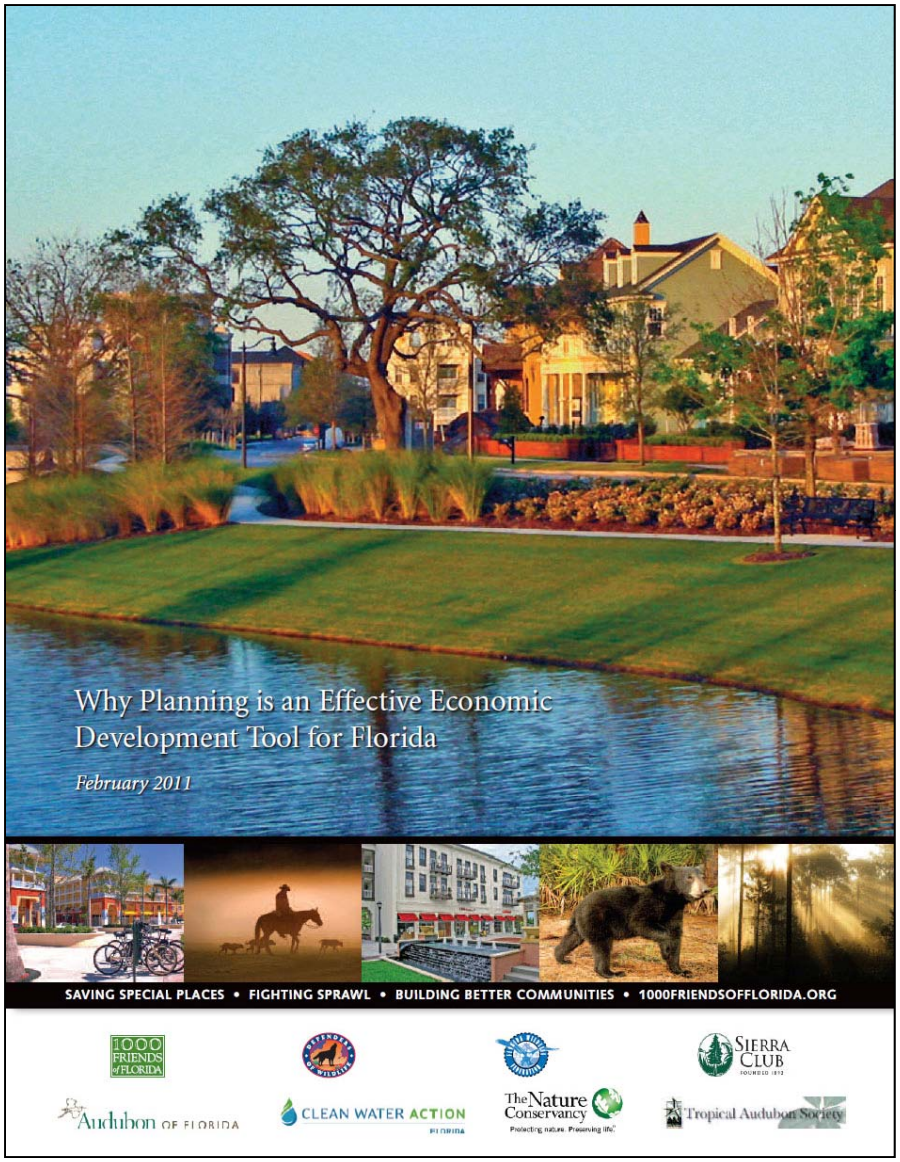
Planning for Quality Growth and Economic Prosperity for Florida's Future

