

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BUDGET**  
**Senator Alexander, Chair**  
**Senator Negrón, Vice Chair**

**MEETING DATE:** Tuesday, March 15, 2011  
**TIME:** 3:15 —5:15 p.m.  
**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Alexander, Chair; Senator Negrón, Vice Chair; Senators Altman, Benacquisto, Bogdanoff, Fasano, Flores, Gaetz, Hays, Joyner, Lynn, Margolis, Montford, Rich, Richter, Simmons, Siplin, Sobel, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 84</b> Higher Education / Lynn (Compare H 35)	Community Colleges; Renames Gulf Coast Community College as "Gulf Coast State College." Renames Pensacola Junior College as "Pensacola State College." Renames St. Johns River Community College as "St. Johns River State College." Renames Valencia Community College as "Valencia College." Amends provisions relating to linkage institutes, the Florida School of the Arts, and the consolidation of certain training schools. Conforms provisions.	HE 02/08/2011 Fav/CS BHI 03/11/2011 Favorable BC 03/15/2011
2	<b>SB 172</b> Bennett (Identical H 93)	Security Cameras; Reenacts a specified provision relating to prohibited standards for security cameras. Provides for retroactive operation of the act. Provides for an exception under specified circumstances.	CA 01/11/2011 Favorable JU 01/25/2011 Favorable BC 03/15/2011
3	<b>SB 174</b> Bennett (Identical H 7001)	Growth Management; Reenacts provisions relating to the definition of "urban service area" and "dense urban land area" for purposes of the Local Government Comprehensive Planning and Land Development Regulation Act. Reenacts provisions relating to certain required and optional elements of a comprehensive plan, concurrency requirements for transportation facilities, a required notice for a new or increased impact fee, the process for adopting a comprehensive plan or plan amendment, etc.	CA 01/11/2011 Favorable GO 02/08/2011 Favorable BC 03/15/2011

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4	<b>SB 176</b> Bennett (Identical H 7003)	Affordable Housing; Reenacts a specified provision relating to the state allocation pool used to confirm private activity bonds. Reenacts a specified provision relating to lands that are owned by a community land trust and used to provide affordable housing. Reenacts a specified provision relating to a tax exemption provided to organizations that provide low-income housing. Reenacts a specified provision relating to a property exemption for affordable housing owned by a nonprofit entity, etc.	CA 01/11/2011 Favorable GO 02/08/2011 Favorable BC 03/15/2011
5	<b>SB 228</b> Siplin (Similar H 61)	Code of Student Conduct; Requires the district school board to include in the code of student conduct adopted by the board an explanation of the responsibilities of each student with regard to appropriate dress and respect for self and others and the role that appropriate dress and respect for self and others has on an orderly learning environment, etc.	ED 02/21/2011 Favorable JU 03/09/2011 Favorable BC 03/15/2011
6	<b>SB 238</b> Altman (Similar H 11)	Child Safety Devices in Motor Vehicles; Provides child-restraint requirements for children ages 4 through 7 years of age who are less than a specified height. Provides certain exceptions. Redefines the term "motor vehicle" to exclude certain vehicles from such requirements. Provides a grace period.	TR 02/07/2011 Favorable CJ 02/22/2011 Favorable BC 03/15/2011
7	<b>CS/SB 366</b> Commerce and Tourism / Altman (Similar H 63)	Public Lodging/Public Food Service Establishments; Cites this act as the "Tourist Safety Act." Provides additional penalties for the offense of unlawfully distributing handbills in a public lodging establishment. Specifies that certain items used in committing such offense are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act. Clarifies provisions relating to the preemption to the state of the regulation of public lodging and public food service establishments etc.	CJ 02/08/2011 Favorable CM 03/09/2011 Fav/CS BC 03/15/2011

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>CS/CS/SB 408</b> Budget Subcommittee on General Government Appropriations / Banking and Insurance / Richter (Similar H 803, Compare H 707, H 4115, CS/S 858, S 1462)	Property and Casualty Insurance; Revises the definition of "losses," relating to the Florida Hurricane Catastrophe Fund, to exclude certain losses. Revises the amount of surplus funds required for domestic insurers applying for a certificate of authority after a certain date. Authorizes the Office of Insurance Regulation to reduce the surplus requirement under specified circumstances. Authorizes the office to disapprove a rate filing because the coverage is inadequate or the insurer charges a higher premium due to certain discriminatory factors, etc.	BI 01/25/2011 BI 02/07/2011 Temporarily Postponed BI 02/22/2011 Fav/CS BGA 03/11/2011 Fav/CS BC 03/15/2011 RC
9	<b>CS/SB 444</b> Community Affairs / Bogdanoff (Similar H 441)	Scrutinized Companies; Prohibits a state agency or local governmental entity from contracting for goods and services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Provides for a contract provision that allows for termination of the contract if the company is found to have been placed on such list. Provides a statute of repose. Prohibits a private right of action, etc.	GO 02/08/2011 Fav/2 Amendments CA 03/07/2011 Fav/CS BC 03/15/2011
10	<b>CS/SB 478</b> Budget Subcommittee on Finance and Tax / Thrasher (Similar H 355, Compare H 161, CS/S 382)	Property Taxation; Tolls the expiration period of a tax certificate and 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 Favorable BFT 03/11/2011 Fav/CS BC 03/15/2011

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	<b>SM 484</b> Hays (Identical HM 617)	Discriminatory Taxes/Reinsurance; Urges Congress to oppose any effort to impose new discriminatory taxes that would significantly limit the use of reinsurance provided by companies located outside the United States.  BI 02/22/2011 Favorable BGA 03/11/2011 Favorable BC 03/15/2011	
12	<b>CS/SB 618</b> Criminal Justice / Evers (Compare H 1233, H 4157, S 1850)	Juvenile Justice; Repeals provisions relating to legislative intent for serious or habitual juvenile offenders in the juvenile justice system, definitions of terms for a training school and the serious or habitual juvenile offender program, the serious or habitual juvenile offender program in the juvenile justice system, the intensive residential treatment program for offenders less than 13 year of age, and the designation of persons holding law enforcement certification within the Office of the Inspector General to act as law enforcement officers, etc.  CJ 03/09/2011 Fav/CS BC 03/15/2011	

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**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 Budget Committee

BILL: SB 172

INTRODUCER: Senator Bennett

SUBJECT: Security Cameras

DATE: March 7, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	<b>Favorable</b>
2.	O'Connor	Maclure	JU	<b>Favorable</b>
3.	Sadberry	Meyer, C.	BC	<b>Pre-meeting</b>
4.				
5.				
6.				

**I. Summary:**

In response to ongoing litigation, this bill reenacts a section of law created by ch. 2009-96, Laws of Fla., (SB 360 (2009 Regular Session)) to eliminate any possible question that it could be subjected to a single-subject<sup>1</sup> challenge or struck down as an unconstitutional unfunded mandate.<sup>2</sup> The bill does not change the law, but reaffirms the change to the law made in 2009 by SB 360 that prevents local governments from requiring that a business spend funds for security cameras. The section does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras.

This bill reenacts section 163.31802, Florida Statutes.

**II. Present Situation:**

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled “An act relating to growth management” or the “Community Renewal Act” (SB 360).<sup>3</sup> This bill made a wide array of changes to Florida’s growth management laws. A number of local governments challenged the law on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single-subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.<sup>4</sup> The circuit court found that the single-subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an

<sup>1</sup> FLA. CONST. art. III, s. 6.

<sup>2</sup> FLA. CONST. art. VII, s. 18(a).

<sup>3</sup> Chapter 2009-96, Laws of Fla.

<sup>4</sup> *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

unconstitutional mandate.<sup>5</sup> The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal, and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.<sup>6</sup>

### Single-Subject Rule

Article III, Section 6 of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith.” The subject shall be briefly expressed in the title.<sup>7</sup> The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.<sup>8</sup> The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.<sup>9</sup> The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.<sup>10</sup> A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.<sup>11</sup> Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation,<sup>12</sup> but that a law containing changes in the workers’ compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.<sup>13</sup>

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.<sup>14</sup> The Florida Statutes are adopted annually during each regular session through an adoption act.<sup>15</sup> The litigants in the SB 360 case argued that the three subjects in the bill are: growth management, security cameras, and affordable housing.<sup>16</sup> During the 2010 Regular Session, SB 1780 adopted the Florida Statutes. Therefore, the circuit court determined that the single-subject challenge to SB 360 was rendered moot.<sup>17</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Atwater v. City of Weston*, Case No. 1D10-5094 (Fla. 1st DCA 2010).

<sup>7</sup> *Franklin v. State*, 887 So. 2d 1063, 1072 (Fla. 2004).

<sup>8</sup> *Santos v. State*, 380 So. 2d 1284 (Fla. 1980).

<sup>9</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).

<sup>10</sup> *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

<sup>11</sup> *Ex parte Knight*, 41 So. 786 (Fla. 1906).

<sup>12</sup> *State v. Lee*, 356 So. 2d 276 (Fla. 1978).

<sup>13</sup> *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991).

<sup>14</sup> *State v. Combs*, 388 So. 2d 1029 (Fla. 1980), and *State v. Johnson*, 616 So. 2d 1 (Fla. 1993).

<sup>15</sup> Senate Committee on Rules, *Senate Bill 1780 Analysis* (Feb. 10, 2010), available at <http://www.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s1780.rc.pdf> (last visited Jan. 19, 2011).

<sup>16</sup> *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

<sup>17</sup> *Id.*

## Mandates

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law<sup>18</sup> unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two-thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times 10 cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.<sup>19</sup>

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility.

## Preemption

Under their broad home rule powers, municipalities and charter counties may legislate concurrently with the Legislature on any subject that has not been expressly preempted to the state.<sup>20</sup> Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication nor by inference.<sup>21</sup> A local government cannot forbid what the Legislature has expressly licensed, authorized, or required, nor may it authorize what

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<sup>18</sup> Although the constitution says “[n]o county or municipality shall be bound by any general law” that is a mandate, the circuit court’s ruling was much broader in that it ordered SB 360 expunged completely from the official records of the state.

<sup>19</sup> Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Comm. on Comprehensive Planning, Local and Military Affairs, The Florida Senate, *Review of Legislative Staff Guidelines for Screening Bills for Mandates on Florida Counties and Municipalities* (Interim Report 2000-24) (Sept. 1999), available at [http://www.flsenate.gov/data/Publications/2000/Senate/reports/interim\\_reports/pdf/00-24ca.pdf](http://www.flsenate.gov/data/Publications/2000/Senate/reports/interim_reports/pdf/00-24ca.pdf) (last visited Jan. 19, 2011).

<sup>20</sup> See, e.g., *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>21</sup> *Id.*

the Legislature has expressly forbidden.<sup>22</sup> The Legislature can preempt counties' broad authority to enact ordinances and may do so either expressly or by implication.<sup>23</sup>

### Local Ordinances Requiring Security Cameras

The Convenience Business Security Act<sup>24</sup> creates security standards for late-night convenience businesses, including the requirement that every convenience business<sup>25</sup> shall be equipped with a "security camera system capable of recording and retrieving an image to assist in offender identification and apprehension."<sup>26</sup> A political subdivision of this state may not adopt, for convenience businesses, security standards that differ from the statutory requirement in the provisions of the Act. All differing standards are preempted and superseded by general law.<sup>27</sup>

Section 163.31802, F.S., created by SB 360, preempts local governments from having in place ordinances or rules requiring that a business expend funds for security cameras unless specifically required by general law. The section does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras. The preemption is broader than the Convenience Business Security Act in that it targets all businesses, but narrower in that it only stops local governments from requiring businesses to expend funds on security cameras (whereas the Act applies to a wider array of security requirements). Therefore, under the law as amended by SB 360, convenience businesses have a statutory requirement to have security cameras, but local governments could not require other businesses to pay for security cameras. Some local governments did have ordinances in place at the time that may be interpreted as requiring security cameras for more than just convenience businesses.<sup>28</sup>

<sup>22</sup> *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>23</sup> *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>24</sup> Sections 812.1701-812.175, F.S.

<sup>25</sup> Section 812.171, F.S., defines a "convenience business" as "any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m. The term 'convenience business' does not include: (1) A business that is solely or primarily a restaurant. (2) A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m. (3) A business that has at least 10,000 square feet of retail floor space. The term 'convenience business' does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m."

<sup>26</sup> Section 812.173, F.S.

<sup>27</sup> Section 812.1725, F.S.

<sup>28</sup> There are several local governments that have ordinances that are not explicitly limited to convenience stores: Boca Raton Ordinances Part II, s. 4-6 (requiring security cameras for nightclubs); DeBary Ordinances Art. II, s. 18-34 (requiring security cameras for late-night businesses); Deltona Ordinances Art. II, s. 22-33 (requiring security cameras for late-night businesses); Fort Pierce Regulations Art. XIII, s. 9-367 (requiring security cameras in all late night stores); Homestead Ordinances Art. I, s. 16-5 (requiring security cameras for small late-night restaurants); Jacksonville Ordinances Title V, s. 177-301 (requiring security cameras for grocery stores and restaurants); Jacksonville Ordinances Title VI, s. 111-310 (enabling Sheriff to purchase cameras for small businesses to meet requirements of Chapter 177); Oakland Park Ordinances Art. III, s. 24-39 (requiring security cameras for new and existing hotels); Orange County Ordinances Art. IV, s. 38-79 (requiring security cameras for freestanding carwashes); Sunrise Ordinances Art. II, s. 3-11 (requiring security cameras to obtain an extended hours license for food service establishments); Volusia County Ordinances Art. II, s. 26-36 (requiring security cameras for all late-night businesses, stores, or operations); West Melbourne Ordinances Art. III, s. 98-362 (requiring security cameras for nightclubs); West Melbourne Ordinances Art. IV, s. 98-963 (requiring interior and exterior security cameras for nightclubs).



