The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

BUDGET
Senator Alexander, Chair
Senator Negron, 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 Negron, 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	**CS/SB 84** 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	**SB 172** 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	**SB 174** 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	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 176** 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	**SB 228** 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	**SB 238** 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	**CS/SB 366** 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	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/CS/SB 408** 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	**CS/SB 444** 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	**CS/SB 478** 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	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SM 484** 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	

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 84
INTRODUCER:	Higher Education Committee and Senator Lynn
SUBJECT:	Community Colleges
DATE:	March 13, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	HE	**Fav/CS**
2.	Bryant	Hamon	BHI	**Favorable**
3.	Hamon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill would codify the names of Gulf Coast State College, Pensacola State College, St. Johns River State College, and Valencia College.

This bill amends ss. 288.8175, 1000.21, 1004.74, and 1004.75, Florida Statutes.

II. Present Situation:

A community college district board of trustees may change its institutional name by using the designation "college" or "state college" if the college has been authorized to grant baccalaureate degrees and has been accredited as a baccalaureate degree granting institution by the Commission on Colleges of the Southern Association of Colleges and Schools.[1] A board of trustees must seek codification of the name change in the next regular session of the Legislature.[2]

The four colleges listed below have met the statutory requirements for changing the college's name:

[1] s. 1001.60, F.S.
[2] s. 1001.60(2)(c), F.S.

Gulf Coast State College
On March 26, 2010, the State Board of Education approved Gulf Coast Community College's proposal to offer the Bachelor of Science Degree in Technology Management. On December 6, 2010, the Southern Association of Colleges and Schools approved Gulf Coast Community College to offer baccalaureate degrees. On January 13, 2011, the Gulf Coast Community College board of trustees approved a change of the college's name to Gulf Coast State College.

Pensacola State College
On March 26, 2010, the State Board of Education approved Pensacola Junior College's proposal to offer the Bachelor of Science Degree in Nursing and a Bachelor of Applied Science Degree in Supervision and Administration. On June 24, 2010, the Southern Association of Colleges and Schools approved Pensacola Junior College to offer baccalaureate degrees. On July 20, 2010, the Pensacola Junior College board of trustees approved a change of the college's name to Pensacola State College.

St. Johns River State College
On March 26, 2010, the State Board of Education approved St. Johns River Community College's proposal to offer the Bachelor of Applied Science degree in Organizational Management and a Bachelor of Science degree in Early Childhood Education. On June 24, 2010, the Southern Association of Colleges and Schools approved St. Johns River Community College to offer baccalaureate degrees. On September 15, 2010, the St. Johns River Community College board of trustees approved a change of the college's name to St. Johns River State College, to become effective January 2011.

Valencia College
On September 21, 2010, the State Board of Education approved Valencia Community College's proposal to offer Bachelor of Science Degrees in Electrical and Computer Engineering Technology and in Radiologic and Imaging Science. On December 7, 2010, the Southern Association of Colleges and Schools approved Valencia Community College to offer baccalaureate degrees. On December 14, 2010, the Valencia Community College board of trustees approved a change of the college's name to Valencia College.

III. Effect of Proposed Changes:

This bill would codify the names of Gulf Coast State College, Pensacola State College, St. Johns River State College, and Valencia College.

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:

The named college may incur costs for name change in signage, publications, documentation, and other related items. Payments of such costs if any will be the responsibility of each college.

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 Higher Education on February 8, 2011:
The committee substitute codifies the names of three additional colleges: Gulf Coast State College, Pensacola State College, and Valencia College.

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:	SB 172
INTRODUCER:	Senator Bennett
SUBJECT:	Security Cameras
DATE:	March 7, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Favorable**
2.	O'Connor	Maclure	JU	**Favorable**
3.	Sadberry	Meyer, C.	BC	**Pre-meeting**
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[1] challenge or struck down as an unconstitutional unfunded mandate.[2] 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).[3] 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.[4] The circuit court found that the single-subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an

[1] FLA. CONST. art. III, s. 6.
[2] FLA. CONST. art. VII, s. 18(a).
[3] Chapter 2009-96, Laws of Fla.
[4] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

unconstitutional mandate.[5] 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.[6]

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.[7] 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.[8] 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.[9] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[10] 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.[11] 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,[12] but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.[13]

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.[14] The Florida Statutes are adopted annually during each regular session through an adoption act.[15] The litigants in the SB 360 case argued that the three subjects in the bill are: growth management, security cameras, and affordable housing.[16] 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.[17]

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[5] *Id.*
[6] *Atwater v. City of Weston*, Case No. 1D10-5094 (Fla. 1st DCA 2010).
[7] *Franklin v. State*, 887 So. 2d 1063, 1072 (Fla. 2004).
[8] *Santos v. State*, 380 So. 2d 1284 (Fla. 1980).
[9] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).
[10] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).
[11] *Ex parte Knight*, 41 So. 786 (Fla. 1906).
[12] *State v. Lee*, 356 So. 2d 276 (Fla. 1978).
[13] *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991).
[14] *State v. Combs*, 388 So. 2d 1029 (Fla. 1980), and *State v. Johnson*, 616 So. 2d 1 (Fla. 1993).
[15] 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).
[16] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[17] *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[18] 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.[19]

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.[20] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication nor by inference.[21] A local government cannot forbid what the Legislature has expressly licensed, authorized, or required, nor may it authorize what

[18] 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.
[19] 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 (last visited Jan. 19, 2011).
[20] *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).
[21] *Id.*

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

Local Ordinances Requiring Security Cameras

The Convenience Business Security Act[24] creates security standards for late-night convenience businesses, including the requirement that every convenience business[25] shall be equipped with a "security camera system capable of recording and retrieving an image to assist in offender identification and apprehension."[26] 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.[27]

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.[28]

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[22] *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[23] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[24] Sections 812.1701-812.175, F.S.
[25] 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."
[26] Section 812.173, F.S.
[27] Section 812.1725, F.S.
[28] 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.[29]

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."[30] 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?

[29] 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).

[30] 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?[31]

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.[32]

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."[33] A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.[34] 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.

[31] *Weingrad v. Miles*, 29 So. 3d 406, 409 (Fla. 3d DCA 2010) (internal citations omitted).
[32] *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).
[33] *Weingrad*, 29 So. 3d at 410.
[34] *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.

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 174
INTRODUCER:	Senator Bennett
SUBJECT:	Growth Management
DATE:	March 7, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Favorable**
2.	Roberts	Roberts	GO	**Favorable**
3.	Martin	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

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[1] 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.[2] 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.

[1] Art. III, § 6, Fla. Const.
[2] 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).[3] 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.[4] 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.[5] 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.

[3] Chapter 2009-96, L.O.F.
[4] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[5] *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),[6] 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."[7] 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

[6] *See* Chapter 163, Part II, F.S.
[7] 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.[8] 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

[8] 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.[9]

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

[9] *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,[10] 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)[11] 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

[10] Chapter 2010-147, L.O.F.

[11] 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.[12] 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.

[12] 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.[13]

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

[13] 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.[14]

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.[15] 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.[16] 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

[14] Chapter 2010-147, L.O.F.
[15] *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2002).
[16] *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

natural or logical connection.[17] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[18] 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.[19] 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,[20] but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.[21]

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.[22] 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.[23]

(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[24] 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.[25]

[17] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).
[18] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).
[19] *Ex parte* Knight, 41 So. 786 (Fla. 1906).
[20] *State v. Lee*, 356 So.2d 276 (Fla. 1978).
[21] *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).
[22] *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).
[23] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[24] 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.
[25] 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.

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 176
INTRODUCER:	Senator Bennett
SUBJECT:	Affordable Housing
DATE:	March 7, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Favorable**
2.	Roberts	Roberts	GO	**Favorable**
3.	Martin	Meyer, C.	BC	**Pre-meeting**
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[1] challenge or struck down as an unconstitutional unfunded mandate.[2] 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.

[1] Art. III, § 6, Fla. Const.
[2] 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).[3] 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.[4] 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.[5] 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)[6] is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.[7] 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.

[3] Chapter 2009-96, L.O.F.
[4] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[5] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[6] Formerly the Florida Housing Finance Agency
[7] 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;[8]
- 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.[9] 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.[10]

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.[11] 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.[12]

[8] 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.
[9] Sections 201.15 (9) and (10), F.S.
[10] *See* ss. 420.507 (33), and 159.608, F.S.
[11] Chapter 2009-96, L.O.F.
[12] *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.[13]

"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."[14] Under current law, SAIL funds must be reserved for the following tenet groups: commercial fishers and farm workers, families, the elderly, and the homeless.[15] 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.[16]

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.[17]

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. [18]

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

[13] Section 420.5087(2)(a) - (c), F.S.
[14] 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.
[15] Section 420.5087(3)(a)-(d), F.S.
[16] Section 420.5087(6)(a), F.S., *referencing* s. 420.507(22)(a)1. and 3., F.S.
[17] Section 420.5087(3)(d), F.S.
[18] 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.[19]

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.[20] "The minimum allocation per county is $350,000, of which at least 65 percent of the funds must be used for homeownership."[21]

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.[22] 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.[23]

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

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".[25]

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

[19] Section 420.9072, F.S.
[20] Information obtained from the Florida Housing Finance Corporation, *See supra* note 12.
[21] *Id.*
[22] Section 420.9072(2)(a)1. -3., F.S.
[23] Section 420.9072(2)(b)1. -4., F.S.
[24] *See* s. 420.9072(3), F.S.
[25] 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.[26] 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.[27] 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".[28]

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.

[26] Chapter 2009-96, L.O.F.
[27] Section 420.9075, F.S.
[28] *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.[29]

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.[30] 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".[31] 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.[32] 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[33] 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.

[29] Chapter 2009-96, L.O.F.
[30] Section 420.9076, F.S.
[31] Section 420.9076(4), F.S.
[32] Chapter 2009-96, L.O.F.
[33] 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.[34]

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.[35] 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.[36] 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[37] 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.[38]

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

[34] Section 420.5095(3)(a), F.S.
[35] Chapter 2009-96, L.O.F. See above for Affordable Housing Income Requirements .
[36] *Id.*
[37] 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.
[38] 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.[39] 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".[40]

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.[41] 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.[42] 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

[39] Section 196.196(1)(a)-(b), F.S.
[40] Section 196.196(3), F.S.
[41] Chapter 2009-96, L.O.F.
[42] 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.[43]

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.[44] 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.

[43] Section 212.054(5), F.S.
[44] 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.[45]

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.[46]

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.[47] 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.[48] 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.[49] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[50] 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.[51] 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

[45] *Id.*
[46] Chapter 2009-96, L.O.F.
[47] *Franklin v. State*, 887 So.2d 1063, 1072 (Fla.2002).
[48] *Santos v. State*, 380 So.2d 1284 (Fla. 1980).
[49] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).
[50] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).
[51] *Ex parte Knight*, 41 So. 786 (Fla. 1906).

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

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.[54] The litigants in the SB 360 case argued that the three subjects in the bill are: growth management, security cameras, and affordable housing.[55] 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.[56]

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[57] 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.[58]

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.

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[52] *State v. Lee*, 356 So.2d 276 (Fla. 1978).
[53] *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).
[54] *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).
[55] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[56] *Id.*
[57] 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.
[58] 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.,[59] and s. 420.0004, F.S.[60] 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".

[59] 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.

[60] 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.

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 228
INTRODUCER:	Senator Siplin
SUBJECT:	Code of Student Conduct
DATE:	March 13, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	**Favorable**
2.	O'Connor	Maclure	JU	**Favorable**
3.	Hamon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill requires student conduct codes to include provisions on student dress and style of wearing clothing. District school boards are specifically required to adopt a dress code policy that prohibits students from wearing clothing in a revealing manner or in a way that is disruptive to learning. This bill provides sanctions for violators, which range from a verbal warning and parental notice to in-school suspension.

To maintain eligibility to participate in interscholastic extracurricular activities, students are required to comply with the district school board student conduct code, including the section on dress code policy.

This bill substantially amends sections 1006.07 and 1006.15, and reenacts section 1002.23(7), Florida Statutes.

II. Present Situation:

As part of their duties to maintain student discipline and preserve school safety, district school boards are required to adopt student conduct codes for public schools, from elementary through high school, and distribute the codes annually to teachers, school employees, students and parents.[1] Certain material is required for inclusion in each code, such as:

- Consistent policies and specific grounds for disciplinary action, including school suspensions, expulsions, and other responses to certain substance-related offenses;

[1] Section 1006.07(2), F.S.

- The process to be followed for discipline, including corporal punishment;
- Student rights and responsibilities; and
- Notice of various infractions and penalties.[2]

In accordance with the supplemental powers and duties of district school boards, permissive authority is provided to school boards to require students to wear uniforms, or adopt other dress-related requirements, if considered necessary to protect the safety or welfare of the student body or school employees.[3]

Section 1006.15, F.S., addresses student criteria for participation in extracurricular activities. To maintain participation eligibility, this provision requires certain factors to be met, such as a minimum grade point average, execution of an academic performance contract, and compliance with certain conduct requirements.[4]

The exposure of underwear, also known as "sagging," allegedly originated in jails, where inmates are denied belts for security reasons.[5] There appear to be a growing number of cities that have banned sagging.[6] Several Florida school districts have, in fact, adopted policies that establish specific standards for dress and grooming for public school students.[7]

An example of a dress code policy in a student conduct code is that adopted by the School Board of Orange County, which provides, in part:

> Clothes shall be worn as they are designed – suspenders over the shoulders, pants secured at the waist, belts buckled, no underwear as outerwear, no underwear exposed….Clothing with holes, tears, or inappropriate patches will not be allowed if considered obscene….Bare midriffs and bare sides should not show even when arms are extended above the head.

A violation of the code based on dress is considered to be a Level I, or least serious, offense. Penalties range from parental contact and a verbal reprimand to a withdrawal of privileges and detention. Repeat offenders are reclassified to Level II, which authorizes in-school suspension.[8]

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[2] *Id.*
[3] Section 1001.43(1)(b), F.S.
[4] Section 1006.15(3)(a), F.S.
[5] http://www.buzzle.com/articles/sagging-pants-history.html.
[6] Opa-Locka, Florida, enacted a sagging ban ordinance on October 24, 2007, in schools, parks, and city-owned property. *See* http://www.floridatrend.com/print_article.asp?aID=48655. The Atlanta Board of Education has banned sagging in all of the system's public schools. *See* http://blogs.bet.com/news/newsyoushouldknow/atlanta-cracks-down-on-low-riding-jeans/.
[7] Duval County Public Schools' dress code includes a prohibition on the exposure of underwear. *See* http://www.duvalschools.org/static/students/codeofconduct/codeofappearance.asp. Santa Rosa County School District's code of student conduct prohibits the wearing of clothing that reveals undergarments. *See* http://www.santarosa.k12.fl.us/files/csc.pdf.
[8] The Orange County School District code is available online at: https://www.ocps.net/Documents/CodeofStudentConductandParentGuide_2010-11.pdf.

III. Effect of Proposed Changes:

This bill requires district school boards to include a student dress policy in student conduct codes. It also requires language to be included in the policy which prohibits students from wearing clothing to school during the regular school day that indecently or in a vulgar manner exposes underwear or body parts or that is disruptive to an orderly learning environment.

Schools will then be required to monitor this component of the policy and impose sanctions for students who violate the policy. The extent of involvement required by the school is contingent on how many times a student has committed an offense as follows:

- For first offenders, the school is required to give the student a verbal warning, and the principal must call the student's parent or guardian;
- For second offenders, the student is ineligible to participate in extracurricular activities for up to 5 days, and the principal must meet with the parent or guardian;
- For third or subsequent offenders, the extracurricular activity exclusion is extended to up to 30 days; the school must place the student in in-school suspension for up to 3 days; and the principal must both call and send written notice to a parent or guardian.

In addition, it is expected that the school will incur related recordkeeping duties, and provide some level of training to school personnel regarding observation of student dress and the process for enforcement.

Finally, a section of the Family and School Partnership for Student Achievement Act is republished to indicate that its reference to the student code of conduct refers to the updated code as amended by the bill.

This bill 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.

D. Other Constitutional Issues:

First Amendment

The bill may potentially implicate First Amendment concerns. Courts have long held that students do not lose their constitutional right to freedom of speech or expression at the schoolhouse gate.[9] However, courts have also repeatedly affirmed the authority of the states and school districts to prescribe and control conduct in schools.[10] Mere regulation of clothing or dress is not constitutionally problematic. Rather, the court will review the restriction in the context of whether the policy interferes with a constitutionally protected political viewpoint. Therefore, at different points in history, the court has upheld on First Amendment grounds the ability of individuals to wear armbands to school to protest the Vietnam War,[11] armbands signifying allegiance to a Nazi association,[12] and hoods and robes indicating membership in the Ku Klux Klan.[13] Likewise, courts have routinely denied the extension of First Amendment protections to instances in which a policy restricts dress that cannot be shown to be political speech.