Presentation to the Senate Committee on Community Affairs

February 21, 2011

Janet Bowman, Director of Legislative Policy & Strategies

The Nature Conservancy


Why Planning is an Effective Economic Development Tool for Florida
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CLEAN WATER ACTION
The Nature Conservancy
Sierra Club
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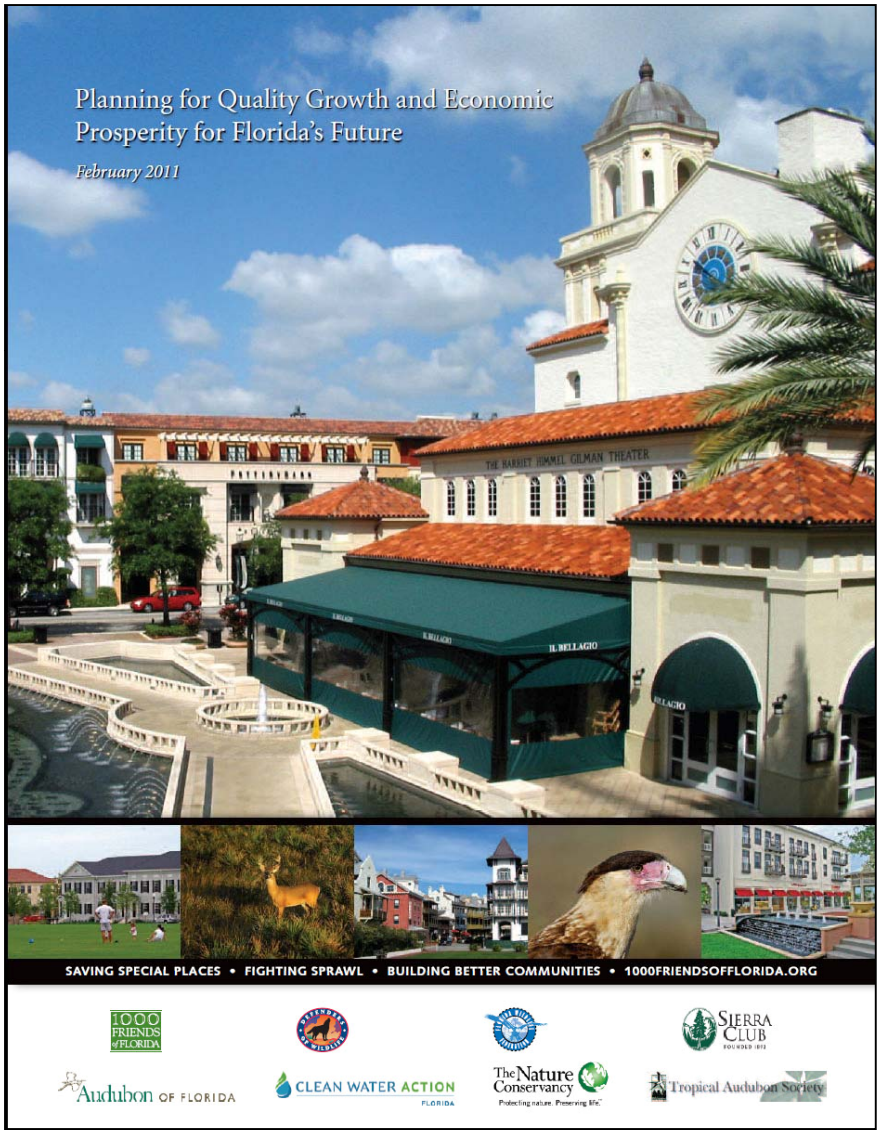
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OF WILDLIFE


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FLORIDA WILDLIFE
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SIERRA
CLUB
FOUNDED 1892


The Nature
Conservancy
Protecting nature. Preserving life.™


Tropical Audubon Society


CLEAN WATER ACTION
FLORIDA

Florida's Environment an Important Economic Asset

- Agriculture, tourism and development all depend on a clean environment.
- Protecting natural resources is key to ensure the prosperity and quality of life we all seek.

Comprehensive Planning as an Economic Development Tool

- Innovative planning opens new market opportunities to stimulate the economy and create new jobs.
- Cost-efficient planning reduces taxpayer infrastructure costs.
- A statewide system of planning provides certainty for all stakeholders.

Important Questions for Growth Management Reform—Role of the State

- What role should the state play in the review, analysis and amendment of local comprehensive plans?

- How can the state nurture future economic growth in Florida and steer land development toward the most beneficial locations?

- How can state planning better protect essential resources, ecosystems, and ecosystem services, and prevent local decisions from harming those resources important to the state as a whole?

Important Questions for Growth Management Reform—Saving costs and improving process.

- How can the state encourage cost-efficient land development and infrastructure to improve the quality of life without requiring taxpayer subsidies?
- How can the transactional costs and approval times for land development be lowered for developers, landowners and others to stimulate economic recovery?
- How can opportunities for citizens to participate in their local planning process be improved?

RECOMMENDATIONS
Protect Significant Statewide Interests

- Place increased emphasis on protecting major ecosystems, significant geographic areas, viable wildlife corridors and water quality and supply and reduce hazard risks.
- Task the state land planning agency with greater focus on identified state resource areas including Aquatic Preserves, Areas of Critical Concern, the Everglades, the Wekiva Basin, viable wildlife corridors, river corridors and springsheds and publicly owned lands.
- Protect military investment in Florida by ensuring that development adjacent to military lands does not harm its ability to fulfill its mission.

Save Taxpayer Dollars

- Ensure new development covers the cost of infrastructure and services.
- Reduce/eliminate state reviews within recognized urban development boundaries, infill and growth corridors.
- Waive DRI, need and transportation concurrency within these areas.
- Incentivize cost-efficient compact development.

Streamline the State Planning Process

- Maintain an independent state planning agency with appropriate economic development promotion.
- Focus state planning role on the edge of developed areas.
- Create a vision-based state plan.
- Recognize limits of “one size fits all” – tailor controls with stakeholders.

Streamline the State Planning Process

- Link state transportation investments to state plan focused on dense urban land areas.
- Identify appropriate hubs and corridors for industrial and rural development.
- Enhance role of independent state planning agency in technical and grant assistance.

Targeted Infrastructure Investment

- Link state transportation investment decisions to priorities in the state comprehensive plan and within dense urban land areas.
- Identify appropriate hubs and corridors for industrial development and appropriate and compatible rural development to ensure more efficient use of state infrastructure dollars and safeguard sensitive natural areas.
- Enhance the role of an independent state planning agency in providing technical and grant assistance to incentive local planning initiatives.

Summary

- Lessen state oversight within developed areas to streamline the planning process but place increased emphasis on protecting significant water and natural resources outside of urban development boundaries.
- Emphasize savings for taxpayers through efficient infrastructure planning.
- Coordinate state investments through a vision-based state plan.
- Maintain an independent state planning function.
- Focus on significant statewide issues, especially natural systems.

Questions