### III. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360 (2009 Regular Session), which made many changes to Florida's growth management laws. This bill retains the 2010 statutes in their current state and reenacts the provision of SB 360 (the creation of s. 163.31802, F.S.) related to security cameras. Senate Bills 174 and 176 reenact the other parts of SB 360. By reenacting these bills separately, clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single-subject violation. More specifically, the bill reenacts the provisions adopted in 2009 that prevent local governments from requiring that a business spend funds for security cameras. The bill will take effect upon becoming a law and shall operate retroactively to June 1, 2009.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

This bill is not a mandate as it reenacts current law. The original security-camera provision in SB 360 did not require local governments to spend funds and, therefore, was not a mandate. As noted in the Present Situation portion of this bill analysis, however, a circuit court granted a verdict of summary judgment striking down SB 360 in its entirety as an unconstitutional mandate because, under the measure, certain local governments would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility. The case is being appealed to the First District Court of Appeal.<sup>29</sup>

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

This bill specifically applies its provisions retroactively to June 1, 2009, the effective date of SB 360 (2009 Regular Session). Retroactive operation is disfavored by courts and generally "statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction."<sup>30</sup> The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

- Is the statute procedural or substantive?

<sup>29</sup> One of the issues raised on appeal is that the trial court erroneously declared SB 360 unconstitutional in its entirety and should have severed only the offending language. Brief for Appellants at 26, *Atwater v. City of Weston*, Case No. 1D10-5094 (Fla. 1st DCA 2010).

<sup>30</sup> Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

- Was there an unambiguous legislative intent for retroactive application?
- Was a person's right vested or inchoate?
- Is the application of the statute to these facts unconstitutionally retroactive?<sup>31</sup>

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.<sup>32</sup>

Notwithstanding a determination of whether the provisions in the bill are procedural or substantive, the bill makes it clear that it is the Legislature's intent to apply the law retroactively. "Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision retroactively."<sup>33</sup> A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.<sup>34</sup> A court would be unlikely to bar the retroactive application of this section as impairing vested rights, creating new obligations, or imposing new penalties because it reenacts current law. As an additional protection, the bill specifies that if retroactive application were held unconstitutional by a court of last resort, it would then apply prospectively.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

<sup>31</sup> *Weingrad v. Miles*, 29 So. 3d 406, 409 (Fla. 3d DCA 2010) (internal citations omitted).

<sup>32</sup> *See Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).

<sup>33</sup> *Weingrad*, 29 So. 3d at 410.

<sup>34</sup> *Id.* at 411.

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

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**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.)

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Prepared By: The Professional Staff of the Budget Committee

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BILL: SB 174

INTRODUCER: Senator Bennett

SUBJECT: Growth Management

DATE: March 7, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Roberts</u>	<u>Roberts</u>	<u>GO</u>	<b>Favorable</b>
3.	<u>Martin</u>	<u>Meyer, C.</u>	<u>BC</u>	<b>Pre-meeting</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

In response to ongoing litigation, this bill reenacts sections of law amended by the parts of ch. 2009-96, Laws of Florida, (SB 360 from 2009) most closely related to the subject of growth management to eliminate any possible question that any of these provisions could be subjected to a single subject<sup>1</sup> challenge. Additionally, if the bill passes by a 2/3 majority of each house, it could remove the argument that these provisions violate the mandates provision of the Florida Constitution.<sup>2</sup> The bill does not change the law, but reaffirms the following changes to the law made in 2009 by SB 360:

- The compliance deadline for local governments to submit financially feasible capital improvement elements was extended, and one of the penalties for failing to adopt a public schools facility element was eliminated.
- Transportation Concurrency Exception Areas (TCEAs) were created in any: municipality that qualifies as a dense urban land area; urban service area which has been adopted into a local comprehensive plan and is located in a county that qualifies as a dense urban land area; and any county, including the cities within the county, which has a population of at least 900,000 and qualifies as a dense urban land area but does not have an urban service area designated within the local comprehensive plan.
- Other local governments have the option of creating TCEAs in certain designated areas.
- TCEAs were not created in Broward or Miami-Dade County.
- The bill explicitly stated that the designation of a transportation concurrency exception area does not limit a local government’s home rule power to adopt ordinances or impose fees.

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<sup>1</sup> Art. III, § 6, Fla. Const.

<sup>2</sup> Article VII, § 18(a), Fla. Const.

- A waiver from transportation concurrency requirements on the state’s strategic intermodal system was created for certain Office of Tourism, Trade, and Economic Development job creation projects.
- Certain developments became exempt from the development-of-regional-impact (DRI) process in the following areas:
  - municipalities that qualify as dense urban land areas;
  - an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
  - a county, such as Pinellas or Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.
  - Other local governments have the option of designating certain areas as exempt from DRI review.
  - The bill required municipalities that change their boundaries to submit their boundary changes and a statement specifying the population census effect and the affected land area to the Office of Economic and Demographic Research.
  - Parties that fail to resolve their disputes through voluntary meetings must now use mandatory, rather than voluntary, mediation or a similar process.
  - Urban service areas may be designated in the comprehensive plan using an expedited process.
  - Chapter 2009-96, Laws of Florida, also authorized permit extensions and commissioned a mobility fee study.
  - Includes the statement that the Legislature finds that this act fulfills an important state interest from the original bill and includes a statement that this bill, SB 174, fulfills an important state interest.

This bill substantially reenacts parts of sections 163.3164, 163.3177, 163.3180, 163.31801, 163.3184, 163.3187, 163.32465, 171.091, 186.509, and 380.06 of the Florida Statutes.

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled “An Act Relating to Growth Management” or “The Community Renewal Act” (SB 360).<sup>3</sup> This bill made a wide array of changes to Florida’s growth management laws. The law was challenged by a number of local governments on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.<sup>4</sup> The circuit court found that the single subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an unconstitutional mandate.<sup>5</sup> The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal, and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted. Local governments, developers, and other private interests are facing uncertainty as a result of this lawsuit.

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<sup>3</sup> Chapter 2009-96, L.O.F.

<sup>4</sup> *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

<sup>5</sup> *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

This discussion explains the issues involved in SB 360. It gives background on the issues and specifies the changes made by SB 360. Discussions of the changes to law effected by SB 360 are flagged by underlining marking the beginning of the discussion.

### **Growth Management**

Local Government Comprehensive Planning and Land Development Regulation Act (the Act),<sup>6</sup> also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."<sup>7</sup> Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

A local government may choose to amend its comprehensive plan for a host of reasons. It may wish to: expand, contract, accommodate proposed job creation projects or housing developments, or change the direction and character of growth. Some comprehensive plan amendments are initiated by landowners or developers, but all must be approved by the local government. To adopt a comprehensive plan amendment, local governments must hold two public hearings and undergo review by state and regional entities. For most types of comprehensive plan amendments, local governments may only amend their comprehensive plan twice a year.

SB 360 created a provision that requires local governments to make concurrent zoning and comprehensive plan changes upon the request of an applicant with an approved application. The bill also exempted urban service areas from the twice a year restriction on plan amendments and gave them expedited review.

### **Proportionate Fair-Share Mitigation**

Proportionate fair-share mitigation is a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. Proportionate fair-share mitigation can be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government's plan or program, the developer may still enter into a binding agreement at the local government's option provided the improvement satisfies part II of ch. 163, F.S., and:

- the proposed improvement satisfies a significant benefit test; or

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<sup>6</sup> See Chapter 163, Part II, F.S.

<sup>7</sup> Section 163.3177(5), F.S.

- the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

### **Proportionate Share Mitigation**

Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.<sup>8</sup> Multi-use developments contain a mix of land uses and multi-use DRIs meeting certain criteria are eligible to satisfy transportation concurrency requirements under s. 163.3180(12), F.S. The proportionate share option under subsection (12) has been used to allow the mitigation collected from certain multiuse DRIs to be “pipelined” or used to make a single improvement that mitigates the impact of the development because this may be the best option where there are insufficient funds to improve all of the impacted roadways.

### **Urban Service Areas**

SB 360 amended s. 163.3164, F.S., to change “existing urban service area” to “urban service area” and to redefine the term to include built-up areas where public facilities and services, including central water and sewer and roads are already in place or are committed within the next three years. The definition also grandfathers-in existing urban service areas or their functional equivalent within counties that qualify as dense urban land areas. This definition is important because for counties that are dense urban land areas, the area within the urban service area automatically became exempt from transportation concurrency and development-of-regional-impact review.

### **Dense Urban Land Areas**

SB 360 created the definition of a “dense urban land area.” The definition includes:

- a municipality that has an average population of at least 1,000 people per square mile and at least 5,000 people total;
- a county, including the municipalities located therein, which has an average population of at least 1,000 people per square mile; and
- a county, including the municipalities located therein, which has a population of at least 1 million.

The Office of Economic and Demographic Research determines which local governments qualify as dense urban land areas. The designation becomes effective upon publication on the state land planning agency’s website. To support the Office of Economic and Demographic Research, municipalities that change their boundaries send their boundary changes and information on the population effect to the Office of Economic and Demographic Research. In 2009, when the lawsuit was instituted, 246 local governments qualified as dense urban land areas. However, because of statutory exemptions, not all of these would be transportation concurrency exception areas (see below).

### **Capital Improvements Element**

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<sup>8</sup> Section 380.06(1), F.S.

In 2005, the Legislature required municipalities to annually adopt a financially feasible Capital Improvements Element (CIE) schedule beginning on December 1, 2007. (House Bill 7203, passed in May 2007, postponed the submittal to December 1, 2008.) The purpose of the annual update is to maintain a financially feasible 5-year schedule of capital improvements. The adopted update amendment must be received by DCA by December 1 of each year. Failure to update the CIE can result in penalties such as a *prohibition on Future Land Use Map amendments*; ineligibility for grant programs such as Community Development Block Grants (CDBG), and Florida Recreation Development Assistance Program (FRDAP); or ineligibility for revenue-sharing funds such as gas tax, cigarette tax, or half-cent sales tax. The majority of jurisdictions failed to meet the December 1, 2008, deadline to submit their financial feasibility reports for their capital improvements element.

SB 360 changed the deadline to submit the CIE financial feasibility element and the implementation of the associated penalty from December 1, 2008, to December 1, 2011. This means that local governments have not been required to fund the complete costs of their capital improvements listed in their comprehensive plan during this time. These requirements could be costly in and of themselves. At the very least, local governments would have been required to amend their comprehensive plans to remove any capital improvements they could not fund. Failure to comply with the financial feasibility requirement could lead to local governments being ineligible for land use map amendments and subject to financial sanctions. Under challenging economic conditions, it is likely that a court overturning this provision could be very costly for local governments.

### **School Concurrency**

In 2005, the Legislature enacted statewide school concurrency requirements. Adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval. Each local government must adopt a public school facilities element and the required update to the interlocal agreement by December 1, 2008. A local government's comprehensive plan must also include proportionate fair-share mitigation options for schools.

Although the majority of jurisdictions did adopt a school facilities element into their comprehensive plans by the December 1, 2008, deadline, a significant number of jurisdictions did not meet the deadline. One of the penalties for failure to comply with the December 1, 2008, deadline is that the local government cannot adopt comprehensive plan amendments that increase residential density.

SB 360 changed the penalties triggered when a local government or a school board fails to enter into an approved interlocal agreement or fails to implement school concurrency. The local government may be subjected to the penalties set forth in s. 163.3184(11)(a) and (b), F.S., and the school board may be subjected to penalties set forth in s. 1008.32(4), F.S. The bill gave a waiver from school concurrency for jurisdictions where student enrollment is less than 2,000 even if the growth rate is more than 10%. The bill specified that school districts must include certain relocatables as student capacity for purposes of school concurrency and that the construction of charter schools counts as mitigation for school concurrency.

### **Transportation Concurrency**



The Growth Management Act of 1985 required local governments to use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available “concurrent” with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. The Florida Department of Transportation is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.<sup>9</sup>

SB 360 modified numerous provisions related to transportation concurrency. These revisions were made in response to concerns that transportation concurrency stifles economic development in urban centers where development should be encouraged to avoid sprawl. This is because developers in congested areas must pay sometimes exorbitant proportionate fair-share costs to pay for road improvements to try to offset the traffic their planned development would create. In some areas, building new roads is functionally impossible. Developers that built their developments prior to congestion or in areas where roads are not yet congested would not have had to pay proportionate fair-share costs for their impacts. Therefore, SB 360 targeted areas based on population density to relieve some of the unintended consequences of transportation concurrency.

SB 360 designated the following areas as transportation concurrency exception areas (TCEAs):

- a municipality that qualifies as a dense urban land area;
- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas or Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

Local governments that did not meet the population threshold of a “dense urban land area” could designate in their comprehensive plans areas such as urban infill and urban service areas as transportation concurrency exception areas.

After SB 360 became law, the Department of Community Affairs interpreted the change as removing state-mandated transportation concurrency within the specified jurisdictions while preserving transportation concurrency ordinances and the transportation concurrency provisions the local governments had already adopted into their comprehensive plans. Therefore, the department indicated that for transportation concurrency exception areas to become effective in practice local governments would need to amend their ordinance and comprehensive plans to implement the transportation concurrency exception area. Some local governments have begun

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<sup>9</sup> See Professional staff analysis, Committee on Ways and Means, *CS/CS/SB 360* (Mar. 19, 2009), available at <http://www.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s0360.wpsc.pdf> (last visited Mar. 30, 2010).

to amend their comprehensive plans or land use regulations to implement transportation concurrency exception areas. SB 1752, which became law in 2010,<sup>10</sup> attempted to preserve any amendment to a local comprehensive plan adopted pursuant to SB 360 designed to implement a transportation concurrency exception area.

SB 360 did not create TCEAs for designated transportation concurrency districts within a county, such as Broward County, that has a population of at least 1.5 million that uses its transportation concurrency system to support alternative modes of transportation and does not levy transportation impact fees. TCEAs are also not created for a county such as Miami-Dade that has exempted more than 40% of its urban service area from transportation concurrency for purposes of urban infill.

Any local government that has a transportation concurrency exception area under one of these provisions must, within 2 years, adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If the local government fails to adopt such a plan it may be subject to the sanctions set forth in s. 163.3184(11)(a) and (b), F.S. This language does not set specific requirements for local governments to include in their mobility plan. It could be as simple as including bike paths or as ambitious as buses or trains. It could mesh with the existing transportation requirements in the comprehensive plan as long as those requirements address alternative modes of transportation. Although adopting a comprehensive plan amendment will involve a cost, the cost of adopting a comprehensive plan amendment varies significantly from jurisdiction and is less significant when local governments are already adopting other amendments in the same cycle. Additionally, not requiring local governments to adhere to the state requirements of transportation concurrency should give local governments the flexibility to manage growth without always going through the costly process of building new roads.