Specifically on point is a case that involved a school prohibition on the wearing of pants in a manner that is known as "sagging." In spite of the student's assertions that sagging pants constituted the style of "hip hop," and the greater African-American group identity, the court held that this did not rise to the level of speech, thereby precipitating analysis of political content.[14] In fact, the court noted that the wearing of a certain clothing style is generally not considered to be expressive conduct.[15]

Also, since *Tinker v. Des Moines Independent Community School District*, even in the presence of political expression, some courts have recognized as valid a school's restriction on speech in furtherance of education interests. In so doing, the court has reiterated that First Amendment rights are not automatically coextensive with the rights of adults in other environments, and that even if the government could not censor the same speech outside of the school setting, "A school need not tolerate student speech that is inconsistent with its basic educational mission."[16] In another case, the U.S. Supreme Court upheld a school's disciplinary action of sanctioning speech that contained language considered vulgar and obscene, based on a rule that prohibited "conduct that substantially interfered with the educational process, including the use of obscene, profane language or gestures."[17]

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[9] *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).
[10] *Id.* at 507.
[11] *Tinker*, 393 U.S. 503.
[12] *Collin v. Smith*, 578 F.2d 1197, 1201 (7th Cir. 1978).
[13] *Hernandez v. Superintendent, Fredericksburg-Rappahannock Joint Security Center*, 800 F.Supp. 1344 (U.S.D.C. VA. 1992).
[14] *Bivens By and Through Green v. Albuquerque Public Schools*, 899 F.Supp. 556, 558, 561 (U.S.D.C. N.M. 1995). *See also Blau v. Fort Thomas Public School District*, 401 F.3d 381 (6th Cir. 2005) (upholding dress code restriction on baggy or tight clothing, among other things); *Brandt v. Board of Educ. of City of Chicago*, 480 F.3d 460 (7th Cir. 2007) (upholding dress code restriction on "gifted" T-shirt); *Canady v. Bossier Parish School Bd.*, 240 F.3d 437 (5th Cir. 2001) (upholding mandatory uniform policy); *Bar-Navon v. School Board of Brevard County, Florida*, 2007 WL 3284322, (M.D. Fla. 2007) (granting motion for summary judgment for the school district on dress code policy that provides that pierced jewelry is limited to the ear).
[15] *Bivens*, *supra* note 14, at 560.
[16] *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 266 (1988).
[17] *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986).

Therefore, it appears that precedential support exists for the prohibition of certain clothing, or the manner in which clothing is worn, based on an assertion that it is otherwise disruptive to learning. Still, without knowing the specific language that district school boards would draft should this bill become law, it is unclear whether a potential challenge could result on the premise that the actual provision would be unconstitutionally vague or overbroad.[18]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill will have a minimal fiscal impact. District school boards will need to add a student dress policy to existing codes on student conduct. The bill will require monitoring and enforcing the student dress component of the conduct code.

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.

[18] Laws that regulate speech can be subject to a facial constitutional challenge if they are vague or overbroad. A law is unconstitutionally vague if a person "of common intelligence must necessarily guess at its meaning." *Connolly v. General Construction Co.*, 269 U.S. 385, 391 (1926). A law is overbroad if it substantially threatens protected speech. *See Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569 (1987).

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 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	**Favorable**
2.	Dugger	Cannon	CJ	**Favorable**
3.	Carey	Meyer, C.	BC	**Pre-meeting**
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.[1] 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.

[1] 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.[2] 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

[2] 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.	Erickson	Cannon	CJ	**Favorable**
2.	Hrdlicka	Cooper	CM	**Fav/CS**
3.	Sadberry	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		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.[1]

Public Lodging and Food Service Establishments – State Regulation
Regulation of public lodging establishments and public food service establishments is specifically preempted to the state.[2] 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[3] at or in a public lodging establishment[4] without either written or oral permission when the public lodging establishment has posed a sign.[5]

[1] 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 (last visited 3/10/2011).
[2] 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.[6] 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.[7]

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.[8]

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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[3] 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."

[4] 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.

[5] 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.

[6] 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.

[7] Section 509.144(3), F.S.

[8] 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."[9] 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."[10] Therefore, a municipality may adopt "an ordinance that authorizes the seizure and impoundment of vehicles used in the commission of certain misdemeanors."[11]

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.

[9] *Shuler v. State*, 984 So.2d 1274, 1275 (Fla. 2d DCA 2008) (footnote omitted).
[10] *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1246 (Fla.2006).
[11] *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.[12] Each public food service establishment must obtain a license and meet the standards set by the division to maintain that license.[13]

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;[14] 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

[12] Section 509.032, F.S.
[13] Section 509.241, F.S.
[14] 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.[15] 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.[16] 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.[17]

However, the U.S. Supreme Court has found that state constitutions may expand upon existing federal rights.[18] 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."[19] 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."[20] This case involved a citizen and political action

[15] *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968).
[16] *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).
[17] *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).
[18] *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).
[19] *Wood v. State*, 2003 WL 1955433 (Fla.Cir.Ct., 2003) (not reported in So.2d).
[20] *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.[21] 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.

[21] 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 . 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

officer's determination of probable cause.

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

And the title is amended as follows:

Delete line 16

and insert:

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

BILL:	CS/CS/SB 408
INTRODUCER:	Budget Subcommitee on General Government Appropriations, Banking and Insurance Committee, and Senator Richter
SUBJECT:	Property Insurance
DATE:	March 14, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson, Emrich	Burgess	BI	**Fav/CS**
2.	Frederick	DeLoach	BGA	**Fav/CS**
3.	Frederick	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill makes numerous changes to laws related to property insurance, primarily residential property insurance. The bill addresses the following primary issues:

- Requires the Florida Hurricane Catastrophe Fund to provide reimbursement for "all incurred losses" including amounts paid as fees on behalf of the policyholder, with exclusions;
- Increases the minimum surplus requirements for residential property insurers to $15 million;
- Allows insurers offering personal lines property insurance to provide written notice of policy changes to their policyholders without having to non-renew an entire insurance policy due to a change in policy terms;
- Reduces the insurer's written notice of nonrenewal, cancellation, or termination of a personal lines or commercial residential property insurance policy to 90 days;
- Modifies current replacement cost coverage and actual cash value provisions relating to dwellings and personal property;
- Requires windstorm and hurricane property insurance claims to be brought within three years and sinkhole loss claims to be brought within two years;

- Modifies provisions related to windstorm damage mitigation discounts for residential property insurance and repeals the provision requiring the OIR to develop a method correlating mitigation discounts to the uniform home grading scale;
- Repeals the requirement that the Consumer Advocate prepare an annual report card for personal residential property insurers;
- Renames the Citizens High Risk Account the Coastal Account and repeals the requirement to reduce the boundaries of the Citizens' High Risk Account (wind-only coverages);
- Allows an insurer seeking to take policies out of Citizens to do so in 45 days;
- Clarifies the ethics requirements for specified board members of the Citizens Property Insurance Corp., and provides that Board members abstain from voting under certain circumstances;
- Allows an insurer to cancel or nonrenew a property insurance policy upon a minimum of 45 days' notice based on a finding that the insurer lacks adequate reinsurance coverage for hurricane risk and other financial factors;
- Revises the regulation of public adjusters by placing limits on public adjuster compensation, prohibiting certain statements in public adjuster advertising, and revising the contents of the public adjuster contract;
- Removes the requirement that a property insurer must offer sinkhole coverage and eliminates application of statutes governing catastrophic ground cover collapse and sinkhole loss coverage from commercial property insurance policies;
- Revises what constitutes a sinkhole loss;
- Limits the authority of the Office of Insurance Regulation (OIR) to disapprove rates for sinkhole insurance.
- Revises procedures for insurers and policyholders relating to standards for sinkhole insurance claim investigations and revises the neutral evaluation process for sinkhole disputes; and
- Provides changes to the procedures pertaining to sinkhole reports by professional engineers or professional geologists and repeals the sinkhole database.

This bill substantially amends the following sections of the Florida Statutes: 215.555, 624.407, 624.408, 624.4095, 624.424, 626.854, 626.8651, 626.8796, 627.0613, 627.062, 627.0629, 627.351, 627.3511, 627.4133, 627.7011, 627.70131, 627.706, 627.7061, 627.707, 627.7073, 627.7074, 627.712

This bill creates sections 626.70132 and 627.73141, Florida Statutes.

This bill repeals section 627.7065, Florida Statutes.

II. Present Situation:

Insurer Surplus Requirements

Florida law specifies certain minimum surplus and capital requirements for property and casualty insurers to transact insurance in the state. Under s. 624.407, F.S., the minimum surplus requirement for new property and casualty insurers in Florida, which includes residential property writers, is the greater of $5 million or ten percent of the insurer's liabilities. The minimum surplus requirement for a residential property insurer, once it is licensed in Florida, is the greater of $4 million or ten percent of the insurer's liabilities.

The current surplus and capital requirements for property and casualty insurers have not been changed since 1993.[1] Surplus is the reserves an insurer has available to pay claims and is a critical component in measuring the financial strength of a company.[2] It is the financial cushion that protects insurers in case of an unexpectedly high number of claims. According to OIR officials, in the past 17 years, circumstances have changed and costs have increased, particularly for residential property insurers, such that increased minimum surplus requirements are necessary. For example, in 2009, the rating agency A.M. Best downgraded nine insurers that sell homeowners insurance in Florida, and Demotech, a company that rates some of the smaller domestic Florida insurers, withdrew its rating from six insurers.[3] Two such insurers were ordered into receivership.[4]

The OIR has found that the current level of surplus is not sufficient to support the business plans of residential property insurers in Florida and has cited several reasons for this position.

- Reinsurance costs continue to rise. The rates charged by reinsurers have increased and the amount of reinsurance being purchased by most insurance companies has also increased. Reinsurance costs vary from insurer to insurer, but currently average at least 30 percent of an insurer's written premium, and in many cases reach 50 percent. The prices reinsurers charge Florida companies change yearly, based on general worldwide losses and capital costs, as well as Florida losses. Reinsurance rates are not regulated by the OIR.
- Changes to the Florida Hurricane Catastrophe Fund (FHCF) have resulted in increases in reinsurance costs to residential property insurers in Florida; therefore insurers will need to purchase more reinsurance from the private market. Since 2007, such insurers have had the option of purchasing coverage from the FHCF above its mandatory layer. This coverage is referred to as TICL coverage. However, the amount of such coverage available for insurers to purchase decreases each year and is currently scheduled to be phased out over the next five years.[5] Reinsurance purchased by insurers from the FHCF is considerably less expensive than private market reinsurance. As TICL coverage is replaced with coverage from the private market, reinsurance costs to insurers will increase. Also, the cost of coverage in the FHCF's mandatory layer is increasing by five percent per year under the "cash build-up" factor. This provision is intended to ensure that the FHCF will have the funds necessary to pay losses when they arise.
- Non-catastrophe losses are increasing. Even in years with no hurricanes in Florida, property writers are experiencing increased losses. This may be attributable to some extent to the current economy. Also, fraudulent or inflated claims are being filed and are expected to increase in times of stressed economic conditions.

In addition to the total surplus amount required by statute, an insurer must also meet specific requirements for its ratios of gross written premium to surplus and net written premiums to

[1] Ch. 1993-410, L.O.F.
[2] An insurer's surplus is the remainder after a company's liabilities are subtracted from its assets.
[3] Windstorm Mitigation Discounts Report, February 1, 2010, Florida Commission on Hurricane Loss Projection Methodology.
[4] Coral Insurance Company and American Keystone Insurance Company are in receivership.
[5] The TICL or Temporary Increase in Coverage Limit Options.

surplus.[6] A company's calculated gross written premium is not allowed to exceed 10 times its surplus as to policyholders; the calculated net written premium may not exceed 4 times its surplus as to policyholders.[7] If a company's premiums exceed either of these ratios, the OIR shall either suspend the insurer's certificate or establish by order the insurer's gross or net written premiums, unless the insurer demonstrates to OIR's satisfaction that exceeding the statutory ratios does not endanger the financial condition of the insurer or the interests of the policyholders.

Florida's Rating Law

Section 627.062, F.S., specifies the rate filing process for property and casualty insurers and provides rating standards for these insurers. The rating law applies to property, casualty and surety insurance and prohibits rates that are excessive, inadequate, or unfairly discriminatory. The rating law specifies what constitutes an excessive, inadequate, or unfairly discriminatory rate as follows.

- A rate is excessive if:
  - It is likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved or if expenses are unreasonably high in relation to the services rendered.
  - The rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when the replacement is attributable to investment losses.
- A rate is inadequate if:
  - It is clearly insufficient, together with the investment income attributable to them to sustain projected losses and expenses in the class of business to which it applies.
  - If discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group or risks.
- A rate is unfairly discriminatory if:
  - The rating plan, including discounts, credits, or surcharges fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program pursuant to s. 627.0625, F.S.
  - As to a risk or group of risks, the application of premium discounts, credits, or surcharges among the risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

Legislation enacted in 2009 allows insurers to make a separate expedited rate filing with the OIR for residential property insurance, which is exempt from the rate filing requirements otherwise applicable under s. 627.062, F.S.[8] The provision (s. 627.062(2)(k), F.S.) is limited to allowing adjustments to rates for reinsurance or financing costs related to the purchase of reinsurance or financing products to replace or finance the payment of the amount covered by the Florida Hurricane Catastrophe Fund's temporary increase in coverage limit (TICL) layer. This includes replacement reinsurance for the TICL reductions, as well as the cash build-up factor and the

[6] S. 624.4095, F.S.
[7] S. 624.4095, F.S., specifies that for property insurers, the calculated premium is the product of 0.90 times the actual or projected premium.
[8] Ch. 2009-87, L.O.F. The OIR has 45 days after the date of the filing to review it and determine if the rate is excessive, inadequate, or unfairly discriminatory.

increase in the price for the remaining TICL layers.[9] All costs contained in the filing are capped at ten percent per policyholder. However, financing products such as a liquidity instrument or line of credit cannot result in an overall premium increase exceeding three percent. The law also provides that insurers purchasing this reinsurance do so at a price no higher than would be paid in an arms-length transaction. An insurer may make only one filing under this provision in any 12-month period.

Change of Policy Terms in Insurance Policies

Under the 5th District Court of Appeal's holding in the case of *U.S. Fire Insurance Co. and Hartford Insurance Company of the Southeast v. Southern Security Life Insurance Co*., 710 So.2d 130 (Fla. 5th DCA 1998), when an insurance company changes a term or terms of a policy, the change constitutes a nonrenewal of the entire policy by the insurer and thus the insurer must send notice of the policy's nonrenewal to the policyholder in accordance with s. 627.4133, F.S. According to the court, providing the policyholder with a new policy that contains the changed policy term is not sufficient notice of the policy changes. The process of non-renewing an entire insurance policy due to a change in a policy term, and subsequently offering coverage to the policyholder, has caused confusion to policyholders.

Replacement Cost Insurance Coverage

There are two basic ways that property insurance losses can be adjusted: replacement cost value (RCV) or actual cash value (ACV). Actual cash value is the depreciated value of the property being replaced or repaired. Current law requires that companies issuing homeowners' insurance policies must offer policyholders an option for replacement cost coverage.[10] The law provides that if a loss is insured for replacement cost, the insurer must pay the replacement costs without holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.

Until 2005, under a replacement cost policy an insurer could make an initial payment based on an ACV basis and require the insured to complete the repair before the insurer paid the balance of the full replacement cost. Following the multiple hurricanes of 2004 and 2005, regulators received complaints from policyholders who were given the ACV, but could not afford to fund the balance necessary to make the repairs or replacements. As a result, these policyholders had paid premiums for replacement cost coverage, but were only being paid ACV. In 2005, the Legislature addressed this problem by requiring that for any loss sustained by a policyholder who has purchased replacement cost coverage, the insurer must pay the full replacement cost, whether or not the insured replaces or repairs the damaged property. [11]

[9] The TICL or Temporary Increase in Coverage Limit Options allows residential property insurers to purchase additional reinsurance *above* the FHCF's mandatory coverage. The 2009 legislation also authorized the FHCF to implement a "cash build up" factor which would increase the reimbursement premiums that the Fund charges property insurers for the mandatory layer of coverage provided by the Fund. The cash build up factor is based on a five percent annual increase which will be phased in over a five-year period, at which time the increase will be 25 percent.
[10] S. 627.7011, F.S.
[11] Ch. 2005-111, L.O.F.