If a local government uses 163.3180(5)(b)6., F.S., the method of creating TCEAs that existed prior to SB 360, it must first consult the state land planning agency and the Department of Transportation regarding the impact on the adopted level-of-service standards established for regional transportation facilities as well as the Strategic Intermodal System (SIS).

Subsection (10) of s. 163.3180, F.S., was amended to provide an exemption from transportation concurrency on the SIS for projects that the local government and the Office of Tourism, Trade, and Economic Development (OTTED)<sup>11</sup> agree are job creation programs as described in s. 288.0656 (for REDI projects) or s. 403.973 (expedited permitting), F.S.

The bill added a specific declaration that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. The bill further clarifies that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation

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<sup>10</sup> Chapter 2010-147, L.O.F.

<sup>11</sup> The Governor through his Office of Tourism, Trade, and Economic Development (OTTED) may waive certain criteria, requirements, or similar provisions for any Rural Areas of Critical Economic Concern (RACEC) project expected to provide more than 1,000 jobs over a 5-year period. OTTED administers an expedited permitting process for "those types of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment."

concurrency exception area except for developments of regional impact that choose to rescind under s. 380.06(29)(e), F.S.

The Office of Program Policy Analysis and Government Accountability must study the implementation of TCEAs and corresponding local government mobility plans and report back to the Legislature by February 1, 2015.

SB 360 also added language that within TCEAs the local government will be deemed to achieve and maintain level-of-service standards. It includes a statement that transportation level-of-service standards for development of regional impact purposes must be the same as for transportation concurrency.

### **The Development of Regional Impact (DRI) Process**

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.<sup>12</sup> Regional planning councils assist the developer by coordinating multi-agency DRI review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving, suggesting mitigation conditions, or not approving proposed developments.

SB 360 exempted developments from the development-of-regional-impact process in the following areas:

- municipalities that qualify as a dense urban land area;
- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas and Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

Local governments that do not meet the density requirements to be dense urban land areas can designate in their comprehensive plan certain designated areas (urban infill and urban service areas, e.g.) within their jurisdiction to be exempt from DRI review. Developments that meet the DRI thresholds and are located partially within a jurisdiction that is not exempt still require DRI review. DRIs that had been approved or that have an application for development approval pending when the exemption takes effect may continue the DRI process or rescind the DRI development order. Developments that choose to rescind are exempt from the twice a year limitation on plan amendments for the year following the exemption. In exempt jurisdictions, the local government would still need to submit the development order to the state land planning agency for any project that would be larger than 120 percent of any applicable DRI threshold and would require DRI review but for the exemption. The state land planning agency would still have the right to challenge such development orders for consistency with the comprehensive plan.

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<sup>12</sup> Section 380.06(1), F.S.

If a local government that qualifies as a dense urban land area for DRI exemption purposes is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved. The section explicitly does not limit or modify the rights of any person to complete any development that has been authorized as a DRI. The exemption from the DRI process does not apply within the boundary of any area of critical state concern, within the boundary of the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area.

Additionally, certain projects that are part of the Innovation Incentive Program, when part of a DRI, do not need to be analyzed under DRI review.

SB 1752, which became law in 2010, included a provision to reauthorize exemptions for developments of regional impact that are underway. Any exemption granted for any project for which an application for development approval has been approved or filed pursuant to s. 380.06, Florida Statutes, or for which a complete development application or rescission request has been approved or is pending, and the application or rescission process is continuing in good faith, should be protected if the development order was filed or application for rescission was pending before a possible final ruling on invalidation of SB 360 could take effect.<sup>13</sup>

### **Intergovernmental Coordination**

The intergovernmental element of a local government's comprehensive plan contains a dispute resolution process. SB 360 changed intergovernmental mediation from optional to mandatory.

### **Impact Fees**

Impact fees are a total or partial payment to counties, municipalities, special districts, and school districts for the cost of providing additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources and the local government's determination to charge the full cost of the fee's earmarked purposes. Section 163.31801 governs impact fees. Prior to SB 360, local governments were required to provide 90 days of notice to create a new impact fee or to change an impact fee. SB 360 modified s. 163.31801(3)(d), F.S., to allow a local government to decrease, suspend, or eliminate an impact fee without waiting 90 days.

### **The Definition of "In Compliance"**

SB 360 amended the definition of "in compliance" to change a technical error.

### **Mobility Fee Study**

SB 360 required the Department of Transportation and the Department of Community Affairs to continue their mobility fee studies with the goal of developing a mobility fee that can replace the existing transportation concurrency system. The mobility fee study was completed and presented

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<sup>13</sup> Chapter 2010-147, L.O.F.

to the Legislature. It is available on the DCA's website and provides some concepts for local governments to use when determining alternatives to transportation concurrency. The Legislature did not adopt a mobility fee nor did the Legislature require local governments to adopt a mobility fee.

### **Extension of Permits**

SB 360 created an undesignated section of law to provide a retroactive 2-year extension and renewal from the date of expiration for:

- any permit issued by the Department of Environmental Permitting or a Water Management District under part IV of ch. 373, F.S.,
- any development order issued by the DCA pursuant to s. 380.06, F.S., and
- any development order, building permit, or other land use approval issued by a local government which expired or will expire between September 1, 2008 and January 1, 2012. For development orders and land use approvals, including but not limited to certificates of concurrency and development agreement, the extension applies to phase, commencement, and buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S.

The conversion of a permit from the construction phase to the operation phase for combined construction and operation permits is specifically provided for. The completion date for any mitigation associated with a phased construction project is extended and renewed so the mitigation takes place in the appropriate phase as originally permitted. Entities requesting an extension and renewal must have notified the authorizing agency in writing by December 31, 2009, and must identify the specific authorization for which the extension will be used.

Exceptions to the extension are provided for certain federal permits, and owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension. Permits and other authorizations which are extended and renewed shall be governed by the rules in place at the time the initial permit or authorization was issued. Modifications to such permits and authorizations are also governed by rules in place at the time the permit or authorization was issued, but may not add time to the extension and renewal. SB 1752, which became law in 2010, contained a provision reauthorizing these permit provisions; therefore, these extensions should remain valid even if SB 360 is struck down by the appellate court.<sup>14</sup>

### **Single Subject Rule**

Section 6, Article III of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith.” The subject shall be briefly expressed in the title.<sup>15</sup> The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.<sup>16</sup> The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a

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<sup>14</sup> Chapter 2010-147, L.O.F.

<sup>15</sup> *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2002).

<sup>16</sup> *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

natural or logical connection.<sup>17</sup> The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.<sup>18</sup> A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.<sup>19</sup> Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation,<sup>20</sup> but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.<sup>21</sup>

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.<sup>22</sup> During the 2010 regular session SB 1780 reenacted the Florida Statutes. Therefore, the circuit court determined that the single subject challenge to SB 360 was rendered moot.<sup>23</sup>

### **(A) Mandates**

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law<sup>24</sup> unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.<sup>25</sup>

<sup>17</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).

<sup>18</sup> *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

<sup>19</sup> *Ex parte Knight*, 41 So. 786 (Fla. 1906).

<sup>20</sup> *State v. Lee*, 356 So.2d 276 (Fla. 1978).

<sup>21</sup> *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).

<sup>22</sup> *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).

<sup>23</sup> *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

<sup>24</sup> Although the constitution says “no county or municipality shall be bound by any general law” that is an (a) mandate, the circuit court’s ruling was much broader in that it ordered SB 360 expunged completely from the official records of the State.

<sup>25</sup> Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Florida Senate Interim Project Report 2000-24.

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments that have designated TCEAS would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility. The court reasoned that an insignificant fiscal impact would be 10 cents per resident or \$1.86 million dollars (thereby partially adopting the legislature's method of assessing an insignificant fiscal impact). The court did not consider the fact that local governments had two years to adopt these mobility plans or any offsetting cost effects over the long term.

The court decided that:

- The cost of amending the comprehensive plan would be at least \$15,000 per jurisdiction required to amend its comprehensive plan.
- All 246 local governments that meet the statutory density requirements will be required to amend their comprehensive plans.
- Therefore, local governments throughout Florida will be required to spend \$3,690,000 to comply with the SB 360 requirement that local governments that have Transportation Concurrency Exception Areas adopt into their comprehensive plan, plans to support and fund mobility within two years.

Because the court deemed \$3,690,000 to be greater than an “insignificant fiscal impact,” it decided that SB 360 was an unconstitutional mandate. The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.

## I. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360, which made many changes to Florida's growth management laws. This bill retains the 2010 statutes in their current state and reenacts those provisions of SB 360 most closely related to growth management. SB 172 and 176 reenact the parts of SB 360 claimed by the litigants to be outside the purview of growth management. By reenacting these bills separately, clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single subject violation. Additionally, passage by a 2/3 majority would eliminate any question of whether the bill is an unconstitutional unfunded mandate.

**Section 1** reenacts s. 1 of ch. 2009-96, the title of SB 360: “Community Renewal Act.”

**Section 2** reenacts s. 163.3164 (29) and (34), F.S., which define the terms “urban service area” and “dense urban land area.” The section also tasks the Office of Economic and Demographic Research within the Legislature with determining which jurisdictions qualify as dense urban land areas under that definition by using specific methods and with annually publishing the list and submitting it to the state land planning agency.

**Section 3** reenacts s. 163.3177 (3)(b), (3)(f), (6)(h), (12)(a), and (12)(j), F.S. Paragraph (3)(b) contains the deadline for local governments to comply with the financial feasibility requirement of the CIE. Paragraph (3)(f) states that areas within TCEAs shall be deemed to have achieved

and maintained their level-of-service standard requirements. Paragraph (6)(h) details the requirements for an intergovernmental coordination element. Paragraph (12)(a) & (j) relate to the public schools facility element.

**Section 4** reenacts s. 163.3180 (5), (10), (13)(b), and (13)(e), F.S. Subsection (5) & (10) relate to TCEAs. Paragraph (13)(b) & (e) relate to school concurrency.

**Section 5** reenacts s. 163.31801(3)(d), F.S., which relates to notice requirements on impact fees.

**Section 6** reenacts s. 163.3184(1)(b) and(3)(e), F.S. Paragraph (1)(b) gives the definition of “in compliance”. Paragraph (3)(e) requires local governments to consider an application for zoning changes concurrently with comprehensive plan amendment changes.

**Section 7** reenacts s. 163.3187(1)(b), (f), and (q) creating exemptions to the twice a year restriction on comprehensive plan amendments.

**Section 8** reenacts s. 163.32465(2), F.S., allowing local governments to use the alternative state review pilot program to designate their urban service areas.

**Section 9** reenacts s. 171.091, F.S., requiring local governments to file boundary changes with the Office of Economic and Demographic Research.

**Section 10** reenacts s. 186.509, F.S., requiring mandatory mediation in certain circumstances.

**Section 11** reenacts s. 380.06 (7)(a), (24), (28), and (29) relating to DRIs.

**Section 12** reenacts ss. 13, 14, and 34 of ch. 2009-96. Section 13 requires DOT & DCA to work on a mobility fee study and report their findings to the Legislature. Section 14 extends and renews certain permits. Section 34 states that the Legislature finds that this act fulfills an important state interest.

**Section 13** states that the Legislature finds that this act fulfills an important state interest.

**Section 14** provides for the act to take effect upon becoming a law and for the portions amended or created by chapter 2009-96 to operate retroactively to June 1, 2009. In the case that a court of last resort finds such retroactive application unconstitutional, the section provides for the act to apply prospectively from the date that it becomes a law.

**Other Potential Implications:**

SB 360 is on appeal. If the trial court opinion is upheld and the bill in its entirety is struck down, local governments, developments, school districts, and any other people or entities that have relied on the bill may be in uncertain legal waters. Most local governments would not have a financially feasible capital improvements elements, meaning that they would either need to: amend their comprehensive plan to remove unfunded infrastructure projects, fund the often costly projects in their CIE, or possibly be subjected to financial sanctions and a prohibition on comprehensive plan amendments. Similarly, local governments that have failed to adopt school concurrency would be prohibited from adopting comprehensive plan amendments. Local



governments that may want to suspend, reduce, or eliminate impact fees to encourage new business would have to wait 90 days to do so. Any existing ordinances that did not wait 90 days may have questionable validity. In addition, local governments that have not yet adopted transportation concurrency exception area amendments into their comprehensive plan could be prohibited from doing so. Similarly, new developments in dense urban land areas would still have to go through the DRI process.

## **II. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

This bill reenacts current law. A discussion of mandates issues for SB 360 can be found in the present situation section.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **III. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

Increased certainty of the growth management laws could have a positive financial impact on the development community.

### **C. Government Sector Impact:**

The bill reenacts current law.

## **IV. Technical Deficiencies:**

None.

## **V. Related Issues:**

None.

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

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**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.)

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Prepared By: The Professional Staff of the Budget Committee

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BILL: SB 176

INTRODUCER: Senator Bennett

SUBJECT: Affordable Housing

DATE: March 7, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.	Roberts	Roberts	GO	<b>Favorable</b>
3.	Martin	Meyer, C.	BC	<b>Pre-meeting</b>
4.				
5.				
6.				

**I. Summary:**

In response to ongoing litigation, this bill reenacts certain sections of law created by ch. 2009-96, Laws of Florida, (SB 360 from 2009) that are most related to the subject of affordable housing in order to eliminate any possible question that it could be subjected to a single subject<sup>1</sup> challenge or struck down as an unconstitutional unfunded mandate.<sup>2</sup> The bill does not change the law, but reaffirms the following changes to the law made in 2009 by SB 360 relating to affordable housing:

- Limiting the Florida Housing and Finance Corporation’s (FHFC) access to the state allocation pool.
- Providing additional requirements for property receiving the low-income housing tax credit and property owned by a community land trust that is used to provide affordable housing.
- Providing that property owned by an exempt charitable organization is considered to be used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing.
- Providing additional authorized uses of the local infrastructure surtax for residential housing projects with at least 30 percent of units set aside for affordable housing.
- Revising definitions relating to the state’s affordable housing programs.
- Directing the FHFC to establish preference criteria for developers and contractors based in Florida or who have substantial experience developing or building affordable housing.
- Including certain projects with green building principles, storm-resistant construction, or other elements reducing the long-term maintenance costs as projects eligible for funding under the state’s State Apartment Incentive Loans (SAIL) affordable housing program.