Insurance companies assert that the current replacement cost and holdback provisions allow some homeowners to file inflated or even fraudulent claims because they are not required to make needed repairs to their dwellings or replace their personal property if they sustain a loss. Many states require the insurer to pay initially only the actual cash value, and then provide the balance of the replacement cost once the insured has replaced or repaired the property.

Mitigation Credits, Discounts, or Other Rate Differentials

Section 627.0629, F.S., requires rate filings for residential property insurance to include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties. The windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance; roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.

Public Adjusters

Public adjusters are defined as persons, other than licensed attorneys, who, for compensation, prepare or file an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.[12] They are employed exclusively by a policyholder who has sustained an insured loss and their responsibilities include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim.

Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements. As of September 2010, Florida had 2,511 licensed public adjusters. In 2008, the Legislature created a public adjuster apprentice license and mandated age, residency, examination, and bond requirements. The public adjuster apprentice must be under the supervision of a licensed public adjuster for a 12-month period in order to qualify for licensure as a property and casualty public adjuster.

Current law provides that a public adjuster may not charge a fee unless a written contract was executed prior to the payment of a claim. Such adjusters are prohibited from charging more than 20 percent of the insurance claims payment on non-hurricane claims and 10 percent of the insurance claims payment on hurricane claims for claims made during the first year after the declaration of the emergency. These fee caps apply only to residential property insurance policies and condominium association policies. There is no fee cap on re-opened or supplemental hurricane claims; however, the fee cannot be based on any payments made by the insurer to the insured prior to the time of the public adjuster contract.

Insureds or claimants have five business days after the date on which the contract is executed to cancel a public adjuster's contract during a state of emergency declared by the Governor. Insureds or claimants have 3 business days to cancel a contract as to claims involving non-

[12] S. 626.854, F.S. See, Part VI (Insurance Adjusters) under ch. 626, F.S.

emergencies. Public adjuster contracts must be in writing and must display an anti-fraud statement.

Current statutes prohibit a public adjuster from directly or indirectly contacting any insured or claimant until 48 hours after an event that triggered a claim. However, that provision was recently struck down by the First District Court of Appeal which ruled that the restriction on soliciting customers within 48 hours of a disaster or other insurance claims event violated commercial speech protected by the state Constitution.[13] The law was challenged in a law suit by Frederick Kortum, a public adjuster in Oviedo. Kortum made the argument that the first 48 hours are of vital importance because policyholders may make decisions that affect how much they could receive from an insurer.

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find coverage in the voluntary admitted market.[14] It is not a private insurance company.[15] Citizens is governed by an eight member board of Governors, two of whom are appointed by each of the following State leaders: Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives. It operates pursuant to a plan of operation which is reviewed and approved by the Financial Services Commission and is subject to regulation by the Office of Insurance Regulation.

Citizens is currently the largest property insurer in Florida with almost 1.3 million policies extending approximately $457 billion of property insurance coverage to Floridians which represents approximately 18 percent of the residential exposure in the State covered by the admitted market.[16] Beginning January 1, 2010, Citizens must implement a rate increase each year which does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges, until rates are actuarially sound.

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations: The Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens' book of business is divided into three separate accounts:[17]

- Personal Lines Account (PLA): Personal residential multi-peril policies including homeowners, mobile homes, dwelling fire, tenants, condominium unit owners.

[13] *Kortum v. Sink*, Case No. 1D10-2459, First District Court of Appeal. Opinion rendered on December 29, 2010.
[14] Admitted market means insurance companies licensed to transact insurance in Florida.
[15] s. 627.351(6)(a)1., F.S.
[16] As of January 2011.
[17] s. 627.351(6)(b).2., F.S.

- Commercial Lines Account (CLA): Commercial residential multi-peril policies including condominium associations, apartment buildings and homeowners association policies as well as commercial non-residential multi-peril (required to include wind coverage) policies (e.g., office buildings, retail, etc.) located outside of the coastal HRA eligible areas.
- High-Risk Account (HRA): Wind-only and multi-peril policies for personal residential, commercial residential, and commercial non-residential risks located in eligible coastal high risk areas.

Under current law, an applicant for coverage with Citizens is eligible even if the applicant has an offer of coverage from an insurer in the private market at its approved rates if the premium for that offer of coverage is over 15 percent more than the premium Citizens would charge for comparable coverage.[18]

Under current law,[19] beginning December 1, 2010, if Citizens' 100 year probable maximum loss[20] (PML) in its wind-only zones is not reduced by 25 percent from what it was in February 2001, the wind-only zones must be reduced by an amount that allows Citizens to reduce its PML by 25 percent. Indications are that Citizens has not been able to reduce its 100 year PML by 25 percent by December 1, 2010 in accordance with this statute. One reason is because Citizens has grown, in part, due to the reluctance of private insurers to expand their writings in Florida because of the significant losses sustained in the 2004 and 2005 hurricane seasons. Therefore, because the required PML reduction will not be accomplished by the statutory deadline, private insurers writing the other peril/non-wind coverage face the choice of either dropping that coverage or writing the windstorm coverage for policies.

Sinkhole Insurance Issues

In December 2010, the Senate Banking and Insurance Committee published its interim report on sinkhole insurance (*Issues Relating to Sinkhole Insurance*, Interim Report 2011-104).[21] The report contained findings, many of which are outlined below, along with policy options for lawmakers and stakeholders to consider.[22] Senate Bill 408 contains many of the policy options suggested in the report.

Under current law, insurers offering property insurance must make available to policyholders, for an appropriate additional premium, sinkhole coverage for losses on any structure, including personal property contents.[23] Sinkhole coverage includes repairing the home, stabilizing the

[18] s. 627.351(6)(c)5.a., F.S.
[19] s. 627.351(6)(y), F.S. This law was enacted in 2002.
[20] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.
[21] The sources for the report included sinkhole policy and claims information collected from 211 insurers for the period 2006 to 2010, pursuant to a data call by the Office of Insurance Regulation. The report also utilized policy and claims data submitted by Citizens Property Insurance Corporation , individual insurers as well as background and research information collected by committee staff. See Senate Interim Report at: http://www.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-104bi.pdf
[22] The report presented a series of "options" that would hopefully aid decision makers as they consider various public policy choices related to sinkholes. The report outlined two basic directions the legislature could take in addressing sinkhole coverage: (1) establish a sinkhole repair program; or (2) leave sinkhole coverage in the private insurance market and make substantial changes directed at removing the current cost drivers.
[23] S. 627.706, F.S.

underlying land, and foundation repairs. Insurance companies must also provide coverage for catastrophic ground cover collapse.[24]

Sinkhole insurance claims have increased substantially both in number and cost over the past two decades and most dramatically over the last several years,[25] despite the fact that licensed geologists in Florida state there is no geological explanation for the significant increase in sinkhole claims being reported to insurers. [26] The drastic increase in sinkhole claims is harming the financial stability of Citizens Property Insurance Corporation (Citizens) and private market insurers and making residential property insurance increasingly unaffordable or unavailable for consumers. The Citizens' sinkhole claims frequency ratio more than doubled between 2006 and 2009. In 2009, Citizens incurred over $84 million in sinkhole losses plus adjustment expenses, yet obtained only $19.6 million in earned premium to cover those costs. Private insurers have also seen their sinkhole claims and costs rise by double and triple digit percentages over the past several years. According to data submitted by 211 property insurers to the Office of Insurance Regulation (OIR), their total reported claims increased from 2,360 in 2006 to 6,694 in 2010, totaling 24,671 claims throughout that period. Total sinkhole claim costs for these insurers amounted to approximately $1.4 billion for the same period.

Representatives from OIR, as well as insurers, believe that a major driving force for the significant increase in sinkhole claims is the fact that many policyholders are incentivized to file such claims because they can keep the cash proceeds from the claim instead of effectuating repairs to their home or remediating the land. The failure of sinkhole claimants to make repairs or stabilize land has concerned property appraisers in several counties, particularly in Hernando and Pasco counties. For example, the Hernando Property Appraiser has estimated that since 2005, the county has lost $173 million in total market value as a result of value adjustments to sinkholes homes. Both appraisers believe that this dilemma has had a damaging effect on the market values of affected homes which could lead to financial instability of local governments.

Current Sinkhole Insurance Law Provisions

Nationally, property insurance policies typically exclude coverage for "earth movement." In contrast, Florida requires every authorized insurer to make coverage for "sinkhole loss" available, for an additional premium, and also to provide coverage for catastrophic ground cover collapse. "Sinkhole loss," is defined by statute as "structural damage to the building, including the foundation, caused by sinkhole activity." In summary, under current law, for a policyholder to have a sinkhole loss, there must be actual structural damage to her or his home, including the foundation, which is "caused by" sinkhole activity. However, while "sinkhole activity" is defined in statute, "structural damage" is not, which has led to the term not being used in a uniform manner and has spawned debate in litigation over the meaning of the term.

The law provides that once the insurance company is notified of the pending claim, it must inspect the insured's premises to determine if there has been physical damage to the structure

[24] Catastrophic ground cover collapse refers to extreme damage in which a property is essentially destroyed and uninhabitable.
[25] The increase in claims frequency and severity is based on data collected from 211 insurers by the Office of Insurance Regulation (OIR) in the Fall of 2010, (*Report on Review of the 2010 Sinkhole Data Call* (OIR Report),
[26] Jon Arthur, Director, Office of the Florida Geological Survey.

which may be the result of sinkhole activity. If the insurer concludes the damage may be the result of such activity, the carrier will then request a professional engineer or a professional geologist to perform the testing to determine the cause of the loss, within a reasonable professional probability, and to issue a report. The tests performed typically include floor evaluations, ground penetration radar (GPR) and standard penetration test (SPT) borings. Insurers use a variety of testing procedures and according to the OIR Report, the average number of testing procedures has increased for both paid and denied claims. The OIR Report found that the average cost among insurers to provide sinkhole tests was $9,466, while the average cost for Citizens ranged from $8,061 to $10,116.

After the testing is performed, the homeowner is notified of the test results, provided a copy of the report, and given notice of the right to participate in the neutral evaluation program. The test report contains the findings and recommendations of the engineer or geologist as to the cause of loss, a description of the tests performed, and a recommendation as to methods for stabilization and repair. These findings and recommendations are "presumed correct."[27] An insurer may deny a claim if it determines that there is no sinkhole loss; however, if the claim is denied without tests being performed, the policyholder may demand testing and the carrier must comply. If a sinkhole loss is verified, the insurer must pay to stabilize the land and building and repair the foundation in accordance with the report's recommendations, and "in consultation with" the policyholder.[28]

The two most commonly recommended stabilization techniques are grouting and underpinning. Under the grouting procedure, a grout mixture (composed of cement, sand, fly ash, and water) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by densifying the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling. Underpinning consists of steel pipes drilled or pushed into the ground to stabilize the building's foundation. Both of these procedures are expensive. According to geologists and engineers, to stabilize an average $150,000 home, grouting would cost an estimated $75,000, while underpinning would be approximately $35,000; for an average $300,000 home, grouting is estimated to cost $90,000, and underpinning would be $45,000.

The insurer may limit its payment to the insured to the actual cash value of the structure, excluding the underpinning or grouting or other repair technique performed below the foundation, until the policyholder enters into a contract to perform the building stabilization and foundation repairs. The insurer must pay for the repairs after the contract is executed, but may not require the policyholder to advance payment, and may make payments directly to the contractor if written approval is obtained from the policyholder. However, if the repairs have begun and the engineer selected by the insurer determines that such repairs cannot be completed within policy limits, the insurer must either complete the repairs or give policy limits to the policyholder without a reduction for the repair expenses incurred.

Insurers who have paid a claim for sinkhole loss must file a copy of the engineer/geologist report and a certification, including the legal description of the property with the county clerk, who

[27] S. 627.7073, F.S. The issue pertaining to the presumption of correctness of an engineer or geologist report is on appeal to the Florida Supreme Court, *Warfel v. Universal Ins. Co. of North America*, App. 2 Dist., 2010 WL 1874367 (2010).
[28] S. 627.707, F.S. The meaning of the term "in consultation with the policyholder" has caused confusion as to its meaning which has resulted in litigation.

must record the report and certification. The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer that a claim has been paid and whether or not the full amount of proceeds were used to repair the sinkhole damage.

Frequency and Severity of Sinkhole Claims, and Affordability and Availability of Sinkhole Insurance Coverage

In the OIR Report of insurer sinkhole claims data (2006 and 2010), the agency received information on 8,959 open claims and 15,712 closed claims, totaling 24,671. Specifically, the data shows:

- Total sinkhole claims increased from 2,360 in 2006 to 7,245 in 2009.
- Total sinkhole losses for closed and open claims combined increased from $209 million in 2006 to $406 million in 2009.
- Total losses for open and closed claims exceeded $1.4 billion over the 4-year period.

The statutory requirement for sinkhole testing consists of an inspection and the geologist/engineering report. In 2006, the sum of the two testing components totaled $20.4 million in expenses. By 2009, however, that total nearly tripled to almost $58 million, attributable to the increase in the number of claims. The data indicate companies must routinely incur extensive and costly testing procedures to adjust a sinkhole claim.

The data indicates a wide variation in the frequency of claims, depending on the geographic region. For example, for the period 2006-2009 over 88 percent of the claims occurred in eleven counties: Hernando, Pasco, Hillsborough, Pinellas, Marion, Polk, Orange, Alachua, Citrus, Miami-Dade, and Broward. Over 66 percent (11,872) of the claims are concentrated in just three counties—Hernando, Pasco and Hillsborough, with Citizens accounting for 36 percent of the total claims (4,261). Miami-Dade and Broward are showing a recent increase in sinkhole claims as those counties represented 2.9 percent of total claims from 2006-2009, but have increased to 4.2 percent for the year to date in 2010. This is statistically significant due to the fact that this area is generally not subject to sinkhole activity.

Citizens Property Insurance Corporation Provision of Sinkhole Coverage

- The largest writer of sinkhole coverage in Florida is Citizens, particularly in the three counties of greatest activity (Hernando, Pasco and Hillsborough). Citizens' claims data for the years 2005 through 2009 shows the large deficiency in the premium Citizens' collects to cover sinkhole claims, particularly in the most active areas. For example, in 2009, for Citizens:
- The statewide pure premium[29] for sinkhole coverage was $295, quadruple the $73 premium that Citizens was allowed to charge for sinkhole coverage.

[29] Pure premium is the amount that all policyholders with sinkhole coverage would need to pay to cover the sinkhole losses (with no profit or indirect costs added).

- The total premium collected statewide for the sinkhole endorsement ($22.2 million) was exceeded by sinkhole losses[30] from Hernando ($40.5 million) and Pasco ($24.9 Million) counties.
- Sinkhole losses from Hernando ($40.5 million) were almost seven times the $5.9 million premium that was collected to cover those losses. Sinkhole losses in Pasco ($24.9 million) were three times the total sinkhole premium of $8.3 million.

Citizens' Sinkhole Claims Frequency & Severity

The dramatic increase in sinkhole claims is the primary cost driver for Citizens' significant sinkhole losses. Statewide, the number of sinkhole claims more than doubled between 2005 and 2009, rising from 660 in 2005 to 1404 in 2009. The increase in sinkhole claims has occurred in spite of the fact that significant numbers of policyholders have dropped sinkhole coverage since it became an optional endorsement in 2007. The percent of Citizens' statewide policies with sinkhole coverage fell from 100 percent in 2006 (when it was mandatory) to 61 percent in 2009. In 2009, only 37 percent of policyholders in Hernando County and 22 percent of policyholders in Pasco County purchased Citizens' policies with sinkhole coverage. As a result of the substantial reduction in the number of people choosing to pay for sinkhole coverage, there are fewer policyholders (and less collected premium) over which to spread the increasing losses. Notwithstanding the substantial reduction in the number of policyholders choosing sinkhole coverage, there has still been an increase in the number of sinkhole claims being filed.

Average claims severity is the average amount of cost that Citizens incurred (indemnity plus loss adjustment expenses) for all claims for which a payment was made. The coverage A limit is the amount for which the main structure (house) is insured. In 2005, the statewide average severity of $123,412 actually exceeded the average coverage A limit of $115,540. In 2006 through 2009, the average severity was lower than the coverage A limit, but remained extremely high relative to other covered perils. In 2009, the average severity dropped significantly, but the data is based on a lower percentage of closed claims than the data for earlier years. Even with the drop in average severity in 2009, total overall losses for sinkholes increased due to the large increases in claim frequency.