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<sup>1</sup> Art. III, § 6, Fla. Const.

<sup>2</sup> Art. VII, § 18(a), Fla. Const.

- Directing the FHFC and certain state and local agencies to coordinate with the Department of Children and Family Services to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving foster care.
- Modifying the distribution of funds from the Local Government Housing Trust fund by authorizing set-asides for specific purposes and repealing another section of law providing for the state administration of remaining local housing distribution funds.
- Revising certain criteria related to local housing assistance plans and affordable housing incentive strategies under the State Housing Initiatives Partnership (SHIP) Program.
- Expands the situations in which a district school board can provide affordable housing to include essential services personnel in areas of critical concern.

This bill substantially reenacts parts of the following sections of the Florida Statutes: 159.807, 193.018, 196.196, 196.1978, 212.055, 163.3202, 420.503, 420.507, 420.5087, 420.622, 420.628, 420.9071, 420.9072, 420.9073, 420.9075, 420.9076, 420.9079, and 1001.43. This bill also reenacts the repeal of s. 420.9078, F.S.

## II. Present Situation:

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled “An Act Relating to Growth Management” or “The Community Renewal Act” (SB 360).<sup>3</sup> This bill made a wide array of changes to Florida’s growth management laws. The law was challenged by a number of local governments on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.<sup>4</sup> The circuit court found that the single subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an unconstitutional mandate.<sup>5</sup> The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.

### Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC)<sup>6</sup> is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.<sup>7</sup> It was created in 1997, when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as a corporation. The FHFC is a public corporation housed within the Department of Community Affairs (DCA), but is a separate budget entity not subject to the control, supervision, or direction of the DCA. Instead, it is governed by a nine member board of directors comprised of the Secretary of DCA, who serves as an ex officio voting member, and eight members appointed by the Governor, subject to confirmation by the Senate.

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<sup>3</sup> Chapter 2009-96, L.O.F.

<sup>4</sup> *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

<sup>5</sup> *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

<sup>6</sup> Formerly the Florida Housing Finance Agency

<sup>7</sup> Housing is determined to be affordable when a family is spending no more than 30 percent of its total income on housing. See Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation’s Mission and Programs*, at 3 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

The corporation operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL), which annually provides low-interest loans on a competitive basis to affordable housing developers;<sup>8</sup>
- The Florida Homeowner Assistance Program (HAP), which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program, which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership (SHIP) Program, which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing; and
- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance, and build workforce housing.

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.<sup>9</sup> Pursuant to s. 420.507, F.S., the FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.<sup>10</sup>

SB 360 (2009) amended the Florida Housing and Finance Corporation Act, under Part V, of ch. 420, F.S., to provide a definition for the term "moderate rehabilitation" and to direct the FHFC to provide criteria by rule, establishing a preference for developers and general contractors based in Florida, and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation's programs.<sup>11</sup> The bill provided statutory guidelines for the FHFC to use when evaluating whether the developer or general contractor is domiciled in the state and whether he/she has substantial experience.

SB 360 also amended s. 159.807(4), F.S., to limit the FHFC's access to the state allocation pool for private activity bonds permitted to be issued in the state under the Internal Revenue Code, to the amount of their initial allocation under s. 159.804, F.S. The amendment also provided that after the initial allocation has been provided, the corporation may not receive more than 80 percent of the amount remaining in the state allocation pool on November 16 of each year. The distribution to the corporation of the unused portion of the state allocation pool was not affected.<sup>12</sup>

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<sup>8</sup> Under current law, low interest mortgage loans provided under the SAIL Program are only available for qualifying farm workers, commercial fishing workers, the elderly, and the homeless. *See* s. 420.507(22), F.S.

<sup>9</sup> Sections 201.15 (9) and (10), F.S.

<sup>10</sup> *See* ss. 420.507 (33), and 159.608, F.S.

<sup>11</sup> Chapter 2009-96, L.O.F.

<sup>12</sup> *Id.*

### **State Apartment Incentive Loan (SAIL) Program**

The SAIL program, created in s. 420.5087, F.S., authorizes the corporation to underwrite or make loans or loan guarantees to provide affordable housing to very-low-income persons if:

- The project sponsor uses tax-exempt financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937, as amended;
- The project sponsor uses taxable financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, adjusted to family size; or
- The project sponsor uses federal low-income housing tax credits and the project meets the tenant eligibility requirements of s. 42 of the Internal Revenue code.<sup>13</sup>

“SAIL funds provide gap financing that leverages federal mortgage revenue bonds and allows developers to obtain the full financing needed to construct affordable multifamily units.”<sup>14</sup> Under current law, SAIL funds must be reserved for the following tenet groups: commercial fishers and farm workers, families, the elderly, and the homeless.<sup>15</sup> Projects that maintain at least 80 percent of their units for commercial fishing workers, farm workers, and the homeless, are eligible to receive loans with interest rates from 0 to 3 percent. All other projects are eligible for loans with interest rates from 1 to 9 percent.<sup>16</sup>

Ten percent of funds set aside to house the elderly must be reserved to provide loans for the purpose of making existing building health and preservation improvements, sanitation repairs or improvements required by federal, state, or local law or regulation, or life safety or security-related repairs and improvements. Loans from the reserved funds may not exceed \$750,000 per housing community, and the sponsor of the housing community must commit to matching at least 5 percent of the loan amount needed to pay for the necessary repairs or improvements.<sup>17</sup>

SB 360 (2009) amended s. 420.5087, F.S., to include the following additional criteria the corporation must consider while evaluating and competitively ranking applications for funding under the SAIL program:

- Projects with green building principles, storm-resistant construction, or other elements to reduce long-term costs relating to maintenance, utilities, or insurance.
- Whether the developer and general contractor have substantial experience.
- Domicile of the developer and general contractor.<sup>18</sup>

The bill also provided that SAIL loan proceeds may be used for moderate rehabilitation or preservation of affordable housing units.

### **State Housing Initiatives Partnership (SHIP) Program**

<sup>13</sup> Section 420.5087(2)(a) - (c), F.S.

<sup>14</sup> The Florida Housing Finance Corporation, *Overview of the Florida Housing Finance Corporation's Mission and Programs*, Sept. 2009, on file with the Senate Committee on Community Affairs.

<sup>15</sup> Section 420.5087(3)(a)-(d), F.S.

<sup>16</sup> Section 420.5087(6)(a), F.S., referencing s. 420.507(22)(a)1. and 3., F.S.

<sup>17</sup> Section 420.5087(3)(d), F.S.

<sup>18</sup> Chapter 2009-96, L.O.F.

The SHIP program, created in part VII of ch. 420, F.S., provides funds to counties and eligible cities as an incentive for the creation of local housing partnerships, to:

- Expand the production and preservation of affordable housing,
- Further the housing element in a local government comprehensive plan specific to affordable housing, and
- Increase related employment.<sup>19</sup>

SHIP funds are collected from documentary stamp tax revenues and are deposited into the Local Government Housing Trust Fund, which are then distributed on an entitlement basis to counties and Community Development Block Grant cities throughout the state.<sup>20</sup> “The minimum allocation per county is \$350,000, of which at least 65 percent of the funds must be used for homeownership.”<sup>21</sup>

To be eligible to receive funding under the SHIP program, a county or an eligible city must complete a three step process: (1) submit a local housing assistance plan to the FHFC, (2) within 12 months of adopting the plan, make amendments to incorporate local housing incentive strategies, and (3) within 24 months after adopting the amended plan, the entity must amend its land development regulations or establish local policies and procedures, as necessary, to implement the adopted strategies.<sup>22</sup> A local government seeking approval to receive funding is also required to adopt an ordinance that:

- Creates a local housing assistance trust fund,
- Implements a local housing assistance plan through a local housing partnership,
- Designates responsibility for the local housing assistance plan, and
- Creates an affordable housing advisory committee.<sup>23</sup>

The ordinance, adopted resolution, local housing assistance plan, and other related information must then be submitted to the FHFC for review and approval.<sup>24</sup>

SB 360 (2009) provided new definitions for the following terms under the State Housing Incentives Partnership Act: “annual gross income”; “assisted housing” and “assisted housing development”; “eligible housing”; “local housing incentive strategies”; “preservation”; and “recaptured funds”.<sup>25</sup>

SB 360 also provided that counties and eligible municipalities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the property being in foreclosure. The one-time relocation grant, in an amount not to exceed \$5,000, may be granted to persons who meet the income eligibility requirements of the SHIP program.

### ***A. Local Housing Distributions***

<sup>19</sup> Section 420.9072, F.S.

<sup>20</sup> Information obtained from the Florida Housing Finance Corporation, *See supra* note 12.

<sup>21</sup> *Id.*

<sup>22</sup> Section 420.9072(2)(a)1. -3., F.S.

<sup>23</sup> Section 420.9072(2)(b)1. -4., F.S.

<sup>24</sup> *See s.* 420.9072(3), F.S.

<sup>25</sup> Chapter 2009-96, L.O.F.

SB 360 (2009) amended s. 420.9073, F.S., to provide that local housing distributions under SHIP be disbursed by the FHFC on a quarterly or more frequent basis, subject to the availability of funds.<sup>26</sup> The bill also allowed the FHFC to withhold up to \$5 million in funds distributed from the Local Government Housing Trust Fund to:

- Provide additional funding to counties and eligible municipalities in a state of emergency.
- Counties and eligible municipalities to purchase properties subject to a SHIP lien and on which foreclosure proceedings have been initiated by any mortgagee.

SB 360 further clarified that counties and cities receiving SHIP must expend those funds in accordance with statutory requirements, corporation rules, and the local housing assistance plan.

SB 360 repealed s. 420.9078, F.S., which prior to its repeal, addressed the state administration of remaining local housing distribution funds. This section provided that the FHFC shall distribute remaining funds as follows:

- Proportionately under the local housing distribution formula established in s. 420.9073, F.S., to counties and cities where a state of emergency or natural disaster has been declared by executive order, and which have an approved local housing assistance plan for repairing and replacing housing damaged as part of the emergency or natural disaster.
- If no emergency or natural disaster funding is required, then proportionately among the counties and cities who have fully expended their local housing distribution for the preceding state fiscal year, and who have an approved local housing assistance plan.

### ***B. Local Housing Assistance Plans***

Section 420.9075, F.S., requires each county or eligible municipality that is participating in the SHIP program to develop and implement a local housing assistance plan that seeks to provide affordable residential units for persons of very low income, low income, or moderate income, and to persons who have special housing needs.<sup>27</sup> The purpose of these plans is “to increase the availability of affordable residential units by combining local resources and cost-saving measures into a local housing partnership and using private and public funds to reduce the cost of housing”.<sup>28</sup>

SB 360 (2009) amended s. 420.9075, F.S., to include persons with disabilities as persons with special needs and to allow counties or eligible municipalities to include strategies to assist persons and households with annual incomes of not more than 140 percent of the area median income. SB 360 further provided that:

- Local housing assistance plans must describe initiatives that encourage or require innovative design, green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.
- Counties and cities are encouraged to develop local housing assistance plans that provide funding for preservation of assisted housing.
- Not more than 20 percent of funds made available in each county and eligible municipality may be used for manufactured housing.

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<sup>26</sup> Chapter 2009-96, L.O.F.

<sup>27</sup> Section 420.9075, F.S.

<sup>28</sup> *Id.*



- SHIP funds may be used for preconstruction activities, and if preconstruction due diligence activities prove that preservation is not feasible, then the costs for those activities are program costs and not administrative costs if such program expenses do not exceed 3 percent of the annual local housing distribution.
- Counties and cities may award construction, rehabilitation, or repair grants as part of disaster recovery, emergency repairs, or to remedy access or health and safety issues.
- Program funds expended for an ineligible activity must be repaid to the Local Housing Assistance Trust Fund and SHIP funds may not be used.<sup>29</sup>

SB 360 also extended Monroe County's exemption from income restrictions relating to the use of set-aside funds in the local government assistance trust fund from July 1, 2008, to July 1, 2013, so that awards could be made to residents with incomes no higher than 120 percent of the area median income, and applied retroactively.

### ***C. Local Housing Incentive Strategies***

Every county or eligible municipality that is participating in the SHIP program, or any municipality receiving SHIP funds through the county or eligible municipality, is required to amend their local housing assistance plan within 12 months of adoption to include local housing incentive strategies.<sup>30</sup> The governing body of the county or municipality is responsible for appointing members to the affordable housing advisory committee by resolution. The committee shall be responsible for evaluating the plan and recommending “specific actions or incentives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value”.<sup>31</sup> The committee must be composed of certain individuals as specified in s. 420.9076(2), F.S.

SB360 (2009) amended s. 420.9076(2), F.S., to allow a local governing body that also serves as a local planning agency to appoint a designee to the local affordable housing advisory committee.<sup>32</sup> SB 360 further instructed that the committee submit its final report, evaluation, and recommendations to the FHFC.

### **Affordable and Workforce Housing Income Requirements**

Income requirements for affordable housing and workforce housing are established in ss. 420.0004<sup>33</sup> and 420.5095, F.S., respectively, as follows:

- Extremely-low-income persons: a person or family whose total annual income does not exceed 30 percent of the median annual adjusted gross income for households within the state.
- Very-low-income persons: a person or family whose total annual income does not exceed 50 percent of the median annual adjusted gross income for households within the state.
- Low-income persons: a person or family whose total annual income does not exceed 80 percent of the median annual adjusted gross income for households within the state.

<sup>29</sup> Chapter 2009-96, L.O.F.

<sup>30</sup> Section 420.9076, F.S.

<sup>31</sup> Section 420.9076(4), F.S.

<sup>32</sup> Chapter 2009-96, L.O.F.

<sup>33</sup> Subsections (8), (10), (11), and (15) of s. 420.0004, F.S.