Effect of Sinkholes on the Affordability and Availability of Citizens Coverage

There is a great variation in the cost of Citizens' sinkhole coverage, depending on the geographic region of the state. In 2009, the statewide average sinkhole premium was $73, the average premium was $944 in Pasco County, $775 in Hernando County, and $98 in Hillsborough County. The average sinkhole premium for the remainder of the state (excluding Pasco, Hernando and Hillsborough) was only $22. This deficiency in premiums is worsening because Florida law prohibits Citizens from increasing the rate of any policyholder by more than approximately 10 percent, even as losses continue to rise at a much faster pace. Thus, Citizens' already deficient sinkhole premiums will fall even further behind its sinkhole losses and Citizens' surplus will continue to erode.

[30] "Losses" refers to indemnity costs for both open and closed claims, plus loss adjustment expenses (LAE). A loss adjustment expense (LAE) is the direct cost associated with investigating, administering, defending, or paying an insurance claim.

Most private insurers and Citizens have implemented, or are implementing, some form of property (including home) inspection program in which the property must meet specified criteria to qualify for sinkhole coverage. As more companies adopt pre-coverage inspection requirements, sinkhole coverage will continue to become less available. It has been reported to committee staff that many private insurers have ceased writing new business in the areas of greatest sinkhole claims activity. In Hernando and Pasco counties, Citizens' share of the homeowners' insurance market has increased substantially in each of the last two years.

Areas of Concern Regarding Sinkhole Claims Process

The following topics have been identified by committee staff as areas of concern regarding the sinkhole claims process based on interviews and data collected from stakeholders.

Failure of Sinkhole Claimants to Repair Property or Stabilize Land

Representatives with the OIR, Citizens, as well as insurers, believe that the significant increase in sinkhole claims is driven by the ability of policyholders to often keep the cash proceeds from the claim instead of effectuating repairs to their home or remediating the land. The failure of sinkhole claimants to make repairs or stabilize land has concerned many property appraisers, most notably in Hernando and Pasco counties. Both property appraisers have indicated that this problem has had a damaging effect on the market values of affected homes which could lead to financial instability of local governments. Hernando County Property Appraiser, Alvin Mazourek, has estimated that since 2005, the county has lost $173 million in total market value as a result of value adjustments to sinkhole homes while Pasco County Property Appraiser, Mike Wells, has cited a reduction in property values in his county of over $50 million.

Requiring Policyholders to Remediate or Repair

The state has a public policy interest in ensuring that policyholders use insurance proceeds to remediate sinkhole activity. The failure of one policyholder to remediate sinkhole conditions underlying his or her property can subsequently affect their neighbor whose property may also experience sinkhole loss. Additionally, property values of nearby homes may be negatively affected. The statutory provisions requiring the policyholder to enter into a contract before receiving insurance proceeds are designed to ensure that insurance proceeds from a sinkhole loss are used to remediate sinkhole conditions. However, these statutory provisions have little relevance when the policyholder contests the claim. When the insurer and the policyholder settle a claim, the settlement agreement is highly unlikely to contain any condition that settlement proceeds be used to remediate the property. Any statutory attempt to require settlement proceeds to be used to remediate sinkhole conditions may well be interpreted to be an unconstitutional impairment of contract that impermissibly limits the right of the parties to the insurance contract to discharge their respective rights and liabilities via a settlement contract agreement. The only way to ensure that sinkhole proceeds are used to remediate sinkhole conditions is to create an environment where insurance proceeds are paid under the policy of insurance and fewer claims are contested by policyholders.

Sinkhole Statutory Provisions

Various provisions of the statutes governing insurance for sinkhole loss are the subject of ongoing litigation between policyholders and insurers. The provisions noted below appear to be fostering litigation between the parties, are creating uncertainty as to the meaning of the statutory language, or have inefficiencies that can be remedied through amendment.

Presumption of Correctness - Section 627.7073(1)(c), F.S., states that a sinkhole report is "presumed correct" if it conforms to statutory standards. Currently on appeal before the Florida Supreme Court is *Warfel v. Universal Ins. Co. of N.A.*, in which the Court will determine whether the presumption of correctness shifts the burden of proof to the insured or merely requires the insured to produce evidence regarding the facts at issue, at which point the presumption disappears. The statutory requirements for the handling and investigation of sinkhole claims give deference to the findings and recommendations of the engineering and geological professionals retained by an insurer to investigate a sinkhole claim. The provisions are designed to improve the availability and affordability of sinkhole coverage by reducing litigation. When a sinkhole loss is verified in the sinkhole report, s. 627.707(5)(a), F.S., requires the insurer "to pay to stabilize the land and building and repair the foundation" of the policyholder "in accordance with the recommendations of the professional engineer as provided under s. 627.7073…." The Second DCA's decision in *Warfe*l eliminates the presumption in favor of the insurer when the report is challenged in a court of law. Regardless of the result of the Florida Supreme Court decision in *Warfel*, the Legislature should consider clarifying the applicability of the presumption of correctness in s. 627.7073, F.S.

In Consultation With the Policyholder – Section 627.707(5), states that when a sinkhole loss is verified, the insurer must pay for repairs recommended by the engineers and geologists retained by the insurer "in consultation with the policyholder." The statute is arguably ambiguous as to what the statute is requiring when it directs the insurer to conduct repairs "in consultation with the policyholder." Insurers assert that the phrase means providing notice to the policyholder regarding payment of claim proceeds to conduct repairs. Some insureds and their representatives assert that the phrase requires the insurance company to essentially reach an agreement with the policyholder regarding the method of repair to be used to remediate the confirmed sinkhole. The issue has become the subject of litigation in sinkhole claims. Clarification of the "in consultation with the policyholder" language may serve to remove the differing interpretations by the parties to the insurance contract.

Structural Damage – Section 627.706, F.S., defines a sinkhole loss as "structural damage to the building, including the foundation, caused by sinkhole activity." Pursuant to the statutory definition of "sinkhole loss," insurers are required to provide coverage for "structural damage to the building, including the foundation, caused by sinkhole activity." The statute does not define the term "structural damage." The result is uncertainty as to how the Florida Statutes define sinkhole loss and precisely what coverage Florida Statutes mandate insurers make available. The term "structural damage" is currently being defined in one of two ways. Some parties state that the term means simply "damage to a structure." The second definition asserts that structural damage is damage that affects the load bearing capacity of the structure.[31]

[31] The 2007 Florida Building Code (FBC): Existing Building (1st Printing) defines "structural" to mean "any part, material or

Statute of Limitations – Under current law, there is no Florida statute of limitations for making a property insurance claim. The statute of limitations for bringing a breach of contract claim is five years. In sinkhole claims, the insured has five years from the date of the insurer's alleged breach to bring a breach of contract suit. Setting an actual date of loss for a sinkhole claim is difficult and often depends on the truthfulness of the insured in stating when possible sinkhole-related damage first appeared. Unfortunately, this allows some insureds to engage in questionable practices in an effort to maximize recovery. One such practice is backdating the date of loss to pre-June 1, 2005, to avoid the statutory requirement to perform repairs. Insureds seeking maximum policy limits may choose a date of loss under the policy term with the greatest limits. Policyholders with Citizens may attempt to circumvent Citizens' bad faith immunity by alleging a sinkhole date of loss under the prior insurer's policy.

Disputed Sinkhole Claims/Neutral Evaluation Program – In 2006, the Legislature established an alternative process for resolving sinkhole disputes called "neutral evaluation." The Department of Financial Services (DFS) certifies engineers and geologists to serve as "neutral evaluators" of sinkhole claims disputes. If the parties do not reach a settlement, the neutral evaluator renders an opinion whether a sinkhole loss has been verified and, if so, the estimated cost of repairs. Neutral evaluation is mandatory if requested by either party, but nonbinding, and the costs are paid by the insurer. The neutral evaluator's written recommendation is admissible in any subsequent action or proceeding relating to the claim. Individuals involved in the neutral evaluation process have expressed the following concerns.

- Neutral evaluators may not be truly neutral, and may be biased because there are no conflict of interest standards.
- Neutral evaluators are sometimes asked to render opinions outside of their area of expertise.
- The scope of duties of a neutral evaluator are not clear and the issues to be determined by the neutral evaluator are not clearly specified in statute.
- Neutral evaluation makes it difficult to utilize the appraisal clause of the insurance policy.
- Time frames imposed by statute need to be revised pursuant to recommendations by DFS staff so that the evaluation procedure is conducive to settling claims.
- The funding for DFS to operate the neutral evaluation program does not cover its administrative costs.

Public Adjuster Participation and Solicitation in Sinkhole Claims - Under current law, a public adjuster is defined as any person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third party claimant in negotiating or settling an insurance claim on behalf of the insured or third party. During the 2005 – 2009 period in which the number of sinkhole claims has risen sharply, the percentage of sinkhole claimants who are represented by public adjusters has increased significantly. Citizens reports that in 2005, only three percent of all sinkhole claims had public adjuster involvement, but by 2009, 25 percent of

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assembly of a building or structure which affects the safety of such building or structure and/or which supports any dead or designed live load and the removal of which part, material or assembly could cause, or be expected to cause, all or any portion to collapse or fail." The FBC for existing buildings also defines a condition called "substantial structural damage" which essentially constitutes damage that reduces the load-bearing capacity of the structure beyond a certain level. The FBC definitions of "structural" and "severe structural damage" indicate that the when the term "structural" is used in an engineering context, the term refers to the load bearing capacity of a building.

its statewide sinkhole claimants were represented by public adjusters. Many insurers believe that the increase in public adjuster involvement with sinkhole claims is a result of the aggressive advertising and solicitation campaigns used by public adjusting firms in the regions where the greatest number of sinkhole claims are filed.

Florida Hurricane Catastrophe Fund

The FHCF is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible).

The FHCF provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers. The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

The FHCF provides reimbursement to insurers for "losses" caused by a hurricane. Section 215.555(2)(d), F.S., defines "losses" as a "direct incurred losses" under covered policies. A direct incurred loss is a loss in which the insured peril is the proximate cause of damage. Sunshine State Insurance Company is challenging the SBA's interpretation of the statute that attorney's fees paid by an insurer to insureds pursuant to a negotiated or court-ordered settlement are not direct incurred losses and thus are not reimbursable under the FHCF contract. The Division of Administrative Hearings has scheduled a hearing on the dispute for April 4-5, 2011.

III. Effect of Proposed Changes:

Section 1 amends s. 215.555(2)(d), F.S., defining what constitutes "losses" under the Florida Hurricane Catastrophe Fund. The bill expands the definition of "losses" to include "all incurred losses" under covered policies, rather than "direct incurred losses." The bill also specifies that losses include amounts paid as fees on behalf of the policyholder. This change specifies that the FHCF must provide reimbursement for attorney's fees and public adjuster fees. The bill also specifies items that are not considered losses and thus are not reimbursable, which is designed to prevent FHCF reimbursement for losses that historically have not been covered by the fund because they were not "direct incurred losses." The statute currently excludes losses for fair rental value, rental income, or business interruption losses. The bill specifies that the following are also not reimbursable losses.

- Liability coverage losses.
- Property losses that are not primarily caused by a hurricane.
- Amounts paid because the insurer voluntarily expanded coverage, such as the waiver of a deductible.

- Reimbursement to the policyholder for an assessment levied by a condominium association or homeowners' association.
- Bad faith awards, punitive damage awards, and court-imposed fines, sanctions, or penalties.
- Amounts paid in excess of the insurance policy coverage limit.
- Allocated and unallocated loss adjustment expenses.

Section 2 specifies that the amendment to s. 215.555, F.S., will apply to the FHCF reimbursement contract that is effective June 1, 2011. The 2011 FHCF reimbursement contracts will be executed on March 1, 2011, effective June 1, 2011. Application of the new definition of "losses" likely will be applied to the 2011 contract through an amendment executed by the SBA and the insurer.

Section 3 amends 624.407, F.S., relating to surplus fund requirements for new insurers, to require that, to receive a certificate of authority to transact insurance in Florida, a new domestic residential property insurer that is not a wholly-owned subsidiary of an insurer domiciled in another state have a $15 million surplus. The current surplus requirements for new residential property insurers is $5 million, unless it is a wholly-owned subsidiary of an insurer domiciled in another state, in which case the minimum requirement is $50 million.

Section 4 amends 624.408, F.S., relating to the surplus fund requirements for current insurers, to requires that a residential property insurer holding a certificate of authority before July 1, 2011, have a surplus of: $5 million until June 30, 2016; $10 million from July 1, 2016, until June 30, 2021; and $15 million thereafter. If the residential property insurer does not hold a certificate of authority before July 1, 2011, it must have a surplus of $15 million. The current surplus requirement for a residential property insurer to maintain its certificate is $4 million.

Section 5 creates s. 624.4095(7), F.S., regarding liabilities related to federal multi-peril crop insurance. Some insurers that provide multi-peril crop insurance cede the entire risk to the Federal Crop Insurance Corporation or to a private reinsurer. Insurers that provide crop insurance coverage in this way encounter two special problems that this bill is intended to address.

Current law limits the ratio of gross written premiums for property insurers to nine times the surplus as to policyholders, and requires surplus to be at least ten percent of total liabilities. When a primary insurer cedes all of the crop risk to a reinsurer, it is not underwriting any of the loss, so it is not necessary to limit its gross written premiums directly to a ratio of its surplus. The bill provides that gross written premiums that are ceded to the Federal Crop Insurance Corporation or to an authorized reinsurer will not be included in the calculation of an insurer's gross writing ratio.

The second problem for these insurers is that it is unrealistic to limit the total liabilities to 10 times the surplus. This is because the primary insurer cedes the entire risk, so it carries a very large balance of reinsurance premiums payable (a liability). This payable balance is almost entirely offset by recoverables (an asset) from the reinsurers, but that does not reduce the "gross" liability that cannot exceed 10 times the surplus. The bill provides that the liabilities for the ceded reinsurance premiums payable for coverage ceded to the Federal Crop Insurance Corporation or an authorized private reinsurer will be netted against the asset for the amounts

recoverable from those reinsurers. It will then be this "netted" amount that would be compared to the insurer's surplus.

Section 6 amends s. 624.424, F.S., regarding use of accountants to prepare annual audits and audited financial reports. The bill enacts prohibitions recommended by the National Association of Insurance Commissioners that prohibit an insurer from using the same accountant or partner of an accounting firm to prepare its annual audit and audited financial report for more than five consecutive years, and to require a five year waiting period before the accountant or partner can be retained by the insurer for that purpose. Current law permits use of the same accountant or partner for 7 straight years followed by a two-year waiting period.

Section 7 amends s. 626.854, F.S., effective June 1, 2011, to limit public adjuster compensation to 20 percent of the reopened or supplemental claim payment for residential property insurance or condominium association policy claims. The public adjuster's compensation must solely be based on the claim payments or settlement obtained through the public adjuster's work after contracting with the insured or claimant.

The bill also clarifies the application of the limit on public adjuster compensation for claims paid within one year of a state of emergency. A public adjuster's compensation is limited to 10 percent of insurance claims payments made within one year of an event declared by the Governor to be a state of emergency. The limit is raised to 20 percent for claims payments for such events that are made more than one year after the declaration of emergency.

Section 8 amends s. 626.854, F.S., effective January 1, 2012.

Unfair and Deceptive Statements in Public Adjuster Advertisements

The bill specifies statements by a public adjuster in an advertisement or solicitation that constitute an unfair or deceptive insurance trade practice pursuant to s. 626.9541, F.S.:

- Inviting the policyholder to file a claim when there is no covered damage to insured property.
- Offering the policyholder monetary or valuable inducement to file a claim.
- Inviting a policyholder to file a claim by stating there is "no risk" to the policyholder.
- Making a statement or representation or using a logo that implies or mistakenly could be construed to imply that the solicitation is made or sanctioned by a governmental entity.

Requires Disclaimer on Public Adjuster Advertisements

The bill requires the following disclaimer on public adjuster advertisements in newspapers, magazines, flyers, and bulk mailers: "This is a solicitation for business. If you have had a claim for an insured property loss or damage and you are satisfied with the payment by your insurer, you may disregard the advertisement."

Insurer Claims Investigations

The bill requires that the insurance company adjuster, independent adjuster, investigator, or attorney provide at least 48 hours notice to the insured or insured's representative before

scheduling a meeting with the claimant or on-site investigation of the insured property. The insured or claimant may waive the notice requirement. A public adjuster is required to give prompt notice of a property insurance claim to the insurer. The public adjuster must ensure that notice of the claim is given, that the insurer receives a copy of the public adjuster's contract, that the property is available for the insurer's inspection, and that the insurer may interview the insured directly about the loss. The public adjuster may be present during the insurer's inspection of the property, but the public adjuster's unavailability may not delay the insurer's timely inspection.

Prohibition on Contractors Adjusting Claims

A licensed contractor or subcontractor is prohibited from adjusting a claim on the insured's behalf unless licensed as a public adjuster.