- Moderate-income persons: a person or family whose total annual income is less than 120 percent of the median annual gross income for households within the state.
- Workforce housing: housing affordable to a person or family whose total annual income does not exceed 140 percent of the area median income, adjusted for household size. In areas of critical state concern, the total annual income may not exceed 150 percent of the area median income.<sup>34</sup>

### **Affordable Housing Property Exemptions**

SB 360 (2009) extended the affordable housing property ad valorem tax exemption to include property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in ss. 159.603(7) and 420.0004, F.S.<sup>35</sup> The property must be owned entirely by a nonprofit entity that is a corporation not for profit, or a Florida-based limited partnership whose sole general partner is a corporation not for profit. The corporation not for profit must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 17. The bill also provided that any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.

### **Affordable Housing for Children and Young Adults Leaving Foster Care**

SB 360 (2009) created s. 420.628, F.S., relating to affordable housing for children and young adults leaving foster care.<sup>36</sup> Section 420.628, F.S., directs the Florida Housing Finance Corporation, the agencies receiving funding under the State Housing Initiatives Partnership Program, local housing finance agencies, and public housing authorities to coordinate with the Department of Children and Family Services and their agents and community-based care providers to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving the child welfare system.

Such young persons are deemed to have met the definitions for eligible persons for affordable housing purposes. In addition, students deemed to be eligible occupants under certain federal requirements<sup>37</sup> are also considered eligible for purposes of affordable housing projects.

### **State Office on Homelessness**

Section 420.622, F.S., creates the State Office on Homelessness within the Department of Children and Family Services in order to “provide interagency, council, and other related coordination on issues relating to homelessness”. SB 360 (2009) amended s.420.622 (5), F.S., to allow money granted by the State Office on Homelessness to also be used to *acquire* transitional or permanent housing for homelessness persons.<sup>38</sup>

### **Charitable Organizations**

Under section 501(c)(3) of the Internal Revenue Code, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes. None of the organization's earnings may benefit any private shareholder or individual, and the

<sup>34</sup> Section 420.5095(3)(a), F.S.

<sup>35</sup> Chapter 2009-96, L.O.F. See above for Affordable Housing Income Requirements .

<sup>36</sup> *Id.*

<sup>37</sup> 26 USC 42(i)(3)(d), provides conditions under which low-income housing units may not be disqualified as low-income housing because the property is occupied by certain students.

<sup>38</sup> Chapter 2009-96, L.O.F.

organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

### **Property entitled to charitable, religious or other exemptions**

In determining whether the use of a property qualifies the property for an ad valorem tax exemption under s. 196.196, F.S., the property appraiser must consider the nature and extent of the charitable or other qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities.<sup>39</sup> Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation.

Property used for religious purposes may be exempt if the entity has taken affirmative steps to prepare the property for use as a house of worship. The term "affirmative steps" is defined by statute to mean "environmental or land use permitting activities, creation of architectural or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to a religious use as a house of public worship".<sup>40</sup>

SB 360 (2009), amended s. 196.196, F.S., to provide that property owned by an exempt organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, is considered to be used for a charitable purpose if the organization has taken "affirmative steps" to prepare the property to provide affordable housing to persons or families meeting the income restrictions for extremely-low, very-low, low, and moderate income families.<sup>41</sup> SB 360 also provided penalties for properties granted a charitable exemption under this subsection that are transferred for purposes other than affordable housing, or if the property is not actually used as affordable housing, within 5 years after the exemption is granted.

### **Community Land Trusts**

In an effort to create permanent affordable homeownership opportunities for Florida's workforce, local governments donate land or the money to purchase land to charitable, tax exempt housing organizations known as community land trusts, which then build homes on the property. The community land trust (CLT) sells the home, but not the land, to an income-eligible buyer at a purchase price that is affordable to the homebuyer, in large part because the buyer is not paying for the land. In return, the homeowner receives a 99-year ground lease interest in the land and pays a nominal monthly fee to the community land trust for the use of the land. After the initial acquisition, resale is limited to a formula contained in the ground lease that restricts the market price of the home to ensure continuous affordability.

SB 360 (2009) created s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land owned by a CLT and that is used to provide affordable housing.<sup>42</sup> The bill defined the term community land trust to mean "a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code

<sup>39</sup> Section 196.196(1)(a)-(b), F.S.

<sup>40</sup> Section 196.196(3), F.S.

<sup>41</sup> Chapter 2009-96, L.O.F.

<sup>42</sup> Chapter 2009-96, L.O.F.

and has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable homeownership.”

The bill also codified in statute the responsibility of a CLT to convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land to persons or families who qualify for affordable housing under the income limits of s. 420.0004, F.S., or for workforce housing under the income limits of s. 420.5095, F.S. The improvements or parcels are each subject to a ground lease of at least 99 years, and the ground lease contains a formula limiting the amount for which the improvement or parcel may be resold. The CLT retains the first right to purchase at the time of resale.

In addition, the bill provided that in arriving at the just valuation of structural improvements or improved parcels conveyed by a CLT, or land owned by the CLT, the property appraiser must assess the property based on the resale restrictions or limited uses contained in the 99-year or longer ground lease. When recorded in the official public records of the county in which the property is located, the ground lease and amendments or supplements to the lease, or a memorandum documenting the restrictions contained in the ground lease, are deemed a land use regulation during the term of the lease.

### **Discretionary Sales Surtax**

Section 212.055, F.S., authorizes qualifying counties and other special local governmental entities to levy various surtaxes. There are seven different types of authorized local discretionary sales surtaxes (also known as local option taxes). The local discretionary sales surtaxes authorized by this section apply to all transactions subject to the sales and use tax imposed pursuant to Chapter 212, F.S.

Section 212.055, F.S., specifies the rate of each surtax that may be imposed, the manner in which each surtax proposal may be adopted and the use of the funds collected. Local discretionary tax rates vary from county to county. The local surtax applies to the first \$5,000 of the sales price for most items. Procedures for administration and collection of the surtax are established in s. 212.054, F.S. Any discretionary sales surtax must take effect only on January 1 and terminate on December 31.<sup>43</sup>

SB 360 (2009) amended s. 212.055(2), F.S, relating to local government infrastructure surtaxes, to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families whose household income does not exceed 120 percent of the area median income adjusted for household size, is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local government to provide such housing.<sup>44</sup> The bill also provided that the local government or special district may enter into a ground lease with any entity for the construction of the residential housing project on land acquired from the expenditure of local infrastructure surtax proceeds.

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<sup>43</sup> Section 212.054(5), F.S.

<sup>44</sup> Chapter 2009-96, L.O.F.

### **Land Development Regulations**

Pursuant to 163.3202, F.S., counties and municipalities are required to adopt or amend land development regulations within 1 year after submitting its revised comprehensive plan for review pursuant to s. 163.3167(2), F.S. Section 163.3202(2), F.S., outlines minimum provisions that the counties and municipalities should include in their local governments land development regulations.

SB 360 (2009) amended s. 163.3202(2), F.S., to provide that certain land development regulations must maintain the existing density of residential properties or recreational vehicle parks, if the properties are intended for residential use, and are located in an unincorporated area with sufficient infrastructure in place to support the use, but are not located within a high coastal hazard are under s. 163.3178, F.S.<sup>45</sup>

### **Supplemental Powers and Duties of District School Board, Affordable Housing**

Section 1001.43(12), F.S., allows district school boards to use portions of school sites that were purchased within the guidelines of the State Requirements for Education facilities, in which the land is not deemed usable for education purposes because of the location or other factors, or the land is declared as a surplus by the board, in order to provide affordable housing for teachers and other district personnel.

SB 360 (2009) amended s. 1001.43, F.S., to expand the purposes for which a district school board could provide affordable housing by providing that in an area of critical state concern, the board may use specified properties and surplus lands to include affordable housing for essential services personnel, as defined by local affordable housing eligibility requirements.<sup>46</sup>

### **Constitutional Provisions**

#### ***A. Single Subject Rule***

Section 6, Article III of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith.” The subject shall be briefly expressed in the title.<sup>47</sup> The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.<sup>48</sup> The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.<sup>49</sup> The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.<sup>50</sup> A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.<sup>51</sup> Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject

<sup>45</sup> *Id.*

<sup>46</sup> Chapter 2009-96, L.O.F.

<sup>47</sup> *Franklin v. State*, 887 So.2d 1063, 1072 (Fla.2002).

<sup>48</sup> *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

<sup>49</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).

<sup>50</sup> *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

<sup>51</sup> *Ex parte Knight*, 41 So. 786 (Fla. 1906).

limitation,<sup>52</sup> but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.<sup>53</sup>

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.<sup>54</sup> The litigants in the SB 360 case argued that the three subjects in the bill are: growth management, security cameras, and affordable housing.<sup>55</sup> During the 2010 regular session SB 1780 reenacted the Florida Statutes. Therefore, the circuit court determined that the single subject challenge to SB 360 was rendered moot.<sup>56</sup>

### ***B. Type A Mandates***

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law<sup>57</sup> unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.<sup>58</sup>

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility.

<sup>52</sup> *State v. Lee*, 356 So.2d 276 (Fla. 1978).

<sup>53</sup> *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).

<sup>54</sup> *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).

<sup>55</sup> *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

<sup>56</sup> *Id.*

<sup>57</sup> Although the constitution says “no county or municipality shall be bound by any general law” that is an (a) mandate, the circuit court’s ruling was much broader in that it ordered SB 360 expunged completely from the official records of the State.

<sup>58</sup> Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Florida Senate Interim Project Report 2000-24.

### III. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360, which made many changes to Florida's affordable housing and growth management laws. This bill retains the 2010 statutes in their current state and reenacts the provision of SB 360 most closely related to affordable housing. SB 172 and 174 reenact the other parts of SB 360 pertaining to security cameras and growth management. By reenacting these bills separately and clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single subject violation. Additionally, passage by a 2/3 majority would eliminate any question of whether the bill is an unconstitutional unfunded mandate.

**Section 1** reenacts s. 159.807(4), F.S., to limit the FHFC's access to the state allocation pool for private activity bonds.

**Section 2** reenacts s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land which is owned by a CLT and used to provide affordable housing.

**Section 3** reenacts s. 196.196(5), F.S., to provide that property owned by an exempt charitable organization is considered to be used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing.

**Section 4** reenacts s. 196.1978, F.S., to extend the affordable housing property ad valorem tax exemption to property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in s. 159.603(7), F.S.,<sup>59</sup> and s. 420.0004, F.S.<sup>60</sup> The property must be owned by a Florida-based limited partnership, the sole general partner of which is a not-for-profit corporation, or be owned by a nonprofit entity that is a not-for-profit corporation.

**Section 5** reenacts s. 212.055(2)(d), F.S., to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families, is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local government to provide such housing.

**Section 6** reenacts s. 163.3202(2), F.S., to provide that certain land development regulations must maintain the existing density of specified properties if they are intended for residential use, and are located in an unincorporated area with sufficient infrastructure in place.

**Section 7** reenacts s. 420.503(25), F.S., to provide a definition for "moderate rehabilitation".

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<sup>59</sup> Section 159.603(7), F.S., provides that "eligible persons" means one or more natural persons or a family, determined by the housing finance authority to be of low, moderate, or middle income. The determination does not preclude any person or family earning up to 150 percent of the state or county median income from participating in a housing financing authority program. Persons 65 years of age or older are eligible regardless of income.

<sup>60</sup>Income limits for extremely-low, very-low, low, and moderate-income persons or families are defined in s. 420.0004, F.S.

**Section 8** reenacts s. 420.507(47), F.S., which directs the FHFC to provide criteria establishing a preference for developers and general contractors based in Florida, or who have substantial experience in developing or building affordable housing through the FHFC.

**Section 9** reenacts s. 420.5087, F.S., to include projects that include green building principles, storm-resistant construction, or other elements to reduce long-term maintenance costs as projects eligible to apply for and receiving consideration for funding from the SAIL program.

**Section 10** reenacts s. 420.622(5), F.S., to allow money granted by the State Office on Homelessness to be used to acquire transitional or permanent housing for homeless persons.

**Section 11** reenacts s. 420.628, F.S., to direct the FHFC and other state and local agencies receiving funding under SHIP to coordinate with the Department of Children and Family Services to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving the child welfare system.

**Section 12** reenacts s. 420.9071, F.S., to provide definitions for the following terms under the State Housing Incentives Partnership Act: “annual gross income”; “assisted housing” and “assisted housing development”; “eligible housing”; “local housing incentive strategies”; “preservation”; and “recaptured funds”.

**Section 13** reenacts s. 420.9072, F.S., to delete a cross-reference to s. 420.9078, F.S., which is being repealed in the bill, and to provide that counties and eligible municipalities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the property being in foreclosure.

**Section 14** reenacts s. 420.9073, F.S., relating to Local Housing Distributions, to modify the distribution of funds from the Local Government Housing Trust Fund by authorizing set-asides for specified purposes.

**Section 15** reenacts s. 420.9075, F.S., relating to local housing assistance plans.

**Section 16** reenacts s. 420.9076, F.S., relating to the adoption of affordable housing incentive strategies.

**Section 17** repeals s. 420.9078, F.S., which used to provide statutory requirements for the FHFC’s distribution of funds remaining in the Local Government Housing Assistance Trust Fund, after all appropriations have been made.

**Section 18** reenacts s. 420.9079, F.S., to correct cross-references.

**Section 19** reenacts s. 1001.43, F.S., to expand the purposes for which a district school board may providing affordable housing, to include essential services personnel in areas of critical state concern.

**Section 20** provides that the act shall take effect upon becoming law, and that those portions of this act which are amended, created, or repealed by chapter 2009-96, Laws of Florida, shall



operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, the bill states that this act should then apply prospectively from the date that this act becomes a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

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**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.)

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Prepared By: The Professional Staff of the Budget Committee

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BILL: SB 238

INTRODUCER: Senators Altman, Benacquisto, and Latvala

SUBJECT: Child Safety Devices in Motor Vehicles

DATE: March 13, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	<b>Favorable</b>
2.	Dugger	Cannon	CJ	<b>Favorable</b>
3.	Carey	Meyer, C.	BC	<b>Pre-meeting</b>
4.				
5.				
6.				

**I. Summary:**

The bill revises child restraint requirements for children passengers in motor vehicles. Current law requires certain child restraint devices for children through age 5 years, although for ages 4 through 5 years, a seat belt may be used in lieu of a specialized device. Under the bill’s provisions, the upper age is raised to 7 years if the child is less than 4 feet 9 inches in height. A seat belt alone will no longer legally provide sufficient protection for children aged 4 through 7 years if they are less than 4 feet 9 inches in height. The infraction is a moving violation punishable by a fine of \$60 plus court costs and add-ons and by the assessment of 3 points against the driver’s license of the motor vehicle operator.

The bill provides exceptions to the new child restraint requirements for children aged 4 through 7 who are less than 4 feet 9 inches in height when a person is:

- Transporting the child gratuitously and in good faith in response to a declared emergency situation or an immediate emergency involving the child; or
- Transporting a child whose medical condition necessitates an exception as evidenced by appropriate documentation from a health professional.

The court may dismiss a first violation if the operator produces proof of purchase of a federally approved child restraint device. The revised provisions take effect January 1, 2012. Beginning July 1, 2011, law enforcement officers may issue verbal warnings and educational literature to those persons who are in compliance with existing law, but who are violating the provisions which take effect in 2012.

This bill substantially amends s. 316.613 of the Florida Statutes.

## II. Present Situation:

Currently, s. 316.613, F.S., requires every motor vehicle operator to properly use a crash-tested, federally approved child restraint device when transporting a child 5 years of age or younger. For children 3 years of age or younger, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a seat belt may be used. These requirements apply to motor vehicles operated on the roadways, streets, and highways of this state. The requirements do not apply to a school bus; a bus used to transport persons for compensation; a farm tractor; a truck of net weight of more than 26,000 pounds; or a motorcycle, moped, or bicycle.<sup>1</sup> A driver who violates this requirement is subject to a \$60 fine, court costs and add-ons, and having 3 points assessed against their driver's license.

A driver who violates this requirement may elect, with the court's approval, to participate in a child restraint safety program. Upon completing such program the above penalties may be waived at the court's discretion and the assessment of points waived. The child restraint safety program must use a course approved by the Department of Highway Safety and Motor Vehicles (DHSMV), and the fee for the course must bear a reasonable relationship to the cost of providing the course.

Section 316.613(4), F.S., provides it is legislative intent that all state, county, and local law enforcement agencies, and safety councils, conduct a continuing safety and public awareness campaign as to the magnitude of the problem with child death and injury from unrestrained occupancy in motor vehicles.

### **Florida's "\$2 Difference Child Safety Seat Program"**

The 1995 Legislature enacted legislation allowing vehicle owners to donate money to help purchase child safety seats for other Floridians who cannot afford them for their children. Vehicle owners have the opportunity to donate \$2 or more to the Highway Safety Operating Trust Fund's \$2 Difference Child Safety Seat Program to help needy residents living in their own county obtain car seats for their children. All monies donated to and collected in a given county are returned to that county in the form of child safety seats. The child safety seats are then distributed in a manner determined by the local tax collector's office.

According to the DHSMV, during the first year of the \$2 Difference Program in 1996, a total of \$37,760 in donations was collected. By early 1999, \$175,000 had been collected for the growing program. The donations for this program have remained steady each year. As of January 2010, the \$2 Difference Child Safety Seat Program has collected a total of \$877,015 in donations from which 19,779 car seats have been purchased for distribution to low-income children and needy families across the state.

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<sup>1</sup> s. 316.613(2)(a-e), F.S.

**Other States**

As of February 2011, 47 States and the District of Columbia have enacted provisions in their child restraint laws mandating booster seat or other appropriate restraint use by children who have outgrown their forward-facing child safety seats, but who are still too small to be appropriately restrained by an adult safety belt system.<sup>2</sup> Only Arizona, Florida, and South Dakota have yet to enact booster seat use requirements.

**III. Effect of Proposed Changes:**

The bill amends s. 316.613, F.S., requiring an operator of a motor vehicle who is transporting a child 7 years of age or younger when that child is less than 4 feet 9 inches in height, to provide for the protection of the child by properly using a crash-tested, federally approved child restraint device. The bill specifies the device must be appropriate for the height and weight of the child, and provides such devices may include:

- A vehicle manufacturer's integrated child seat;
- A separate child safety seat; or
- A child booster seat that displays the child's weight and height specifications for the seat on the attached manufacturer's label as required by Federal Motor Vehicle Safety Standard No. 213.

Any such device must comply with the standards of the United States Department of Transportation and be secured in the vehicle in accordance with instructions of the manufacturer.

Children through 3 years of age must be transported in an integrated or separate child safety seat, and children aged 4 through 7 years who are less than 4 feet 9 inches in height must be transported in a separate carrier, integrated child seat, or booster seat. Under the provisions of this bill, motorists will no longer be permitted to transport children aged 4 to 7 years who are less than 4 feet 9 inches in height with only a safety belt used as protection.

The bill also provides the term "motor vehicle" as used in s. 316.613, F.S., does not include a passenger vehicle designed to accommodate ten or more persons used for the transportation of persons for compensation, and therefore, exempts such vehicle from the child-restraint requirements for children ages 4 through 7 years.

The infraction is a moving violation punishable by a fine of \$60 plus court costs and add-ons, and by assessment of 3 points against the driver's license. The requirement to use a booster seat does not apply to a person who is transporting a child aged 4 to 7 years who is less than 4 feet 9 inches in height if the person is:

- Transporting the child gratuitously and in good faith in response to a declared emergency situation or an immediate emergency involving the child; or

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<sup>2</sup> [http://www.ghsa.org/html/stateinfo/laws/childsafety\\_laws.html](http://www.ghsa.org/html/stateinfo/laws/childsafety_laws.html) (last visited February 3, 2011).

- Transporting a child whose medical condition necessitates an exception as evidenced by appropriate documentation from a health professional.

Courts may dismiss the charge against a driver for a first violation of the child restraint law upon proof of purchase of or otherwise obtained a federally approved child restraint device.

The new child restraint requirements as provided in the bill will not take effect until January 1, 2012. However, the bill authorizes law enforcement personnel to issue a warning and distribute educational literature beginning July 1, 2011, to a person who is in compliance with current law, but whose actions violate the provisions that take effect January 1, 2012.

#### **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:**

Drivers of vehicles must use a separate carrier, an integrated child seat or a child booster seat to transport children through age 7 years if they are less than 4 feet 9 inches in height. Seat belts alone will not satisfy the legal requirements for child restraints for children between the ages of 4 and 7 years who are less than the required height when being transported in a motor vehicle on roadways, streets, or highways in Florida. This will have a fiscal impact to vehicle operators for the cost of acquiring the necessary restraint devices.

However, because the number of additional children who will need restraint devices other than seat belts is unknown, the amount of this impact cannot be determined. Violation of the law would be punishable by a fine of at least \$60 plus court costs and add-ons, and a 3 point assessment on the operator's driver license. The court may dismiss a first violation if the operator purchases an approved device. Furthermore, for six months prior to the new requirements becoming effective, a law enforcement officer may issue verbal

warning and provide informational material to drivers who would violate the requirements after the effective date.

**C. Government Sector Impact:**

Enactment of the bill may result in increased issuance of traffic citations, resulting in revenue increases to state and local governments. Since the number of additional citations that will be issued is unknown, any resulting positive fiscal impact on state and local governments is indeterminate. Also, the cost to DHSMV of providing educational literature is expected to be minimal and will be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The DHSMV recommends revising the effective date to October 1, 2011, to allow for the programmatic updates to be implemented.

**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 Budget Committee

BILL: CS/SB 366

INTRODUCER: Commerce and Tourism Committee and Senator Altman

SUBJECT: Handbill Distribution

DATE: March 13, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Hrdlicka</u>	<u>Cooper</u>	<u>CM</u>	<b>Fav/CS</b>
3.	<u>Sadberry</u>	<u>Meyer, C.</u>	<u>BC</u>	<b>Pre-meeting</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 366 amends current law related to distribution of handbills at public lodging establishments and public food service establishments.

Under the CS, handbills may only be distributed with written permission of the public lodging establishment. The CS increases the penalties for violation of the handbill statute by:

- Increasing the fines for persons who direct others to unlawfully distribute handbills from \$500 to \$1,000;
- Imposing new fines for persons who unlawfully distribute handbills and who direct others to unlawfully distribute handbills for subsequent violations of the statute (\$2,000 for the second violation, and \$3,000 for the third and any subsequent violations);
- Expanding the property that is subject to seizure or forfeiture under the Florida Contraband Forfeiture Act to include property used in violation of a person's third or subsequent violation of the handbill distribution statute; and
- Permitting law enforcement officers to make a warrantless arrest of violations of the handbill statute.



Additionally, the CS preempts matters related to the nutritional content and marketing of foods offered in public lodging establishments and public food service establishments to the state – thereby prohibiting local governments from enacting such ordinances.

The CS clarifies that completion, rather than attendance, is required at remedial education programs for violating ch. 509, F.S., or rules of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, operating without a license, or operating with a revoked or suspended license. In addition, such educational programs are to be administered by a food safety training program provider whose program has been approved by the Division of Hotels and Restaurants, rather than programs sponsored by the Hospitality Education Program.

This CS substantially amends the following sections of the Florida Statutes: 509.032, 509.144, 509.261, 901.15, and 932.701.

## II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to DBPR, there are 82,600 licensed public lodging and food service establishments.<sup>1</sup>

### **Public Lodging and Food Service Establishments – State Regulation**

Regulation of public lodging establishments and public food service establishments is specifically preempted to the state.<sup>2</sup> This includes, but is not limited to:

- Inspection of public lodging establishments and public food service establishments for compliance with the sanitation standards; and
- Regulation of food safety protection standards for required training and testing of food service establishment personnel.

However, such preemption does not limit the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code.

### **Public Lodging Establishments – Unlawful Handbilling**

Under Florida law, it is illegal to deliver, distribute, or place, or attempt to deliver, distribute, or place, a handbill<sup>3</sup> at or in a public lodging establishment<sup>4</sup> without either written or oral permission when the public lodging establishment has posed a sign.<sup>5</sup>

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<sup>1</sup> For FY 2009-2010, there were 37,273 licensed public lodging establishments and 45,327 licensed public food service establishments. *Annual Report, Fiscal Year 2009-2010*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at:

[http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2009\\_10.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2009_10.pdf) (last visited 3/10/2011).

<sup>2</sup> Section 509.032(7), F.S.

Any individual, agent, contractor, or volunteer who is acting on behalf of an individual, business, company, or food service establishment and engages in prohibited handbill distribution commits a first degree misdemeanor.<sup>6</sup> There is no statutorily imposed fine for violation of this provision.

Any person who directs another person to deliver, distribute, or place, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a first degree misdemeanor. Any person sentenced under this provision shall be ordered to pay a minimum fine of \$500 in addition to any other penalty imposed by the court.<sup>7</sup>

### **Florida Contraband Forfeiture Act**

The Florida Contraband Forfeiture Act (act) provides that any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the act.<sup>8</sup>

Section 932.701(2)(a), F.S., defines the term “contraband article” to include:

- Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state’s burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.
- Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.
- Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.
- Any motor fuel upon which the motor fuel tax has not been paid as required by law.
- Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

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<sup>3</sup> Section 509.144(1)(a), F.S., defines “handbill” to mean “a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about an individual, business, company, or food service establishment, but shall not include employee communications permissible under the National Labor Relations Act.”

<sup>4</sup> Section 509.144(1)(c), F.S., defines “at or in a public lodging establishment” to mean “any property under the sole ownership or control of a public lodging establishment.” The term “public lodging establishment” is defined in s. 509.013, F.S.

<sup>5</sup> Section 509.144(1)(b), F.S., defines “without permission.” Section 509.144(4), F.S., sets forth the requirements that a posted sign must meet in order to prohibit advertising or solicitation under the statute.

<sup>6</sup> Section 509.144(2), F.S. A first degree misdemeanor is punishable by up to 1 year in a county jail, a fine up to \$1,000, or both. *See* ss. 775.082 and 775.083, F.S.

<sup>7</sup> Section 509.144(3), F.S.

<sup>8</sup> Sections 932.701 – 932.706, F.S.

- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
- Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.
- Any motor vehicle offered for sale in violation of s. 320.28, F.S.
- Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a), F.S.
- Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145, F.S., and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.
- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.

The current definition of the term “contraband article” does not include property that was used as an instrumentality in the commission of a violation of s. 509.144, F.S., relating to handbill distribution.

Relevant to the bill, there are indications that forfeitures may or do occur in some misdemeanor cases. For example, one Florida court has indicated (in dicta) that the definition of “contraband article” in s. 932.701(2)(a), F.S., would apparently apply to the seizure of “money as suspected contraband connected with narcotics activity, regardless of whether the crimes constitute felonies.”<sup>9</sup> Additionally, the Florida Supreme Court has held that the Florida Contraband Forfeiture Act “does not preempt to the Legislature the field of vehicle seizure and forfeiture, much less impoundment, for misdemeanor offenses.”<sup>10</sup> Therefore, a municipality may adopt “an ordinance that authorizes the seizure and impoundment of vehicles used in the commission of certain misdemeanors.”<sup>11</sup>

### **Warrantless Arrest**

Section 901.15, F.S., sets forth the instances in which a law enforcement officer can arrest a person without a warrant. For misdemeanor offenses, the general rule is that law enforcement officers must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.

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<sup>9</sup> *Shuler v. State*, 984 So.2d 1274, 1275 (Fla. 2d DCA 2008) (footnote omitted).

<sup>10</sup> *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1246 (Fla.2006).

<sup>11</sup> *Id.*

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Some examples include violations of injunctions for protection in domestic violence, repeat violence, sexual violence, and dating violence situations; violations of pretrial release conditions in domestic and dating violence cases; misdemeanor battery; and criminal mischief or graffiti-related offenses. For these offenses, an officer does not have to witness the crime in order to make a warrantless arrest – the officer only needs to have probable cause to believe the person committed the crime.

### **Public Food Service Establishments – licensure**

The division is responsible for inspecting public food service establishments to ensure that they meet the requirements of ch. 509, F.S., and division rules.<sup>12</sup> Each public food service establishment must obtain a license and meet the standards set by the division to maintain that license.<sup>13</sup>

Any public food service establishment that has operated or is operating in violation of ch. 509, F.S., or the rules of the division, operating without a license, or operating with a suspended or revoked license may be subject by the division to:

- Fines not to exceed \$1,000 per offense;
- Mandatory attendance, at personal expense, at an educational program sponsored by the Hospitality Education Program;<sup>14</sup> and
- The suspension, revocation, or refusal of a license issued pursuant to ch. 509, F.S.