Section 9 amends s. 626.8651(6), F.S., to require a public adjuster apprentice to meet continuing education requirements (minimum 8 hours, including 2 hours of ethics) in order to obtain licensure as a public adjuster. The provision is effective January 1, 2012.

Section 10 amends s. 626.8796, F.S., regarding public adjuster contracts, effective January 1, 2012, to require that the public adjuster contract include the adjuster's name, business address, license number, and public adjusting firm's name. The contract must also include the insured's name and street address. A brief description of the loss and the type of claim involved (emergency, non-emergency, supplemental) and the percentage of the public adjuster's compensation must also be included. The contract must be signed and dated by the public adjuster and all named insureds. If all named insureds cannot sign the contract, the public adjuster must submit a signed affidavit that the signatories have authority to enter the contract and settle all claims issues on behalf of all named insureds. The public adjuster must provide a copy of the executed contract to the insurer within 30 days of its execution.

Current law also requires the public adjuster contract to provide notice that any person who injures, defrauds, or deceives an insurer or insured commits a third degree felony.

Section 11 creates s. 626.70132, F.S., regarding notice of a hurricane or windstorm claim, to require that notice of a new, reopened, or supplemental hurricane or windstorm property insurance claim be provided within three years of the hurricane first making landfall or the windstorm causing the covered damage. A supplemental or reopened claim is defined in this section as an additional claim for recovery made from the same hurricane or windstorm that the insurer previously adjusted. The section does not affect any applicable statute of limitations provided in s. 95.11, F.S.

Section 12 repeals s. 627.0613(4), F.S., to eliminate the requirement that the Insurance Consumer Advocate annually prepare a report card for each authorized personal residential property insurer.

Section 13 amends s. 627.062, F.S., regarding the rate standards applicable to property, casualty and surety insurance. The bill makes multiple substantive and clarifying changes regarding the

submission of rates by insurers and their approval or denial by the Office of Insurance Regulation. This section:

- Requires the office to issue an approval or notice of intent to disapprove of a "file and use" rate filing within 90 days of the filing's submission. Currently the Office is required to issue a "notice of intent to approve" instead of an approval.
- Prohibits the OIR from impeding an insurer's right to acquire policyholders, advertise, or appoint agents, including agent commissions.
- No longer prohibits the following acts in order for an insurer to make a separate filing related to reinsurance or financing products that replace Florida Hurricane Catastrophe Fund Temporary Increase in Coverage Limits (TICL) coverage.
    - Including expenses or profit for the insurer.
    - Including other changes in its rate in the filing.
    - Having implemented a rate increase in the past 6 months.
    - Filing for a rate increase within 6 months of approval.
- Deletes language related to the development of a standard rating territory plan for use by all insurers for residential property insurance.
- Deletes obsolete language related to implementation of the presumed factor for medical malpractice insurance pursuant to the 2003 medical malpractice reforms.
- Deletes obsolete language prohibiting property insurance filings from being made on a "use and file" basis. The language only applies to filings made before December 31, 2010.
- Limits the OIR's authority to disapprove rate filings for sinkhole insurance. Under the bill, the OIR may only deny the rate filing if the rate is inadequate, or charges the policyholder or applicant a higher premium based on race, religion, sex, national origin, or marital status.

Section 14 amends s. 627.0629, F.S., regarding windstorm damage mitigation discounts for residential property insurance.

Mitigation Discounts

Current law requires rate filings for residential property insurance to take the presence of mitigation techniques into account and provide actuarially reasonable credits, discounts, and reduced deductibles for mitigation techniques. The bill specifies that the rate filing must also consider the absence of mitigation techniques and include actuarially reasonable debits or increases in deductibles that recognize the absence of mitigation techniques.

The bill specifies that the aggregate amount of mitigation discounts granted by an insurer should not exceed the aggregate expected reduction in losses resulting from the mitigation techniques. An insurer that demonstrates that its aggregate mitigation discounts exceed the expected reduction in aggregate loss created by the mitigation may recover the lost revenue through an increase in its base rates. The bill deletes the requirement that the OIR develop a method of calculating mitigation discounts that directly correlates to the uniform home grading scale.

Implementation of Approved Rates Over Multiple Years

Current law allows an insurer to implement an approved rate filing over multiple years in order to provide an appropriate transition period for policyholders. Insurers are permitted to include the

actual cost of private market reinsurance that replaces Florida Hurricane Catastrophe Fund TICL coverage within the rate. The bill allows the portion of the rate that corresponds to the cost of reinsurance to replace TICL coverage to include an expense or profit load.

Section 15 amends s. 627.351(6), F.S., regarding Citizens Property Insurance Corporation.

Renames the High Risk Account

The bill renames the Citizens "High Risk Account" the "Coastal Account." The account is being renamed to improve Citizens' bargaining position when dealing with outside investors, as the current name "High Risk Account" has a negative connotation.

Citizens Policyholder Surcharge

The bill specifies that the Citizens policyholder surcharge is payable upon cancellation, termination, renewal, or issuance of a new policy within 12 months after imposition of the surcharge or the period of time necessary to collect the surcharge. Citizens cannot levy a regular assessment until it has levied the full amount of the Citizens policyholder surcharge. Current law is less specific regarding when the surcharge is due, only stating that it is to be collected when the insurance policy is issued or renewed.

Repeals Requirement to Reduce High Risk Area

Citizens is authorized to offer policies that that provide coverage only for the peril of wind for risks located within the high risk/coastal account. The high risk area of the high risk/coastal account consists of areas that were eligible for coverage in the Florida Windstorm Underwriting Association, essentially coastal areas at high risk for a hurricane. The bill repeals the requirement to reduce the high-risk area after December 1, 2010, if necessary to reduce the probable maximum loss attributable to wind-only coverages to 25 percent below the "benchmark" for the high-risk area, which is defined in statute as the 100-year probable maximum loss for the Florida Windstorm Underwriting Association based on its November 30, 2000, exposures. The bill also repeals a requirement to reduce the high-risk area after February 1, 2015, by 50 percent below the benchmark.

Repeal of the requirement to reduce the high risk area prevents the reduction of Citizens exposure to losses due to hurricane loss under wind-only policies in coastal areas. However, reduction of the high risk area might also reduce the number of private market carriers providing coverage in coastal areas. Currently private market insurers are able to provide coverage to risks in the coastal area that exclude wind. If such insurers are required to cover wind, they may choose not to write the policy with the eventual result perhaps being that the entire risk is insured by Citizens.

Citizens Board of Governors

Members of the board with insurance experience are deemed to be within the exception in s. 112.313(7)(b), F.S., that allows a public officer to practice a particular profession or occupation when required or permitted by law or ordinance.

The bill provides procedures for board members who have a conflict of interest regarding a particular matter. A Citizens board member may not vote on any measure that would inure to the gain or loss of the board member; the board member's corporate principal or the parent or subsidiary of the corporate principal; or the relative or business associate of the board member. A board member with a conflict must state his or her interest in the matter prior to the vote being taken. The board member must also provide written disclosure of the conflict within 15 days after the vote, and the disclosure must be included in the minutes of the board meeting and available as a public record.

Section 16 amends s. 627.3511(5)(a), F.S., to provide conforming changes regarding the name change of the Citizens coastal account.

Section 17 amends s. 627.4133, F.S., regarding the written notice requirements for nonrenewal of a policy.

Notice of Nonrenewal for Personal or Commercial Residential Property Insurance Policies

The bill creates a uniform 90-day written notice requirement for the nonrenewal, cancellation, or termination of a personal lines or commercial residential property insurance policy. Under current law, an insurer must provide 100 days written notice. However, if the insurer has covered the insured's property for the last five years or more then 180 days written notice is required. If the insured has been with the insurer for less than five years but the nonrenewal, cancellation, or termination is effective between June 1 and November 30, then the insurer must give the greater of 100 days written notice or notice by June 1.

Notice of Nonrenewal for Citizens "Take-out" Policies

The bill requires Citizens to provide 45 days notice of nonrenewal to the policyholder for a policy that has been assumed by an authorized insurer. For such policies, Citizens is exempt from the notice requirements of paragraph (2)(a) and (2)(b) apply to policies for personal lines and commercial residential property insurance. Paragraph (2)(a) requires the insurer to provide 45 days written notice of the renewal premium. Paragraph (2)(b) contains a number of notice requirements pertaining to the nonrenewal, cancellation, or termination of the policy.

45-Day Notice of Cancellation or Non-Renewal of Property Insurance Policies

An insurer may cancel or nonrenew a property insurance policy after 45 days notice if the OIR finds that the early cancellation of policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal. Acceptable grounds for early cancellation or nonrenewal may include the insurer's financial condition, the lack of adequate reinsurance for hurricane risks, or other relevant factors. The office may condition its findings on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81, F.S., or the appointment of a receiver under ch. 631, F.S.

Section 18 creates s. 627.73141, F.S., which allows insurers to change policy terms for a renewal policy of personal lines property insurance without cancelling the policy and providing a notice of cancellation.

Notice of Change in Policy Terms

The bill authorizes insurers to renew a personal lines property and casualty insurance policy under different terms by providing to the policyholder a written "Notice of Change in Policy Terms" instead of a written "Notice of Non-Renewal." The Notice must be titled "Notice of Change in Policy Terms," give the insured written notice of the change, and be enclosed with the written notice of renewal premium. The insured is deemed to have accepted the change in policy terms upon the insurer's receipt of the premium payment for the renewal policy. If the insurer fails to provide the Notice of Change in Policy Terms the original policy terms remain in effect. The bill also provides Legislative intent language stating that the section is designed to allow insurers to change policy terms without nonrenewing policyholders, alleviate policyholder confusion caused by the required policy nonrenewal when an insurer intends to renew the policy under different terms, and encourage policyholders to discuss their coverages with insurance agents. Currently, when an insurer wants to change the terms of the insurance contract by which it provides coverage to the insured at renewal, it must provide the insured with a written Notice of Non-Renewal in compliance with the time frames for notice requirements provided for in statute.

Section 19 amends s. 627.7011, F.S., regarding insurer payment of losses insured on a replacement cost basis.

Payment of Losses to Dwellings Insured on Replacement Cost Basis

The insurer must initially apply the deductible and pay the actual cash value of the insured loss. The policyholder must then contract for the performance of building and structural repairs, which triggers the insurer's obligation to pay any remaining amounts incurred to perform the repairs as the work is performed. The insurer may waive the requirement that the policyholder contract for repairs. The insurer, contractor, or subcontractor may not require the policyholder to advance payment for repairs except for incidental expenses to mitigate further damage. The insurer must pay replacement cost coverage without reservation or holdback of any depreciation if a total loss occurs in accordance with s. 627.702, F.S., the valued policy law.

Payment of Personal Property Losses on Replacement Cost Basis

The insurer may limit its initial payment to the actual cash value of the personal property. The insurer must pay the reservation or holdback upon the insured's providing a receipt for the replaced property. The insurer must provide clear notice of the payment process in the insurance contract. The insurer is prohibited from requiring the policyholder to advance payment to replace property.

Section 20 amends s. 627.70131(5)(a), F.S., regarding payment of property insurance claims, to require that an initial, reopened, or supplemental property insurance claim be paid or denied by the insurer the later of:

- 90 days after receiving notice of the claim unless there are factors beyond the insurer's control that reasonably prevent payment; or
- 15 days after there are no longer factors beyond the control of the insurer that reasonably prevented payment.

Current law contains the timeframes for payment of a claim described above, but simply says they apply to a property insurance claim. This has resulted in disputes regarding the time frame the insurer has to make a payment for a reopened or supplemental property insurance claim.

Section 21 provides a statement of Legislative findings regarding sinkhole loss insurance coverage. The findings include the following declarations.

- There is a compelling state interest in maintaining a viable and orderly property insurance market.
- The 2005 legislative revisions to the sinkhole statutes (ss. 627.706-627.7074, F.S.) are designed to increase reliance on objective, scientific testing requirements and reduce the number of sinkhole claims and disputes arising under the prior law.
- The Legislature finds that losses associated with sinkhole claims adversely affect the public health, safety, and welfare of this state and its citizens. The Legislature determined that since the 2005 statutory revisions, both private-sector insurers and Citizens have experienced high claims frequency and severity for sinkhole insurance claims. Additionally, many properties remain unrepaired even after loss payments, which reduce the local property tax base and adversely affect the real estate market.
- Sections 19 through 24 of the act clarify technical or scientific definitions adopted in the 2005 legislation in order to reduce sinkhole claims and disputes.
- The legal presumption intended by the Legislature is clarified to reduce disputes and litigation associated with technical reviews associated with sinkhole claims.
- Other statutory revisions advance legislative intent to rely on scientific or technical determinations relating to sinkholes and sinkhole claims, reduce the number and cost of sinkhole claim disputes, and ensure that repairs are made pursuant to scientific and technical determinations and insurance claims payments.

Section 22 amends s. 627.706, F.S., which currently requires property insurers to offer sinkhole coverage to each policyholder for an additional premium and requires that coverage for catastrophic ground cover collapse be included in every property insurance policy. The bill makes the following changes:

Removes the Requirement that Insurers Offer Sinkhole Coverage

Insurers no longer must make sinkhole coverage available. Instead, insurers are authorized to make the coverage available but are not required to do so. Insurers are also allowed to restrict sinkhole coverage to the principal building.

Sinkhole and Catastrophic Ground Cover Collapse Insurance Only Applies to Residential Property Insurance

Property insurers covering commercial risks will no longer be bound by the requirement to include coverage for catastrophic ground cover collapse coverage and the provisions of the section regarding sinkhole coverage. Only insurers transacting *residential* property insurance as described in s. 627.4025, F.S., will be required to include catastrophic ground cover collapse and will be governed by the provisions of the bill authorizing sinkhole coverage. Section 627.4025, F.S., defines residential coverage as follows.

- Personal lines coverage which consists of homeowner's, mobile homeowner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's, and similar policies.
- Commercial lines residential coverage which consists of condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowner's association.

Applies the Sinkhole Deductible to the Sinkhole Investigation

The sinkhole deductible will apply to any expenses incurred by the insurer in investigating a sinkhole claim. Separate deductibles for sinkhole coverage are currently authorized to be equal to one, two, five, or ten percent of the policy dwelling limits.

Redefines Sinkhole Loss Coverage

The bill changes the definition of "sinkhole loss," primarily by creating a statutory definition of "structural damage." Sinkhole loss is currently defined as "structural damage to the building, including the foundation, caused by sinkhole activity." However, "structural damage" is not defined by statute. The bill defines structural damage as the occurrence of all of the following.

- A covered building suffers foundation movement outside an acceptable variance under the applicable building code; and
- Damage to a covered building, including the foundation, that prevents the primary structural members and/or primary structural systems from supporting the loads and forces they are designed to support; and
- The loss meets any additional conditions contained in the insurance policy.

Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage as defined by the bill that is caused by sinkhole activity and any additional conditions contained in the insurance policy. Contents coverage and additional living expense coverage is only available if there is *structural* damage to the covered building caused by sinkhole activity. The bill also specifies that "sinkhole loss" means structural damage to the *covered* building.

The definition of sinkhole loss is also modified by the bill's amendment of the definition of sinkhole activity. The bill specifies that *contemporary* movement or raveling of soils is necessary for sinkhole activity to occur. Merriam-Webster's defines "contemporary" in two different ways, and either definition arguably could apply. The term can either refer to something that exists or

occurs within the current modern time period or can mean simultaneous or within the same time period. The first definition would require the movement or raveling of soils to have occurred recently. The second definition would require it to have occurred within the same time period as another event, which could mean that the weakening of the earth supporting the property would result from soil movement that occurred at roughly the same time, but would not necessarily require both events to have occurred recently.

Two Year Sinkhole Claim Deadline

The bill requires a policyholder to provide notice to the insurer of a new, supplemental, or reopened claim for sinkhole loss within 2 years after the policyholder knew or should have known about the sinkhole loss.

Changes the Requirements for Professional Engineers and Professional Geologists

In order to qualify as a professional engineer under the sinkhole statutes, a professional engineer must have successfully completed five or more courses in geotechnical engineering, structural engineering, soil mechanics, foundations, or geology. The bill deletes the requirement that the engineering degree include a specialty in geotechnical engineering. The bill also deletes the requirement that the geology degree include expertise in Florida geology.

Alters Provisions Related to Catastrophic Ground Cover Collapse

The bill amends the definition of catastrophic ground cover collapse to specify that the coverage only applies if there is structural damage to the *covered* building. The bill also deletes a reference to "structural damage" that the current statute implies can consist of "merely the settling or cracking of a foundation, structure, or building…."

Currently, when a policyholder chooses coverage only for catastrophic ground cover collapse, the insurer must give notice that sinkhole losses are not covered, but that sinkhole coverage can be purchased for an additional premium. Under the bill, insurers no longer must offer sinkhole coverage to policyholders. Accordingly, the notice to policyholders will no longer state that the insured may purchase sinkhole loss coverage for an addition premium.

Nonrenewal of Policies That Include Sinkhole Coverage

The bill allows an insurer to nonrenew a policy that provides sinkhole coverage and instead offer coverage that includes catastrophic ground cover collapse and excludes sinkhole coverage. The insurer is not required to provide the policyholder with the opportunity to purchase a sinkhole endorsement. The insurer may require an inspection of the property prior to issuing a sinkhole coverage endorsement. Currently the nonrenewal process detailed in this paragraph is limited to Pasco County and Hernando County and requires the insurer to make an offer of sinkhole coverage for an additional appropriate premium, subject to the underwriting or insurability guidelines of the insurer.

Section 23 makes a technical change to s. 627.7061, F.S., substituting policyholder for insured.

Section 24 repeals s. 627.7065, F.S., eliminating the database of information relating to sinkholes developed by the Department of Financial Services and the Department of Environmental Protection.

Section 25 amends s. 627.707, F.S., containing the standards for the investigation of sinkhole claims by insurers, the payment of such claims, and the nonrenewal of policies covering sinkhole loss under specified circumstances. The bill substantially modifies the process for an insurer's investigation of a sinkhole claim.

Investigation of Sinkhole Claims

The bill creates a substantially new process for an insurer's investigation of a sinkhole claim. The process requires the insurer to determine whether: (1) the building has incurred structural damage that (2) has been caused by sinkhole activity. Coverage for sinkhole loss will not be available if structural damage is not present or sinkhole activity is not the cause of structural damage. The new process is as follows:

1) *Initial Inspection & Structural Damage Determination*: Upon receipt of a claim for sinkhole loss, the insurer must inspect the policyholder's premises to determine if there has been structural damage which may be the result of sinkhole activity. This inspection will often require the insurer to retain a professional engineer to evaluate whether the insured building has incurred structural damage as defined by statute.
2) *Sinkhole Testing Initiated by the Insurer*: The insurer is required to engage a professional engineer or professional geologist to conduct sinkhole testing pursuant to s. 627.7072, F.S., if the insurer confirms that structural damage exists and is either unable to identify a valid cause of the structural damage or discovers that the structural damage is consistent with sinkhole loss. If coverage is excluded under the policy even if sinkhole loss is confirmed, then the insurer is not required to conduct sinkhole testing. The bill deletes the requirement that the insurer conduct sinkhole testing upon the demand of the policyholder.
3) *Notice to the Policyholder*: The bill maintains the requirement that the insurer must provide written notice to the policyholder detailing what the insurer has determined to be the cause of damage (if the determination has been made) and a statement of the circumstances under which the insurer must conduct sinkhole testing. Notice of the right of the policyholder to demand sinkhole testing is deleted.

4) *Authorization to Deny Sinkhole Claim*: Insurers may continue to deny the claim upon a determination that there is no sinkhole loss.
5) *Policyholder Demand for Sinkhole Testing*: The bill specifies that the policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denies the claim for lack of sinkhole loss without performing sinkhole testing and if coverage would be available if a sinkhole loss is confirmed (i.e. the claim denial was not issued due to policy conditions or exclusions of coverage and instead was based the failure of the loss to meet the definition of sinkhole loss). However, if sinkhole testing certifies pursuant to s. 627.7073, F.S., that there is no sinkhole loss (structural damage caused by sinkhole activity), then the policyholder must pay the insurer up to 50 percent of the sinkhole testing costs up to the greater of the sinkhole deductible or $2,500.

6) *Payment of a Claim for Sinkhole Loss*: The insurer continues to be required to pay to stabilize the land and building and repair the foundation upon the verification of a sinkhole loss. The bill specifies that payment shall be made to conduct such repairs in accordance with the recommendations of the professional engineer retained by the insurer under s. 627.707(2), F.S. The bill also clarifies that the insurer is required to give notice to the policyholder regarding payment of the claim. Current law states that the claim payment must be made "in consultation with the policyholder," which has created disagreement between insurers and some policyholders whether the statute requires only notice to the policyholder or whether the insurer and policyholder must reach an agreement regarding the methods of sinkhole repairs to be used and their estimated costs.

Payment of Sinkhole Loss Claims

Under current law an insurer may limit payment to the actual cash value of the sinkhole loss not including below-ground repair techniques until the policyholder enters into a contract for the performance of building stabilization repairs. The bill requires the contract for below-ground repairs to be made in accordance with the recommendations set forth in the insurer's sinkhole report issued pursuant to 627.7073, F.S.. and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss. The time period is tolled if either party invokes neutral evaluation. Stabilization and all other repairs to the structure and contents must be completed within 12 months after the policyholder enters into the contract for repairs unless the insurer and policyholder mutually agree otherwise, the claim is in neutral evaluation, the claim is in litigation, or the claim is under appraisal.

Under current law, the insurer may make payment directly to persons selected by the policyholder to perform land and building stabilization and foundation repairs if the policyholder and any lien holder grant written approval. The bill deletes the requirement of policyholder approval in order for the insurer to make direct payment to the persons performing repairs.

Prohibition of Rebates for Sinkhole Repairs

The bill prohibits a policyholder from accepting a rebate from a person performing sinkhole repairs. If the policyholder does receive a rebate, coverage under the insurance policy is rendered void and the policyholder must refund the amount of the rebate to the insurer. Furthermore, a policyholder that accepts a rebate or a person who offers a rebate commits insurance fraud punishable as a third degree felony as provided in s. 775.082, F.S. (up to five years imprisonment), s. 775.083, F.S. (up to a $5,000 fine), and s. 775.084, F.S. (for a habitual felony offender up to 10 years imprisonment with no eligibility for release for five years).

Requirement to Pay Costs of Sinkhole Testing

If the policyholder requests that the insurer conduct sinkhole testing and the sinkhole testing report certifies there is no sinkhole loss, the policyholder must reimburse 50 percent of the insurer's sinkhole testing costs up to the greater of the deductible or $2,500. The policyholder is not responsible for testing costs if sinkhole testing is initiated by the insurer (due to a determination that structural damage is present).

Nonrenewal of Policies

Current law allows the insurer to nonrenew a policy on the basis of a sinkhole loss claim if the insurer makes payments that exceed the current policy limit for property damage coverage. The bill instead provides that the policy may be nonrenewed if the payments equal or exceed the policy limit in effect on the date of loss to the covered building as set forth on the declarations page. However, the policy cannot be nonrenewed if the insured has repaired the structure in accordance with the engineering recommendations provided in the sinkhole report obtained by the insurer.

Section 26 amends s. 627.7073, F.S., containing the statutory requirements regarding sinkhole testing reports.

Sinkhole Testing Reports

The bill alters the findings that must be contained within a certified sinkhole testing report, primarily to require the report to determine if structural damage is present that has been caused by sinkhole activity.

If the sinkhole report verifies the existence of a sinkhole loss, the bill requires the report to certify that structural damage to the covered building has been identified within a reasonable professional probability. The report must verify causation by certifying that the cause of structural damage is sinkhole activity. The report must also certify that the analyses were sufficient to identify sinkhole activity as the cause of structural damage. The bill maintains the requirement that the report provide recommendations for stabilizing the land and building and repairing the foundation.

In the event that a sinkhole loss is not verified, the report must state that there is no structural damage or that the cause of structural damage is not sinkhole activity within a reasonable professional probability. The report must also state the cause of structural damage when certifying that a sinkhole loss has not occurred.

Presumption of Correctness

Current law states that the findings, opinions, and recommendations contained in a statutorily compliant sinkhole testing report are presumed correct. The bill also states that the presumption of correctness shifts the burden of proof in court to the Plaintiff. The bill will reverse the holding of *Warfel v. Universal Ins. Co. of N.A.*, which found that the presumption of correctness does not shift the burden of proof. The bill specifies that the presumption of correctness only applies to a report prepared by the insurer's professional engineer with regard to land and building recommendations. The presumption of correctness is based upon public policy concerns regarding the affordability of sinkhole coverage, to provide consistency in claims handling, and to reduce the number of disputed sinkhole claims.

Filing of Sinkhole-Related Reports with Clerk of Court

The bill expands current law, which requires the insurer to file a sinkhole report with the county Clerk of Court when paying a claim for sinkhole loss. Insurers must also file a neutral evaluator's report that verifies a sinkhole loss, a copy of the certification that stabilization has been completed (if any), and the amount of the payment. The bill also requires the policyholder to file with the county Clerk of Court a copy of any sinkhole report regarding the insured property prepared at the request of the policyholder. Filing the policyholder's sinkhole report is a precondition to accepting payment for a sinkhole loss.

Notice to Property Buyers of Sinkhole Claims

The bill strengthens the requirement that sellers notify the buyers of real property of any sinkhole claims payments regarding the property and whether all proceeds were used to repair sinkhole damage. The bill requires the disclosure to be made before closing and to include the amount of the payment received. The seller must also provide to the buyer prior to closing the statutory sinkhole report, all other reports regarding the property, the neutral evaluation report, and the certification indicating that stabilization of the property is completed.

Section 27 amends, s. 627.7074, F.S., which provides the procedure for the neutral evaluation of sinkhole claims administered through the Department of Financial Services (DFS). The bill specifies that neutral evaluation is available to either party if a sinkhole report has been issued pursuant to s. 627.7073, F.S. Currently, the statute does not state when neutral evaluation can be requested, which has resulted in requests for neutral evaluation before sinkhole testing has been conducted. In addition, the bill requires neutral evaluation to determine the following.

- Causation.
- All Methods of stabilization and repair both above and below ground.
- The costs for stabilization and all repairs.
- Information necessary to determine whether sinkhole loss has been verified, causation, and estimated repair costs.

The neutral evaluator's report must describe all matters that are the subject of the neutral evaluation, including the following.

- Whether sinkhole loss has been verified or eliminated within a reasonable degree of professional probability.
- Whether sinkhole activity caused structural damage to the building.
- If sinkhole loss is present, the estimated cost of stabilizing the land and covered structures and other appropriate remediation and necessary building repairs due to sinkhole loss.

Availability of Appraisal

Neutral evaluation does not invalidate an appraisal clause in an insurance policy, which either party may select to resolve a dispute regarding the amount of loss.

Neutral Evaluator Access to Information

The neutral evaluator must have reasonable access to the interior and exterior of insured structures that are the subject of a claim. The policyholder must provide the neutral evaluator with any reports initiated by the policyholder or the policyholder's agent that confirm sinkhole loss or dispute another sinkhole report.

Criteria for Disqualification of a Neutral Evaluator

The parties may disqualify up to two neutral evaluators proposed by the DFS without cause. The parties may also submit requests to disqualify evaluators for cause. The proposed neutral evaluator may only be disqualified for cause because of a specified familial relationship, a conflict of interest based on prior representation of either party or adverse to the parties' interests in a substantially related matter, or a prior employment relationship with either party. Under current law, each party may disqualify up to three proposed neutral evaluators for any reason, but there are no disqualifications for cause.

Time-Frames for Conducting Neutral Evaluation

The bill generally expands the time frames for conducting neutral evaluation. The parties are directed to agree to the appointment of a qualified neutral evaluator, but if they cannot do so within 14 days, the Department of Financial Services is directed to select the neutral evaluator. The neutral evaluator that is selected must notify the parties of the schedule for the neutral evaluation conference within 14 days of receiving the assignment. The neutral evaluator is directed to make reasonable efforts to hold the conference within 90 days after the DFS has received the neutral evaluation request, but failure to do so does not invalidate either party's right to neutral evaluation. The neutral evaluation report must be sent to all parties and the DFS within 14 days after completing the neutral evaluation conference. The mandatory stay of court proceedings pending completion of neutral evaluation is automatically lifted five days after the filing of the neutral evaluator's report with the court.

Permits Additional Experts and Testing to Assist the Neutral Evaluator

The neutral evaluator that lacks the training and credentials to provide an opinion regarding a disputed issue may enlist another professional neutral evaluator, a professional engineer or professional geologist, or a licensed building contractor who has the training and credentials to provide that opinion.

The neutral evaluator may also request the entity that performed the sinkhole investigation pursuant to s. 627.7072, F.S., perform additional and reasonable testing that is deemed necessary by the neutral evaluator.

Admissibility of Neutral Evaluator's Testimony and Report

The neutral evaluator's full report and testimony must be admitted in any action, litigation or proceeding giving rise to the claim or related to the claim. However, oral or written statements or nonverbal conduct other than those required to be admitted are confidential and may not be disclosed to a person other than a party to neutral evaluation or a party's counsel.

Other Provisions

The bill includes the following provisions.

- The actions of the insurer are not a confession of judgment or admission of liability if an insurer timely complies with the neutral evaluator's recommendations but the policyholder declines to resolve the matter in accordance with those recommendations.
- Payments shall be made pursuant to the insurance policy and s. 627.707(5), F.S., if the insurer agrees to comply with the neutral evaluator's report.
- Neutral evaluators are agents of the DFS and have immunity from suit.
- The DFS must adopt procedural rules for neutral evaluation.

Section 28 amends s. 627.712(1), F.S., to provide conforming changes regarding the name change of the Citizens coastal account.

Section 29 provides that act is generally effective July 1, 2011, except as otherwise expressly provided. This provision is effective June 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers should benefit because the bill strengthens insurer solvency by increasing the minimum surplus requirements for "new" or "current" residential property insurers which increases the likelihood that insurers can pay policyholder claims and that fewer insurers will enter rehabilitation or liquidation proceedings. The bill also safeguards insurer solvency by permitting insurers to cancel or nonrenew insurance policies within 45 days if the OIR finds the early cancellations are necessary to protect the best interests of the policyholders and the public.

Insurance agents should benefit under this legislation because the OIR is precluded from directly or indirectly impeding or compromising an insurer's right to acquire policyholders, advertise, or appoint agents, including the amount of agent commissions during a rate filing procedure.

Revising the adjustment and holdback procedures for homeowners' insurance policies which offer replacement cost coverage should help ensure that policyholders make necessary repairs to their dwellings. The revisions should also discourage inflated estimates for personal property claims that are insured on a replacement basis.

The revisions to the statutes governing sinkhole coverage should reduce the number of sinkhole claims and disputes, ultimately reducing the losses associated with such claims. The reforms should reduce premium costs for policyholders purchasing residential property insurance and increase the availability of coverage within the private market. However, claim costs associated with sinkhole loss may increase in the short term with the passage of this bill, as a number of policyholders may file sinkhole damage claims alleging damage that occurred before the effective date of the reforms contained in this bill.

Insurers no longer must offer sinkhole coverage for an additional premium. Also, commercial property insurance will no longer contain catastrophic ground cover collapse or sinkhole coverage. This likely will reduce the availability of sinkhole coverage from the private market or Citizens Property Insurance Corporation. Representatives from the Florida Surplus Lines Service Office indicated to committee staff that sinkhole coverage is not generally available from the surplus lines market at the present time.

The bill requires the Florida Hurricane Catastrophe Fund to provide reimbursement for fees (such as attorney's fees) paid on behalf of the policyholder and requires reimbursement for all incurred losses, with exceptions. To the extent this results in additional monies paid by the FHCF, it could increase the likelihood that the fund will have to issue revenue bonds. If the fund does not provide reimbursement for fees, it may incentivize insurance carriers to pay claims prior to the Plaintiff retaining an attorney.

C. Government Sector Impact:

Citizens Property Insurance Corporation is sustaining large losses related to sinkhole losses that are far greater than the sinkhole premium that Citizens is permitted to accept. The reforms to the sinkhole coverage insurance market in the bill are designed to reduce the costs associated with sinkhole claims.

Eliminating the database of information relating to sinkholes developed by the Department of Financial Services and the Department of Environmental Protection will remove all costs associated with its maintenance.

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/CS by Budget Subcommittee on General Government Appropriations on March 11, 2011

The committee substitute makes the following substantial changes:

- Requires that all windstorm and hurricane property insurance claims be made within three years of the actual occurrence.
- Reinstates current language related to the collection of assessments that was inadvertently deleted (technical).
- Deletes the provision which specifies that the certification of a rate filing is not rendered false if the insurer provides additional or supplementary information requested by the Office of Insurance Regulation and reinstates current law.
- Deregulates sinkhole insurance rates with the goal of restoring a competitive market for sinkhole insurance in Florida.