### **III. Effect of Proposed Changes:**

The CS amends current law related to distribution of handbills at public lodging establishments and public food service establishments.

Section 1 states that this act may be cited as the “Tourist Safety Act.”

Section 2 amends s. 509.144, F.S., which deals with prohibited handbill distribution in a public lodging establishment.

Currently, s. 509.144, F.S., prohibits delivering, distributing, or placing a handbill at or in a public lodging establishment without the expressed written or oral permission of the owner, manager, or agent of the owner or manager of the establishment where a sign is posted prohibiting advertising or solicitation as specified in the statute.

The CS amends the statute as follows:

- Modifies the definition of ‘handbill’ to indicate that the term does not include communication protected by the First Amendment to the United States Constitution or

<sup>12</sup> Section 509.032, F.S.

<sup>13</sup> Section 509.241, F.S.

<sup>14</sup> Section 509.302, F.S. This program was not funded in FY 2010-2011.

communications that relate to the public health, safety, or welfare which are distributed by a federal, state, or local governmental entity or a public or private utility.

- Restricts permission to distribute handbills to written permission, by striking “oral permission” from the definition of the term “without permission.”
- Increases the fine for persons who unlawfully direct another to distribute handbills from \$500 to \$1,000.
- Imposes new fines for persons who unlawfully distribute handbills and who direct others to unlawfully distribute handbills for subsequent violations of the statute:
  - For a second violation, a minimum fine of \$2,000.
  - For a third or subsequent violation, a minimum fine of \$3,000.
- Provides for seizure and forfeiture under the Florida Contraband Forfeiture Act of any personal property that was used or was attempted to be used as an instrumentality in the commission of, or aiding and abetting in the commission of, a person’s third or subsequent violation of the statute, whether or not comprising an element of the offense.
  - Personal property includes, but is not limited to, any vehicle of any kind, item, object, tool, device, weapon, machine, money, securities, books, or records.

Section 3 amends s. 901.15, F.S., to add another exception to the general rule that officers must witness a misdemeanor offense in order to make a warrantless arrest. Specifically, the CS provides that an officer may arrest a person without a warrant:

- If there is probable cause to believe that a violation of s. 509.144, F.S., has been committed; and
- Where the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the probable cause determination.

Section 4 amends the definition of the term “contraband article” in s. 932.701, F.S., to indicate the term also includes the property specified in s. 509.144, F.S., which is subject to seizure and forfeiture upon a person’s third or subsequent offense of that statute.

Section 5 amends s. 509.032, F.S., to preempt matters related to the nutritional content and marketing of foods offered in public lodging establishments and public food service establishments to the state. This prohibits local governments from enacting such ordinances.

Section 6 amends s. 509.261, F.S., related to revocation or suspension of public food service establishment licenses. The CS clarifies that completion, rather than attendance, is required at remedial education programs for violating ch. 509, F.S., or rules of the division, operating without a license, or operating with a revoked or suspended license. In addition, such educational programs are to be administered by a food safety training program provider whose program has been approved by the division, rather than programs sponsored by the Hospitality Education Program.

Section 7 provides that the terms and provisions of the act do not affect or impede provisions of s. 790.251, F.S. (rights to keep and bear arms in motor vehicles for self-defense and other lawful purposes), or any other protection or right guaranteed by the Second Amendment to the United States Constitution.

Section 8 provides an effective date of October 1, 2011.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

The rights of private property owners to prohibit certain activities versus a person's right to free expression on that private property has been addressed by the U.S. Supreme Court. In one example, the Court allowed picketers to protest on shopping mall property because the characteristics of the shopping mall were more like a public forum than private property.<sup>15</sup> The Court generally gives greater deference to free expression over property rights when a public forum is involved. Later, the Court revised its position, stating that a relationship must exist between the speech and the property when it upheld a ban against anti-war protesters on mall property.<sup>16</sup> The current position of the Court appears to be that the right to free expression on private property is not guaranteed in the U.S. Constitution when the property owner objects.<sup>17</sup>

However, the U.S. Supreme Court has found that state constitutions may expand upon existing federal rights.<sup>18</sup> For example, a Florida circuit court held that the State Constitution "prohibits a private owner of a 'quasi-public' place from using state trespass laws to exclude peaceful political activity."<sup>19</sup> The court reversed the conviction of a man (Wood) who was convicted in county court of trespass for staying in the Panama City Mall after having been told by mall security that his solicitation of signatures in the mall to appear on a ballot for political office violated the mall's rules and was told to stop the solicitation in the mall or leave. However, in a later Florida circuit court case, the court held that "there is no right under the First Amendment to the United States Constitution to engage in free speech or other political activity on private property without the property owner's permission."<sup>20</sup> This case involved a citizen and political action

<sup>15</sup> *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968).

<sup>16</sup> *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

<sup>17</sup> *Hudgens v. NLRB*, 424 U.S. 507 (1976) (finding no right of free expression for picketers wishing to demonstrate on mall property when the mall owner objected).

<sup>18</sup> *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).

<sup>19</sup> *Wood v. State*, 2003 WL 1955433 (Fla.Cir.Ct., 2003) (not reported in So.2d).

<sup>20</sup> *Publix Supermarkets, Inc. v. Tallahasseeans for Practical Law Enforcement*, 2005 WL 3673662 (Fla.Cir.Ct., 2005) (not reported in So.2d)(citations omitted).

committee soliciting signatures for a political petition on the private property of a Publix supermarket in Tallahassee.

Most cases have only applied to a situation involving a “quasi-public” forum of a shopping mall. This bill only addresses public lodging establishments, which unlike shopping malls are generally open only to paying patrons.<sup>21</sup> The bill amends the definition of “handbill” in s. 509.144(1)(a), F.S., to specify that it does not include communication protected by the First Amendment to the United States Constitution. As a result, if a court or law were to hold that sliding pizza delivery pamphlets under hotel room doors without permission is constitutionally protected free speech, the bill’s provisions would not apply to such activity.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Persons or businesses violating s. 509.144, F.S., will be faced with increased financial penalties. Additionally, for the third and any subsequent offenses, personal property may be seized and forfeited.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference met on March 2, 2011, and determined that this bill would have no prison bed impact.

Local governments may see increased revenues because the bill increases the fines for violations of s. 509.144, F.S., and provides for seizure and forfeiture of personal property.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Local governments may not enact ordinances that relate to nutritional content and marketing of foods offered in public lodging or public food service establishments.

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<sup>21</sup> The prohibition of handbill distribution in public lodging establishments has only been specifically permitted by Florida law since 2005. Ch. 2005-183, L.O.F.

**VIII. Additional Information:**

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

**CS by Commerce and Tourism on March 9, 2011:**

The CS differs from the bill as filed in the following ways:

- Expands the definition of handbill to include “communications that relate to the public health, safety, or welfare which are distributed by a federal, state, or local governmental entity or a public or private utility.”
- Preempts matters related to the nutritional content and marketing of foods offered in public lodging establishments and public food service establishments to the state.
- Clarifies that completion, rather than attendance, is required at remedial education programs for violating ch. 509, F.S., or rules of the division, operating without a license, or operating with a revoked or suspended license. In addition, such educational programs are to be administered by a food safety training program provider whose program has been approved by the Division of Hotels and Restaurants, rather than programs sponsored by the Hospitality Education Program.

- B. **Amendments:**

None.





826302

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget (Altman) recommended the following:

**Senate Amendment**

Delete lines 71 - 78  
and insert:  
~~minimum~~ fine of \$1,000 ~~\$500~~ in addition to any other penalty  
imposed by the court.

(4) In addition to any other penalty imposed by the court,  
a person who violates subsection (2) or subsection (3):

(a) A second time shall be ordered to pay a fine of \$2,000.

(b) A third or subsequent time shall be ordered to pay a  
fine of \$3,000.



364950

LEGISLATIVE ACTION

Senate

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House

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The Committee on Budget (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 121 and 122

insert:

Section 4. Section 901.1503, Florida Statutes, is created to read:

901.1503 When notice to appear by officer without warrant is lawful.—A law enforcement officer may give a notice to appear to a person without a warrant when the officer has determined that he or she has probable cause to believe that a violation of s. 509.144 has been committed and the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the



364950

14 officer's determination of probable cause.

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

17 And the title is amended as follows:

18       Delete line 16

19 and insert:

20       determination of probable cause; creating s. 901.1503,  
21       F.S.; authorizing a law enforcement officer to give a  
22       notice to appear to a person without a warrant when  
23       there is probable cause to believe the person violated  
24       s. 509.144, F.S., and the owner or manager of the  
25       public lodging establishment signs an affidavit  
26       containing information supporting the determination of  
27       probable cause; amending s. 932.701,

**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 Budget Subcommittee on Finance and Tax

**BILL:** CS/SB 478

**INTRODUCER:** Budget Subcommittee on Finance and Tax and Senator Thrasher

**SUBJECT:** Property Taxation

**DATE:** March 11, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.	Babin	Diez-Arguelles	BFT	<b>Fav/CS</b>
3.	Babin	Meyer. C.	BC	<b>Pre-meeting</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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<sup>4</sup> 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 and by filing a petition to the Value Adjustment Board<sup>5</sup> (VAB) within 25 days after the TRIM notice is mailed, or to contest

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<sup>1</sup> 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).

<sup>2</sup> Section 196.185, F.S.

<sup>3</sup> Section 193.1142, F.S.

<sup>4</sup> 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 March 8, 2011).

<sup>5</sup> 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

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 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.<sup>6</sup> 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.

### **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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.”<sup>10</sup> 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.<sup>11</sup>

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

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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.

<sup>6</sup> Section 200.065, F.S.

<sup>7</sup> Section 197.322 (1), F.S. *See also* s. 197.222(1), F.S. Taxpayers who elect to prepay their taxes by installment shall make payments “based upon the estimated tax equal to the actual taxes levied upon the subject property in the prior year.”

<sup>8</sup> Section 197.333, F.S.

<sup>9</sup> Section 197.343, F.S.

<sup>10</sup> Section 197.432(5), F.S.

<sup>11</sup> Section 197.122, F.S., *see also* s. 197.432, F.S.

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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> 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.

### **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 and any proceeding or process 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.

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<sup>12</sup> Section 197.472, F.S.

<sup>13</sup> Section 197.502, F.S.

<sup>14</sup> Section 197.542, F.S.; and *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](http://www.clerkofcourts.co.walton.fl.us/public_records/tax_deed_and_foreclosure_sale_information_area.html) (last visited on March 8, 2011), which provides, “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.”

<sup>15</sup> Section 197.502(8), F.S.

- “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) of 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). 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. When a tax roll cannot be certified in time to allow payment of taxes before January 1, current law requires notice to be published in both a county newspaper of general circulation and published at the courthouse door. The bill removes the requirement of publishing the notice at the courthouse. The bill also makes grammatical changes and provides that if there is an underpayment or overpayment of tax of less than \$10, the tax collector 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 a consolidated application procedure for applying for tax deferral, as well as procedures for tax collectors to approve or deny property tax deferral applications. The bill establishes March 31 as the filing date for all applications for deferral. Current law provides that tax collectors will consider applications within 30 days. The bill extends the time period to 45 days. The bill also deletes the requirement that deferral applications be signed under oath. Lastly, current law provides situations in which a taxpayer can defer paying taxes. Currently, if the total amount of deferred taxes exceeds 85% of the property value or if the primary mortgage exceeds 70% of the property value, deferral is not permitted. This bill changes the property value used to determine eligibility from the “assessed” value to the “just” value of the property involved.

**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 days after receiving the deferral disapproval notice from the tax collector to 30 days after the tax collector mails the deferral disapproval notice.

**Section 14** amends s. 197.243, F.S., by removing “Act” from the title.

**Section 15** amends s. 197.252(1), F.S., to remove language stating that the amount of tax and non-ad valorem assessments that may be deferred is limited to the amount that could be covered if a tax certificate was sold. The bill deletes the January 31 application deadline for homestead tax deferral, conforming this section to the March 31 application date established for all deferral applications in new s. 197.2423, F.S., created by section 12 of the bill. This section clarifies that interest on any tax certificates may also be deferred. It also deletes language in subsections (3) and (5) which is inserted in new ss. 197.2421 and 197.2423, F.S., which are created by 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. Currently, after a tax collector receives a certified tax roll, the tax collector is required to mail a tax notice to taxpayers stating how much tax is due. Under current law, s. 197.254 requires that the tax collector print information on the back of the envelope, notifying the taxpayer of the right to deferral. The bill removes 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 removes 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 changes the limit on the amount of interest on tax certificates from 9.5 percent to 7 percent.

**Section 20** amends s. 197.263, F.S., moving language from subsection (2) and placing it in subsection (1). The language 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. Although current law allows surviving spouses to continue claiming tax deferral, the current provision only applies to homestead deferral. However, under the new language of the bill, the surviving spouse deferral would extend to homestead, working waterfront, and affordable housing deferrals.

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., concerning the distribution of payments on deferred taxes. Current law requires that when a tax collector receives payments for deferred taxes or interest, the tax collector is required to distribute the payment in accordance with normal procedures for distributions, but the statute only specifies payments for taxes or interest. The bill amends the statute to add payments for assessments. This section also removes some specificity in the recordkeeping requirement that the tax collector provide a description of the property and the amount of taxes or interest collected for such property. However, the statute will still require that the tax collector maintain a record of the payment.

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

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

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

**Section 26** amends s. 197.322, F.S., by making minor wording and numbering changes, allowing the tax collector to send tax notices electronically, and specifying procedures for electronic delivery.

**Section 27** amends s. 197.332(1), F.S., allowing tax collectors to perform their duties through electronic means and to contract with third parties for services to carry out their duties, but specifies that the use of third party contracted services does not diminish the ultimate responsibility of the tax collectors to perform their duties pursuant to law. The bill specifies that when the tax collector enters into contracts with these vendors, the tax collector is exercising his or her power to contract. The bill allows the tax collector to include the costs of contracted serves in proceedings to recover taxes, interests, and costs.

The bill creates s. 197.332(2), F.S., which will 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.