CS by Banking and Insurance on February 22, 2011

The Committee Substitute makes the following substantial changes:

- Requires the Florida Hurricane Catastrophe Fund to provide reimbursement for all incurred losses, including fees, with exceptions.
- Deletes the requirement that the Insurance Consumer Advocate issue yearly report cards for personal residential property insurers.
- Deletes the requirement to reduce the Citizens high-risk area that is eligible to purchase wind-only coverage from Citizens.
- Reduces to 90 days the written notice of nonrenewal, cancellation, or termination for personal or residential property insurance policies.
- Creates requirements for the payment of a loss to a dwelling or personal property insured on a replacement cost basis. The insurer must pay the actual cash value of the loss. Payment for the replacement cost is available once the insured has contracted to perform dwelling repairs or has provided a receipt to the insurer for the purchase of personal property financed by the payment of insurance proceeds.

- Specifies that if an insurer cancels a policy providing sinkhole coverage and instead offers a policy that provides catastrophic ground cover collapse, the insurer is not required to offer a sinkhole coverage endorsement.
- Requires a policyholder to refund to the insurer the amount of a refund accepted from any person performing sinkhole repairs and voids coverage.
- Specifies that a policyholder is liable for part of the cost of sinkhole testing conducted by the insurer if the policyholder requested the testing and a sinkhole loss is not verified.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 249 and 250
insert:

(6) REVENUE BONDS.—

(b) *Emergency assessments*—

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct

premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and

remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and

until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2011 ~~2013~~, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2011 ~~2013~~.

850230

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 221 and 222
and insert:
subsection (2) and paragraph (b) of subsection (6) of section 215.555, Florida Statutes, are amended to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 5
and insert:
Catastrophe Fund, to exclude certain losses; moving up the date for repealing the exemption for medical malpractice insurance premiums from emergency assessments; providing

546352

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 656 and 657
insert:

Section 10. Section 626.8652, Florida Statutes, is created to read:

626.8652 Public adjuster for sinkhole insurance.—Effective July 1, 2012, a licensed public adjuster may not adjust a catastrophic ground cover collapse or sinkhole claim as provided under ss. 627.706-627.7074 unless the adjuster is certified by the department as having completed a sinkhole education program established by the department by rule and worked for at least 1 year under the direct supervision of a public adjuster certified

546352

under this section.

(1) The department may waive this requirement and certify an adjuster who demonstrates to the department that he or she has adjusted at least 500 sinkhole claims, without having been subject to any disciplinary actions by the department, before July 1, 2012.

(2) A certified public adjuster must submit to the department for review a copy of any proposed advertisement to the public in order to ensure that such advertisement does not contain any false, misleading, or deceptive information about the services to be provided by the adjuster. The department shall adopt advertising standards by rule. The department may charge a fee to cover the cost of reviewing such advertisements.

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

And the title is amended as follows:

After line 59

insert:

creating s. 626.8652, F.S.; requiring public adjusters adjusting claims for sinkhole damage to be certified; providing certification requirements; providing an exemption for certain adjusters; requiring the Department of Financial Services to adopt advertising standards by rule and review proposed advertisements by certified adjusters; authorizing the department to charge a fee for such review;

867916

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 687 - 704.

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

And the title is amended as follows:

Delete lines 61 - 67

and insert:

a public adjuster contract; repealing s. 624.0613(4), F.S.,

749848

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 713 - 753
and insert:
(2) As to all such classes of insurance:
(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals that ~~to~~ allow the insurer a reasonable rate of return on the ~~such~~ classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, must ~~shall~~ be filed with the office under one of the following procedures except as provided in subparagraph 3.:

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1. If the filing is made at least 90 days before the proposed effective date and ~~the filing~~ is not implemented during the office's review of the filing and any proceeding and judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file and use" filing. In such case, the office shall finalize its review by issuance of an approval ~~a notice of intent to approve~~ or a notice of intent to disapprove within 90 days after receipt of the filing. The approval ~~notice of intent to approve~~ and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings does ~~shall~~ not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue an approval ~~a notice of intent to approve~~ or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with ~~the provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as soon as practicable, but within ~~no later than~~ 30 days after the effective date, and is ~~shall be~~ considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office to return to policyholders those portions of rates found to be excessive, as provided in paragraph (h).

3. For all property insurance filings ~~made or submitted after January 25, 2007, but before December 31, 2010~~, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For

749848

purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered to be property coverages.

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

And the title is amended as follows:

Delete lines 77 - 78

and insert:

discriminatory factors; requiring all insurers seeking a certain rate to make a "file and use" filing; prohibiting the Office of Insurance

536388

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1262 - 1340

and insert:

Section 14. Subsection (5) and paragraph (b) of subsection (8) of section 627.0629, Florida Statutes, are amended to read:

627.0629 Residential property insurance; rate filings.—

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

And the title is amended as follows:

Delete lines 92 - 111

and insert:

Legislature; amending s. 627.0629, F.S.; conforming

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provisions to changes made

364978

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1266 - 1340

and insert:

(1)(a) It is the intent of the Legislature that insurers ~~must~~ provide the most accurate pricing signals available in order ~~savings~~ to encourage consumers to ~~who~~ install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses. It is also the intent of the Legislature that implementation of mitigation discounts not result in a loss of income to the insurers granting the discounts, so that the aggregate of such discounts not exceed the aggregate of the expected reduction in

364978

loss attributable to the mitigation efforts for which discounts are granted. A rate filing for residential property insurance must include actuarially reasonable discounts, credits, debits, or other rate differentials, or appropriate reductions in deductibles, which provide the proper pricing for all properties. The rate filing must take into account the presence or absence of ~~on which~~ fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm which have been installed or implemented. The fixtures or construction techniques must ~~shall~~ include, but need not be limited to, fixtures or construction techniques that ~~which~~ enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Credits, debits, discounts, or other rate differentials, or appropriate reductions or increases in deductibles, which recognize the presence or absence of ~~for~~ fixtures and construction techniques that ~~which~~ meet the minimum requirements of the Florida Building Code must be included in the rate filing. If an insurer demonstrates that the aggregate of its mitigation discounts results in a reduction to revenue which exceeds the reduction of the aggregate loss that is expected to result from the mitigation, the insurer may recover the lost revenue through an increase in its base rates. ~~All insurance companies must make a rate filing which includes the credits, discounts, or other rate differentials or reductions in deductibles by February 28, 2003. By July 1, 2007, the office shall reevaluate the discounts, credits, other rate differentials, and appropriate reductions in deductibles for fixtures and construction techniques that meet the minimum~~

~~requirements of the Florida Building Code, based upon actual experience or any other loss relativity studies available to the office.~~ The office shall determine the discounts, credits, debits, other rate differentials, and appropriate reductions or increases in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

(b) By February 1, 2011, the Office of Insurance Regulation, in consultation with the Department of Financial Services and the Department of Community Affairs, shall develop and make publicly available a proposed method for insurers to establish discounts, credits, or other rate differentials for hurricane mitigation measures which directly correlate to the numerical rating assigned to a structure pursuant to the uniform home grading scale adopted by the Financial Services Commission pursuant to s. 215.55865, including any proposed changes to the uniform home grading scale. By October 1, 2011, the commission shall adopt rules requiring insurers to make rate filings for residential property insurance which revise insurers' discounts, credits, or other rate differentials for hurricane mitigation measures so that such rate differentials correlate directly to the uniform home grading scale. The rules may include such changes to the uniform home grading scale as the commission determines are necessary, and may specify the minimum required discounts, credits, or other rate differentials. Such rate differentials must be consistent with generally accepted actuarial principles and wind-loss mitigation studies. The rules must ~~shall~~ allow a period of at least 2 years after the effective date of the revised mitigation discounts, credits, or

364978

other rate differentials for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer shall continue to apply the mitigation credit that was applied immediately before ~~prior to~~ the effective date of the revised credit. Discounts, credits, and other rate differentials established for rate filings under this paragraph shall supersede, after adoption, the discounts, credits, and other rate differentials included in rate filings under paragraph (a).

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

And the title is amended as follows:

Delete lines 101 - 107

and insert:

reduction in expected losses;

263112

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Delete lines 2421 - 2428

and insert:

b. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement ~~or renewal~~ coverage to the policyholder.

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2567 - 2596

and insert:

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs, the insurer shall pay the replacement cost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.

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

And the title is amended as follows:

Delete lines 149 - 160

and insert:

less any applicable deductible;

587550

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2705 - 2710
and insert:
(1) Every insurer authorized to transact property insurance, as described in s. 627.4025, in this state must ~~shall~~ provide coverage for a catastrophic ground cover collapse. The insurer may restrict such coverage to the principal building and other covered structures, as defined in the applicable policy, but must ~~and shall~~ make available, for an appropriate

Delete lines 2801 - 2803
and insert:
YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES.

587550

YOU MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN ADDITIONAL PREMIUM.”

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

And the title is amended as follows:

Delete lines 169 - 170

and insert:

principal building; allowing the deductible to

900524

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete line 2710

and insert:

insurer ~~and~~ shall make available, for an appropriate

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

And the title is amended as follows:

Delete lines 169 - 170

and insert:

principal building; allowing the deductible to

386970

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Delete lines 2752 - 2756

and insert:

(h) ~~(c)~~ "Sinkhole loss" means structural damage to the covered building, including the foundation, caused by sinkhole activity. Contents coverage and additional living expenses ~~shall~~ apply only if there is structural damage to the covered building caused by sinkhole activity. Cosmetic damage consisting of hairline to one-sixteenth inch cracks to nonstructural building components is not covered unless accompanied by structural damage.

386970

Delete lines 2779 - 2787

and insert:

(i) "Structural damage" means settlement damage to one or more primary structural components or structural systems of a covered structure.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 2842 and 2843
insert:

Section 25. Section 627.7066, Florida Statutes, is created to read:

627.7066 Investigation and remediation permits.—

(1) Each county shall, by ordinance, require a property owner to obtain an investigation permit before conducting an investigation of potential sinkhole activity.

(a) An application for such permit must include a legal description of the property to be investigated and the name of the property owner.


498756

(b) Upon completion of the investigation, a summary of the results, which includes the dates of the investigation, the type of testing and analysis conducted, who conducted the investigation, and the findings of the investigation, must be submitted to the county and filed with the permit application.

(c) A copy of the permit and the summary document must be filed in the public records of the county.

(d) All permit costs and the cost of recording shall be paid by the permit applicant.

(2) Each county shall, by ordinance, require any person providing stabilization and foundation repairs resulting from sinkhole activity to obtain a remediation permit.

(a) An application for such permit must include a legal description of the property, the name of the property owner, and identify the proposed repairs, including the quantities of materials to be used and estimated repair costs.

(b) Upon completion of repairs, a summary of the repair activities conducted, including materials used and the cost of such materials plus labor, an accounting of any differences between the estimated and actual materials and costs, and payments by the insurer to the owner pursuant to a sinkhole claim, must be submitted to the county and filed with the permit application.

(c) A copy of the permit and the summary document must be filed in the public records of the county.

(d) All permit costs and the cost of recording shall be paid by the person conducting the repairs.

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

498756

And the title is amended as follows:

Delete line 180

and insert:

establishment of a sinkhole database; creating s. 627.7066, F.S.; requiring counties to adopt an ordinance requiring permits before conducting an investigation of potential sinkhole activity and before making any repairs resulting from sinkhole activity; requiring a summary of the investigation and repairs conducted to be filed with the permit; requiring a copy of the permit and summary to be filed in the county records; amending s.

899690

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 3076 and 3077
insert:

(3) Upon completion of any building stabilization or foundation repairs for a verified sinkhole loss, the professional engineer responsible for monitoring the repairs shall issue a report to the property owner which specifies what repairs have been performed and certifies within a reasonable degree of professional probability that such repairs have been properly performed. The professional engineer issuing the report shall file a copy of the report and certification, which includes a legal description of the real property and the name

899690

of the property owner, with the county clerk of the court, who shall record the report and certification.

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

And the title is amended as follows:

Delete line 197

and insert:

to accepting payment; requiring the professional engineer responsible for monitoring sinkhole repairs to issue a report and certification to the property owner and file such report with the court; amending s. 627.7074, F.S.;

442272

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Between lines 3169 and 3170
insert:

5. The proposed neutral evaluator has, for the preceding 5 years, directly or indirectly, performed 80 percent or more of his or her sinkhole loss investigatory work exclusively on behalf of policyholders or exclusively on behalf of an insurer who is a party to a neutral evaluation. Work performed as a neutral evaluator may not be considered in calculating the percentage of work performed.

Delete lines 3283 - 3289
and insert:


442272

(b) If the insurer invokes neutral evaluation before litigation begins, the actions of the insurer are not a confession of judgment or admission of liability if the insurer acknowledges coverage in writing and tenders all undisputed policy proceeds due within 30 days after the date neutral evaluation is completed. The insurer is not liable for attorney's fees under s. 627.428 or other provisions of the insurance code unless the policyholder obtains a judgment that is more favorable than the recommendation of the neutral evaluator.

(16) If the insurer and the policyholder agree to comply with the neutral

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 444
INTRODUCER:	Community Affairs Committee and Senator Bogdanoff
SUBJECT:	Scrutinized Companies
DATE:	March 13, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	**Fav/2 amendments**
2.	Wolfgang	Yeatman	CA	**Fav/CS**
3.	Betta	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This Committee Substitute (CS) prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more.

The bill also:

- Requires public entities to have a contract provision that allows contracts to be terminated if the company submitted a false certification or is placed on either of the Scrutinized Companies list.
- Provides an exception to the prohibition.
- Requires a company seeking to enter into a contract of $1 million or more to certify that it is not a scrutinized business operation.
- Provides a process by which an agency or local government can report a false certification and by which the relevant government attorney may bring civil suit.
- Specifies penalties for a company that makes a false certification.

- States that the act preempts any ordinance or rule of any local governmental entity involving public contracts for goods or services of $1 million or more with a company engaged in scrutinized business operations.
- Requires the Department of Management Services must submit a written notice describing the act to the Attorney General of the United States within 30 days after July 1, 2011.
- States that the act becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in the act.

This bill creates section 287.135 of the Florida Statutes.

II. Present Situation:

International and federal law has been evolving to address concerns regarding Iran's policy of nuclear development as well as its state support of terrorism and human rights violations. The Congressional Research Service recently reported the following:

> There appears to be a growing international consensus to adopt progressively strict economic sanctions against Iran to try to compel it to verifiably confine its nuclear program to purely peaceful uses. The U.S. view—shared by major allies—is that sanctions should target Iran's energy sector that provides about 80% of government revenues, and try to isolate Iran from the international financial system. Measures adopted since mid-2010 by the United Nations Security Council, the European Union, and several other countries target those sectors, and complement the numerous U.S. laws and regulations that have long sought to try to pressure Iran. U.S. efforts to curb international energy investment in Iran's energy sector began in 1996 with the Iran Sanctions Act (ISA), a U.S. law that mandates U.S. penalties against foreign companies that conduct certain business with Iran's energy sector. ISA represented a U.S. effort to persuade foreign firms to choose between the Iranian market and the much larger U.S. and other developed markets. In the 111th Congress, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA, P.L. 111-195) expanded ISA significantly to try to restrict Iran's ability to make or import gasoline, for which Iran depends heavily on imports. CISADA also adds a broad range of other measures further restricting the already limited amount of U.S. trade with Iran and restricting some high technology trade with countries that allow WMD-useful technology to reach Iran.
>
> As indicators of the broadening international adoption of stricter sanctions against Iran, CISADA's enactment followed the June 9, 2010, adoption of U.N. Security Council Resolution 1929. That Resolution, the latest in a series of U.N. resolutions against Iran that began in 2006, imposes a ban on sales of heavy weapons to Iran, and authorized - but did not mandate – sanctions on Iran's energy or broad financial sector. European Union sanctions, imposed July 27, 2010, align the EU with the U.S. position, to a large extent, by prohibiting EU involvement in Iran's energy sector and restricting trade financing and banking relationships with Iran, among other measures. National measures announced by Japan and South Korea in early September 2010— both are large buyers of

> Iranian energy—impose restrictions similar to those of the EU. Even India, perceived as highly hesitant to antagonize Iran, has begun to impose sanctions on Iran by refusing to use certain financial mechanisms to process payments to Iran. Because so many major economic powers have imposed sanctions on Iran, the sanctions are, by all accounts, having a growing effect. In January 2011, Secretary of State Clinton claimed that sanctions have accomplished a core objective of slowing Iran's nuclear program. Economically, the sanctions are reinforcing the effects of Iran's economic mismanagement and key bottlenecks. Among other indicators, there has been a stream of announcements by major international firms during 2010 that they are exiting the Iranian market. Iran's oil production has fallen slightly to about 3.9 million barrels per day, from over 4.1 million barrels per day several years ago, although Iran now has small natural gas exports that it did not have before Iran opened its fields to foreign investment in 1996. Sales to Iran of gasoline have fallen dramatically since CISADA was enacted. U.S. officials say that the cumulative effect of sanctions could harm Iran's economy to the point where domestic pressure compels Iranian leaders to accept a nuclear compromise, although nuclear talks in late January 2011 made virtually no progress. Possibly in an effort to accomplish the separate objective of promoting the cause of the domestic opposition in Iran, the Obama Administration and Congress are increasingly emphasizing measures that would sanction Iranian officials who are human rights abusers and facilitate the democracy movement's access to information.[1]

On February 7, 2011, "the U.S. Department of State recognized the Southern Sudan referendum results and the creation of the Government of Southern Sudan. Secretary of State Clinton also declared that the United States is 'initiating the process of withdrawing Sudan's State Sponsor of Terrorism designation, the first step of which is initiating a review of that designation."[2]

State Sponsors of Terrorism

Countries which are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions under the Export Administration Act[3], and the Arms Export Control Act.[4] The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.[5] Some

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[1] CONGRESSIONAL RESEARCH SERVICE, IRAN SANCTIONS RS20871 (Feb. 3, 2011). *See also* CONGRESSIONAL RESEARCH SERVICE REPORT, IRAN SANCTIONS RS20871 (Feb 2, 2010).