The bill 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 tax collectors may send additional tax notices electronically with express consent of the property owner, and stating specific procedures for electronic transmission. The requirement that the tax collector send a duplicate tax notice to a condominium or mobile-home owner's homeowner association, when required, 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." The bill 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. Current law requires that on or before the later of June 1 or 60 days after the date of delinquency, the tax collector shall advertise tax certificate sales in a newspaper. In addition to making minor wording changes, the bill adds language that provides that if the deadline falls on a Saturday, Sunday, or legal holiday, it is extended to the next working day.

The bill also 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. After a newspaper publishes advertisements concerning tax certificate sales, current law requires the publisher to sign an affidavit to the tax collector on a form prescribed by the department. The bill makes minor wording changes and removes the requirement for the affidavit to be in the form prescribed by the department.

**Section 34** amends s. 197.413, F.S. Current law requires that when a petition for sale of tangible personal property for payment of taxes is made, the clerk of court is required to provide notice to the delinquent taxpayer. The bill makes minor wording changes, and permits the tax collector and clerk of court to agree that the tax collector can provide required notices to delinquent taxpayers.

Current law permits tax collectors to collect a \$2 fee from each delinquent taxpayer when the taxpayer pays the taxes. Additionally, the tax collector may collect \$8 for each tax warrant issued. The bill 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. Current law requires that the tax collector keep a record of all warrants and levies made under Chapter 197, F.S., on a form prescribed by the department. The bill removes the requirement that the record be kept in a form prescribed by the department, and permits the warrant register to be kept in paper or electronic form.

**Section 36** amends s. 197.4155, F.S. Current law permits tax collectors to implement programs to allow delinquent personal property taxes to be paid in installments. If a tax collector implements a program, current law requires that the program be made available to each taxpayer that owes over \$1,000 of delinquent personal property taxes. The bill makes minor wording changes and 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., which provides the requirements for tax collectors that sell tax certificates for unpaid taxes. The bill makes minor wording changes and reorganizes the substantive provisions of the statute. Substantively, the bill:

- Provides that bidders can use “proxy bidding.” Proxy bidding is a newly-defined term added in Section 2 of the bill (amending s. 197.102, F.S.).
- States that the tax collector may not issue a tax certificate if the real property taxes are paid before a certificate is awarded, and provides that after a certificate is awarded, the delinquent taxes, interest, costs, and charges are paid by redeeming the tax certificate.
- Increases the amount below which a tax certificate is automatically struck to the county, rather than sold at public auction, from \$100 to \$250
- Provides 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.
- Permits the use of a random number generator to determine the winning bidder amongst multiple tax certificate bidders that bid the same winning amount. “Random Number Generator” is newly-defined by Section 2 of the bill (amending s. 197.102, F.S.).
- Authorizes tax collectors discretion as to whether they should require a deposit before allowing persons to bid on tax certificates (currently the statute mandates deposits);

- Authorizes electronic notice of when certificates are ready;
- Provides that any refund for a payment requested by the tax collector in error must be refunded 15 business days after the payment;
- Requires that upon cancellation of a bid, the tax collector must reoffer the certificate for sale if the tax certificate sale is not adjourned; if the sale has been adjourned, the tax collector must offer the certificate at a subsequent sale;
- Permits the official record of awarded tax certificates to be maintained electronically.

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) and the bill grants the tax collectors discretion as to whether a reasonable effort at collecting unpaid amounts for a tax certificate.

**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 obsolete 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 for a sale at public auction. 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** replace 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.

On March 3, 2011, the Revenue Estimating Conference estimated that this bill's impact was indeterminate and could have a positive or negative impact on local government revenues due to the existence of both indeterminate positive revenue impacts and indeterminate negative revenue impacts.

**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.

The implementation of this bill may require rule changes by the Department of Revenue.<sup>16</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Revenue made the following comments regarding the bill as filed:

- 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.<sup>17</sup>

The first and third comments have been addressed in the committee substitute.

<sup>16</sup> Department of Revenue, *SB 478 Agency Analysis*, at 23-24 (Feb. 3, 2011) (on file with the Senate Committee on Community Affairs).

<sup>17</sup> *Id.* at 23-25.

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

Budget Subcommittee on Finance and Tax on March 11, 2011:

This Committee Substitute includes 10 amendments adopted by the Subcommittee. The amendments:

- clarified that the provision that tolls the statute of limitation for proceedings involving processes pursuant to ch. 197 also tolls the statute for tax certificate purposes;
- cured a current statutory conflict by clarifying that the time to protest the denial of a deferral application begins after the mailing of the notice, not the receipt of the notice;
- clarified that the changes relating to payment of deferral tax certificates require the payments be in full-year increments;
- clarified that when a tax collector contracts with third-party vendors for services, the tax collector is exercising his or her contractual power;
- relating to additional tax notices sent after taxes become delinquent, removes the statement that the second notice will be sent by postal mail, conforming this provision to similar provisions throughout the bill;
- retained unintentionally stricken language regarding a tax collector continuing efforts to collect uncollected taxes;
- included s. 197.374, in order to amend a statutory reference;
- removed a suggested statutory change to the time frame in which a tax collector must automatically issue a refund of a tax overpayment; and
- made corrections to typographical errors.

**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 Budget Committee

BILL: CS/SB 618

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Juvenile Justice

DATE: March 13, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	Sadberry	Meyer, C.	BC	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill repeals numerous sections and provisions containing obsolete language in ch. 985, F.S., to more accurately reflect current practices within the Department of Juvenile Justice (DJJ). The specific provisions which the bill deletes are as follows.

The bill repeals the definition of “serious or habitual juvenile offender program” (SHOP) in s. 985.03(48), F.S., the legislative intent language relating to SHOP in s. 985.02(5), F.S., and the statute implementing this program in s. 985.47, F.S. It repeals two statutes implementing the intensive residential treatment program for offenders under 13 years of age (JR.SHOP) in ss. 985.483 and 985.486, F.S. The definition of “training school” is also repealed in s. 985.02(56), F.S.

References in s. 985.494, F.S., to SHOP, JR. SHOP, the early delinquency intervention program (EDIP), and the sheriff’s training and respect (STAR) programs (formerly known as juvenile boot camps) are also deleted under the bill. Instead of listing these specific prerequisite programs, the bill provides that a child adjudicated delinquent for a felony (or a child who has a withheld felony adjudication) must complete two different high risk residential commitment programs as a prerequisite to being placed in a maximum risk residential program.

The bill deletes references to the STAR program in s. 985.445, F.S., which authorizes a residential commitment to a STAR program if a child is adjudicated delinquent for committing grand theft auto.

In addition to repealing these obsolete programs, the bill also repeals an unnecessary statute, s. 985.636, F.S., relating to inspectors within the Inspector General's Office being sworn law enforcement officers, if the Secretary of the DJJ deems it necessary to enforce criminal law and conduct criminal investigations relating to state operated facilities.

Finally, the last two sections of the bill repeal obsolete references to the Juvenile Justice Standards and Training Commission (Commission) which provided staff development and training until it expired in 2001 and the DJJ took over those duties. The bill codifies current practice by specifying that the DJJ is responsible for staff development and training.

This bill amends sections 985.494 and 985.66, Florida Statutes. The bill repeals sections 985.02(5), 985.03(48), 985.03(56), 985.445, 985.47, 985.48(8), 985.483, 985.486, 985.636, Florida Statutes. It also makes conforming changes to sections 985.0301, 985.47, and 985.565, Florida Statutes.

## II. Present Situation:

There are several statutes relating to the serious or habitual juvenile offender program (SHOP) and the intensive residential treatment program for offenders under 13 years of age (JR. SHOP). Section 985.03(48), F.S., provides a definition of SHOP by citing to the program created in s. 985.47, F.S. The cited section specifies the requirements of a SHOP program. Moreover, legislative intent language relating to SHOP exists in s. 985.02(5), F.S. Similarly, two statutes exist that implement JR.SHOPs in ss. 985.483 and 985.486, F.S.

Section 985.494, F.S., provides that a child adjudicated delinquent for a felony (or a child who has an adjudication of delinquency withheld for a felony) must be committed to a SHOP or a JR. SHOP, if such child has participated in an early delinquency intervention program (EDIP) and has completed a sheriff's training and respect (STAR) program (formerly known as juvenile boot camp).

Additionally, such child must be committed to a maximum risk residential program, if he or she has participated in an EDIP, has completed a STAR program and a SHOP or JR. SHOP. The length of stay in a maximum risk commitment program is for an indeterminate period of time; however, it may not exceed the maximum imprisonment that an adult would serve for that offense.<sup>1</sup>

This section of law also allows the court to consider an equivalent program of similar intensity as being comparable to one of these specified programs when committing a child to an appropriate program under this statute.<sup>2</sup>

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<sup>1</sup> Section 985.494(1)(b), F.S.

<sup>2</sup> Section 985.494(2), F.S.

The definition of “training school” is contained in s. 985.03(56), F.S., to include the Arthur G. Dozier School and the Eckerd Youth Development Center. According to the DJJ, the training schools no longer exist as a category in the DJJ residential programs. Residential programs are now categorized by restrictiveness levels.<sup>3</sup>

Section 985.445, F.S., provides the court with discretion to place a child adjudicated delinquent for committing a first or second grand theft auto into a STAR program. Upon a third adjudication, however, the court is required to place that child into a STAR program. The statute also requires the court to order such child to complete a specified number of community service hours (at least 50 for a first adjudication, 100 for the second adjudication, and 250 for the third adjudication).

According to the DJJ, there have been no operational STAR programs since 2008. The department also states that the SHOP and JR. SHOPS have been underutilized for the past several years. Because maximum and high risk programs currently serve the most serious offenders, the DJJ states it no longer needs the SHOP and JR. SHOP designations.<sup>4</sup> In 1996, according to the DJJ, the SHOPS were reclassified from maximum risk to high risk programs but the statutory admission criteria remained unchanged. In reviewing the records of children admitted to the SHOPS in FY 07-08, the DJJ found that 12.3 percent of the 24 children admitted did not meet the statutory criteria. Similarly, 10 percent of the 20 children admitted to the JR. SHOPS did not meet that criteria.<sup>5</sup>

Section 985.636, F.S., relating to the Inspector General’s Office, authorizes the Secretary of the DJJ to designate inspectors holding a law enforcement certification as law enforcement officers within the Inspector General’s Office. This designation is only for the purpose of enforcing any criminal law and conducting any investigation involving a state-operated program that falls under the department’s jurisdiction. However, according to the DJJ, this law is unnecessary because the department has never had sworn law enforcement officers.

Section 985.66, F.S., prescribes standards for the juvenile justice training academies, establishes the Juvenile Justice Training Trust Fund, and creates the Juvenile Justice Standards and Training Commission (Commission) under the DJJ. The legislative purpose of the statute is to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff.<sup>6</sup> Section 985.48(8), F.S., also requires the Commission to establish a training program to manage and provide services to juvenile sexual offenders in juvenile sexual offender programs. However, the Commission expired on June 30, 2001 because it was not reenacted by the Legislature.<sup>7</sup> After that, the DJJ took over the training duties of the Commission.<sup>8</sup>

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<sup>3</sup> Department of Juvenile Justice 2011 Agency Proposal (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)

<sup>4</sup> 2011 Department of Juvenile Justice Legislative Priority Paper, updated on March 4, 2011 (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)

<sup>5</sup> Department of Juvenile Justice 2011 Agency Proposal (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)

<sup>6</sup> Section 985.66(1), F.S.

<sup>7</sup> Section 985.66(9), F.S.

### III. Effect of Proposed Changes:

The bill repeals numerous sections and provisions containing obsolete language in ch. 985, F.S., to more accurately reflect current practices within the Department of Juvenile Justice (DJJ). The specific provisions which the bill deletes are as follows.

The bill repeals the following provisions relating to serious or habitual juvenile offender programs (SHOP): the definition of SHOP in s. 985.03(48), F.S., the SHOP legislative intent language in s. 985.02(5), F.S., and the statute implementing SHOP in s. 985.47, F.S. It repeals two statutes implementing the intensive residential treatment program for offenders under 13 years of age (JR.SHOP) in ss. 985.483 and 985.486, F.S.

The bill deletes references in s. 985.494, F.S., to the SHOPS, JR. SHOPS, EDIPs, and the STAR programs (formerly known as juvenile boot camp). Instead of listing these specific prerequisite programs, the bill provides that a child adjudicated delinquent for committing a felony (or a child who has a withheld felony adjudication) must complete two different high risk residential commitment programs as a prerequisite to being placed in a maximum risk residential program.

The bill also deletes references to the STAR program in s. 985.445, F.S., which authorizes a residential commitment to a STAR program if a child is adjudicated delinquent for committing grand theft auto. The bill accomplishes this by repealing s. 985.445, F.S. Finally, the bill makes conforming changes to several statutes referencing this repealed section of law.

The definition of “training school” is repealed in s. 985.02(56), F.S.

The bill also repeals an unnecessary statute, s. 985.636, F.S., which allows certain inspectors within the DJJ’s Inspector General’s Office to be deemed certified law enforcement officers by the Secretary of the DJJ. (According to the DJJ, the department has never had sworn law enforcement officers.)<sup>9</sup>

Finally, the bill amends s. 985.66, F.S., by deleting obsolete references to the Juvenile Justice Standards and Training Commission (which sunset on June 30, 2001) and authorizing the DJJ to continue providing staff development and training to department program staff. It also amends s. 985.48, F.S., to conform to these changes by deleting references to the provision requiring the Commission to establish a training program to manage juvenile sexual offenders.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>8</sup> Department of Juvenile Justice 2011 Agency Proposal (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)

<sup>9</sup> *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DJJ, there is no fiscal impact to the department.<sup>10</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Criminal Justice on March 9, 2011:**

Incorporates the original bill's "repealer" provisions as well as repeals additional outdated provisions related to the following:

- Serious or habitual juvenile offender programs (SHOPs) and intensive residential treatment programs for offenders under 13 year of age (JR. SHOPs);
- Sheriff's Training and Respect programs;
- Definition of "training schools";
- Inspectors within the Inspector General's Office being sworn law enforcement officers when deemed necessary by the Secretary of DJJ; and
- Juvenile Justice Standards and Training Commission.

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<sup>10</sup> *Id.*

B. Amendments:

None.

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

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