[2] FLORIDA STATE BOARD OF ADMINISTRATION, PROTECTING FLORIDA'S INVESTMENTS ACT (PFIA); QUARTERLY REPORT (February 22, 2011) *available at* http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=YY6ZTOCV0qQ%3D&tabid=751&mid=2408 (last visited March 4, 2011).

[3] U.S. Export Administration Act, Pub. L. No. 96-72 § 6(j) (1979) expired in 1994 but is periodically revived by executive order through the International Emergency Economic Powers Act, 50 U.S.C. 1701. See generally, CONGRESSIONAL RESEARCH SERVICE, THE EXPORT ADMINISTRATION ACT: EVOLUTION, PROVISIONS, AND DEBATE (July 15, 2009).

[4] U.S. Arms Export Control Act, 22 U.S.C. 2778.

[5] U.S. DEPARTMENT OF STATE, OFFICE OF COORDINATOR FOR COUNTERTERRORISM, STATE SPONSORS OF TERRORISM, http://www.state.gov/s/ct/c14151.htm (last visited Feb. 28, 2011).

of the miscellaneous restrictions include opposition to loans by the World Bank and other financial institutions, removal of diplomatic immunity to allow victims of terrorism to file civil lawsuits, denial of tax credits to companies and individuals for income earned in named countries, authority to prohibit U.S. citizens from engaging in transactions without a Treasury Department license, and prohibition of Department of Defense contracts above $100,000 with companies controlled by terrorist-list states.[6]

The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria.[7]

The Voice Act

In addition, Congress directed the President of the United States to submit a report on non-Iranian persons, including corporations with United States subsidiaries, that have knowingly or negligently provided hardware, software, or other forms of assistance to the Government of Iran that has furthered Iran's efforts to filter online political content, disrupt cell phone and Internet communications, and monitor the online activities of Iranian citizens.[8]

State Law Pertaining to Foreign Trade

Section 288.855, F.S., prohibits the export or sale of any goods or services to a foreign country in violation of federal law and restricts interference with foreign export except as otherwise prohibited by law.

State Agency Procurement of Commodities and Services

The comprehensive process contained in ch. 287, F.S., for the procurement of commodities and contractual services by executive agencies[9] sets forth numerous requirements for fair and open competition among vendors, agency maintenance of written documentation that supports procurement decisions, and implementation of monitoring mechanisms. Legislative intent language for the chapter explains that the process is necessary in order to:

- Reduce improprieties and opportunities for favoritism;
- Ensure the equitable and economical award of public contracts; and
- Inspire public confidence in state procurement.[10]

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include: overseeing agency

[6] U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON TERRORISM, 181-82 (2008), *available at* http://www.state.gov/documents/organization/122599.pdf (last visited Feb. 28, 2011).
[7] *See supra* n. 4.
[8] VOICE Act, Pub. L. No. 111-84, § 1265, 123 Stat. 2190 (2009).
[9] Section 287.012(1), F.S., provides that the term "agency" for purposes of ch. 287, F.S., ". . . means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."
[10] Section 287.001, F.S.

implementation of the ch. 287, F.S., competitive procurement process;[11] creating uniform agency procurement rules;[12] implementing the online procurement program;[13] and establishing state term contracts.[14] The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

Protecting Florida's Investments Act: Scrutinized Companies

On June 8, 2007, the Protecting Florida's Investments Act (PFIA) was signed into law. The PFIA requires the State Board of Administration (SBA), acting on behalf of the Florida Retirement System Trust Fund (the FRSTF), to assemble and publish a list of Scrutinized Companies that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities and are required to divest those securities if the companies do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA will not affect any FRSTF investments in U.S. companies. The PFIA will solely affect foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production or military support activities.[15]

The definition of scrutinized companies in Sudan and Iran is in s. 215.473(1)(t), F.S., and the SBA website retains a complete list of scrutinized companies and companies that are under continuing examination. Scrutinized companies are judged according to whether they meet the following criteria:

Sudan:
1. Have a material business relationship with the government of Sudan or a government-created project involving oil related, mineral extraction, or power generation activities, or
2. Have a material business relationship involving the supply of military equipment, or
3. Impart minimal benefit to disadvantaged citizens that are typically located in the geographic periphery of Sudan, or
4. Have been complicit in the genocidal campaign in Darfur.

[11] Sections 287.032 and 287.042, F.S.
[12] Sections 287.032(2) and 287.042(3), (4), and (12), F.S.
[13] Section 287.057(23), F.S.
[14] Sections 287.042(2), 287.056 and 287.1345, F.S.
[15] FLORIDA STATE BOARD OF ADMINISTRATION, PROTECTING FLORIDA'S INVESTMENTS ACT (PFIA); QUARTERLY REPORT (February 22, 2011) *available at* http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=YY6ZTOCV0qQ%3D&tabid=751&mid=2408 (last visited March 4, 2011).

Iran:
1. Have a material business relationship with the government of Iran or a government-created project involving oil related or mineral extraction activities, or
2. Have made material investments with the effect of significantly enhancing Iran's petroleum sector.[16]

State and Local Government Authority to Prohibit Contracts

In the past, state and local governments have proposed or enacted measures restricting their agencies' economic transactions with firms that do business with or in foreign countries whose conduct the jurisdictions find objectionable. However, there is case law that indicates that the dormant federal foreign affairs power may preempt state and local governments from enacting these restrictions. For example, in 2000, the U.S. Supreme Court unanimously held in *Crosby v. National Foreign Trade Council* that a Massachusetts law restricting state transactions with firms doing business in Burma was preempted by a federal Burma statute.[17] Therefore, in the absence of a grant of federal authority statutes that prohibit contracting with companies on the scrutinized companies list may be unconstitutional.

With respect to Sudan[18] and Iran,[19] the federal government has expressly given state and local governments the authority to divest from companies directly invested in certain Sudanese or Iranian sectors. The statutes, authorizing state and local governments to prohibit the investment of assets in these countries, define "investment" to include the "entry into or renewal of a contract for goods or services."[20] The statutes require that:

- The state or local government shall provide written notice to each person to which a measure is to be applied.
- The measure shall apply to a person not earlier than 90 days after the date on which written notice is provided.
- The state or local government shall provide an opportunity to comment in writing to each person to which a measure is to be applied. If the person demonstrates to the State or local government that the person does not engage in investment activities in Iran, the measure shall not apply to the person.
- The state or local government enacting such a measure must send notice to the U.S. Attorney General within 30 days after adopting a measure.

III. Effect of Proposed Changes:

The CS provides the following definitions for the created section of law:

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[16] *Id*.
[17] 530 U.S. 363 (2000). *See also*, *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003); *but see Faculty Senate of Fla. Int'l Univ. v. Winn*, 616 F.3d 1206 (11th Cir. 2010) (upholding a university prohibition on using state or nonstate funds on activities related to travel to a terrorist state).
[18] The Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174, §§ 1 to 12, Dec. 31, 2007, 121 Stat. 2516, as amended Pub. L. No. 111-195, Title II, § 205(a), July 1, 2010, 124 Stat. 1344.
[19] 22 U.S.C. § 8532.
[20] The Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174, § 3(f), 121 Stat. 2516 (2007); 22 U.S.C. § 8532(g)(2)(C).

- "Awarding body" for purposes of state contracts, an agency or department, and for purposes of local contracts, means the governing body of the local governmental entity.
- "Local governmental entity" means a county, municipality, special district, or other political subdivision of the state.

The CS prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency[21] or local governmental entity for goods or services of $1 million or more.

The CS provides that any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after July 1, 2011, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

The bill allows an agency or local governmental entity to make a case-by-case exception to the prohibition if:

- The scrutinized business operations[22] were made before July 1, 2010;
- The scrutinized business operations have not been expanded or renewed after July 1, 2010;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
  - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
  - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of $1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not a scrutinized business operation under s. 215.473, F.S.

[21] As defined in s. 287.012(1), F.S.

[22] S. 215.473(1)(s), F.S., defines "scrutinized business operations" to mean "business operations that have resulted in a company becoming a scrutinized company."

If an agency or local governmental entity determines that a company has submitted a false certification that it is not a scrutinized business operation and has provided the company with written notice and 90 days to respond in writing to such determination, and the company fails to demonstrate that it has ceased its engagement in scrutinized business operations, then:

- The awarding body *must* report the company to the Attorney General and provide information demonstrating the false certification. The Attorney General must determine whether to bring a civil action against the company. The awarding body *may* report the company to the municipal attorney, county attorney, or district attorney and provide information demonstrating the false certification. Such attorney may determine whether to bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification) and a civil penalty equal to the greater of $2 million or twice the amount of the contract for which the false certification was submitted. A civil action to collect the penalties must commence within 3 years after the date the false certification is made.
- The bill specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.
- An existing contract with the company shall be terminated at the option of the awarding body.
- The company is ineligible to bid on any contract with an agency or a local governmental entity for 3 years after the date of determining that the company submitted a false certification.

The bill specifies that the act preempts any ordinance or rule of any local governmental entity involving public contracts for goods or services of $1 million or more with a company engaged in scrutinized business operations.

In accordance with the requirements of federal law,[23] the Department of Management Services must submit a written notice describing the act to the Attorney General of the United States within 30 days after July 1, 2011.

The act becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in the act.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[23] The Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174, §§ 1 to 12, Dec. 31, 2007, 121 Stat. 2516, as amended Pub. L. No. 111-195, Title II, § 205(a), July 1, 2010, 124 Stat. 1344.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Without Congressional authorization, it might be possible that this bill would be an unconstitutional preemption of federal authority (see present situation discussion). However, Congress has authorized the contractual restrictions included in this bill and the bill contains a provision that specifically makes it inoperative if Congress ever rescinds that authority. Therefore, this bill should not violate the Supremacy Clause of the U.S. Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will adversely affect companies on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List that seek to enter into contracts with Florida governmental entities.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by the Community Affairs Committee on March 7, 2011:
The CS requires public entities to have a contract provision that allows contracts to be terminated if the company submitted a false certification or is placed on either of the Scrutinized Companies list.

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 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	**Favorable**
2.	Babin	Diez-Arguelles	BFT	**Fav/CS**
3.	Babin	Meyer. C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	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.[1] The State Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.[2]

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

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

Chapter 194, F.S., provides that taxpayers have the right to appeal the property appraiser's assessment at an informal conference with the property appraiser and by filing a petition to the Value Adjustment Board[5] (VAB) within 25 days after the TRIM notice is mailed, or to contest

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[1] *See Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

[2] Section 196.185, F.S.

[3] Section 193.1142, F.S.

[4] The millage rate is the rate at which the property is taxed and is set by county commissioners based on how much revenue is needed for operating expenses. *See* s. 200.069, F.S. *See also* Florida Department of Revenue website, *Local Government Property Tax Process*, available at http://dor.myflorida.com/dor/property/taxpayers/pdf/ptoinfographic.pdf (last visited on March 8, 2011).

[5] The Value Adjustment Board for each county consists of two elected governing members of the county, one of whom shall be elected chairperson and the other a member of the school board, as well as two citizen members: one, appointed by the

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.[6] The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original certification of value is more than 1% for municipalities, counties, school boards, and water management districts, or more than 3% for other taxing authorities.

Tax Collections, Sales and Liens

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

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

A property owner can redeem a tax certificate anytime before a tax deed is issued or the property is placed on the list of lands available for sale. The person redeeming or purchasing the tax

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.

[6] Section 200.065, F.S.

[7] 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."

[8] Section 197.333, F.S.

[9] Section 197.343, F.S.

[10] Section 197.432(5), F.S.

[11] 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.[12]

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

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

Tax Deferrals

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

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.

[12] Section 197.472, F.S.
[13] Section 197.502, F.S.
[14] 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 (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."
[15] 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.[16]

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.[17]

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

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

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:	SM 484
INTRODUCER:	Senator Hays
SUBJECT:	Discriminatory Taxes/Reinsurance
DATE:	March 13, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Favorable**
2.	Frederick	DeLoach	BGA	**Favorable**
3.	Frederick	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

The Memorial urges the 112th Congress to refrain from imposing new taxation on foreign companies that sell reinsurance in the United States.

II. Present Situation:

Reinsurance

Reinsurance is an unregulated insurance product sold to primary insurers to help cover their exposure to excessive loss. As an example, a direct writer of homeowners insurance may purchase reinsurance to cover a specified layer of losses above a certain amount. Reinsurance protects the homeowner and the primary insurance company during major events and disasters.

Proposed Federal Legislation

In recent years Congress has introduced legislation to tax foreign reinsurance companies that sell reinsurance in the United States. In the 111th Congress, H.R. 3424 was introduced calling for a percentage based tax on gross revenues for all foreign based reinsurance companies. House Resolution 3424 and its predecessor in the 110th Congress, H.R. 6969, were both introduced but neither was heard by a House committee. The sponsor of the bills was Representative Neal of Massachusetts. During his remarks on the House Floor in July of 2009, Representative Neal had argued the tax was necessary to lessen a competitive advantage that foreign based reinsurers had over American based reinsurance companies who were currently subject to the United States tax

code.[1] Opponents of the tax have argued foreign based companies are already subject to taxation by their home country and therefore no competitive advantage exists.[2]

The budgets released by the White House for Fiscal Years 2011 and 2012 have also called for a tax on offshore reinsurance companies. In 2011, the tax was estimated to collect $500 million for one year, while the tax revenues estimated in the 2012 budget calls for the collection of $2.6 billion over ten years.[3] While this is less than the estimated $2 billion per year taxed in H.R. 3424, it is important to note any taxes levied will result in Floridians paying the greatest share of the costs that the tax will impose on foreign based reinsurers.

Foreign based reinsurance in Florida

Foreign based companies that sell reinsurance are a vital component to Florida's property insurance needs. In recent years, a number of large national property insurers have reduced the amount of Florida property risk that they are willing to insure. The gap created by this reduction has been filled to some extent by Florida domestic property insurers which are much smaller and less capitalized than the national companies. In order to manage the risk they assume, Florida domestic companies rely heavily on reinsurance, particularly reinsurance provided by foreign domiciled companies. The Office of Insurance Regulation (OIR) estimates that over 90 percent of Florida's reinsurance is insured through foreign based sources. Foreign reinsurance has allowed primary insurance companies in Florida to maintain their current level of coverage. If an additional transaction tax is imposed on foreign reinsurers, they will raise their prices to Florida's direct insurance writers and those price increases will be passed onto Florida's residents. As a result, Florida's residents are almost certain to incur a far greater portion of the additional tax burden than any other state.

III. Effect of Proposed Changes:

The Memorial would inform the 112th Congress of the affects Florida could face if a new tax were imposed on foreign reinsurance companies. Florida based property insurance policies are a major purchaser of foreign based reinsurance. Any additional costs imposed on foreign reinsurance companies by Congress will be absorbed to a large degree by Florida homeowners through higher insurance premiums.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[1] July 31, 2009 Congressional Record – Extensions of Remarks E2111- E2112
[2] July 8, 2010 The Brattle Group – The Impact on the U.S. Insurance Market of H.R. 3424 on Offshore Affiliate Reinsurance
[3] February 15, 2011Jonathan Kent; The Royal Gazette – Reinsurers face tax threat in Obama's Budget

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Office of Insurance Regulation, more than 90 percent of Florida based property insurance companies are purchasers of foreign based reinsurance. Any additional costs imposed on foreign reinsurance companies by Congress would be passed on to Florida homeowners through higher insurance premiums.

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.