The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Monday, March 21, 2011
TIME: 10:15 a.m.—12:15 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 968** Environmental Preservation and Conservation / Dean	Boating Safety; Provides an exemption from the requirement that certain persons must possess a boating safety identification card while operating a motor vessel of a specified horsepower or greater. Requires liveries to require that a person present a valid boater safety identification card or provide proof that the person passed the boating education safety course or examination. EP 03/10/2011 Fav/CS CA 03/21/2011 BC	
2	**SB 468** Bullard (Similar H 1343)	Community Redevelopment; Expands the definition of the term "blighted area" to include land previously used as a military facility. CA 03/21/2011 MS BC	
3	**CS/SB 402** Criminal Justice / Negron (Identical CS/H 45)	Regulation of Firearms and Ammunition; Prohibits specified persons and entities, when acting in their official capacity, from regulating or attempting to regulate firearms or ammunition in any manner except as specifically authorized by s. 790.33, F.S., by general law, or by the State Constitution. Eliminates provisions authorizing counties to adopt an ordinance requiring a waiting period between the purchase and delivery of a handgun. Provides that public funds may not be used to defend the unlawful conduct of any person charged with a knowing and willful violation of certain provisions, etc. CJ 02/08/2011 Fav/CS CA 03/21/2011 JU RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 650** Regulated Industries / Jones (Identical CS/H 423)	Mobile Home Park Lot Tenancies; Provides for local code and ordinance violations to be cited to the responsible party. Prohibits liens, penalties, fines, or other administrative or civil proceedings against one party or that party's property for a duty or responsibility of the other party. Revises procedures for mobile home owners being provided eviction notice due to a change in use of the land comprising the mobile home park or the portion thereof from which mobile homes are to be evicted, etc. RI 03/09/2011 Fav/CS CA 03/21/2011 RC	
5	**SB 384** Bogdanoff (Similar H 243)	Tangible Personal Property Taxes; Authorizes a person who rents heavy equipment to collect a tangible personal property tax recovery fee. Defines the term "heavy equipment." Limits the application of the act to short-term rental agreements. CA 03/21/2011 CM BC	
6	**SB 828** Bogdanoff (Similar H 667)	Public Records/Local Government Inspector General; Expands an exemption from public records requirements to include certain records relating to investigations in the custody of an inspector general of a local government. Provides for future repeal and legislative review of such revisions to the exemption under the Open Government Sunset Review Act. Provides a statement of public necessity. CA 03/21/2011 JU GO	
7	**SB 1234** Smith (Identical H 743)	Special Assessment for Law Enforcement Services; Authorizes a municipality to impose a special assessment to fund the costs of providing law enforcement services. Makes the imposition of the assessment contingent upon adoption of an ordinance approved by the governing body of a municipality and a reduction in the municipality's ad valorem millage. Limits the maximum millage reduction required. Specifies the rolled-back rate for the calculation of a future increase in ad valorem millage. Provides for the construction of the act as a general law authorizing taxation by a municipality. CA 03/21/2011 CJ BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 858** Agriculture / Hays (Similar H 707, Compare H 803, CS/CS/S 408)	Agriculture; Prohibits a county from enforcing certain limits on the activity of a bona fide farm operation on agricultural land under certain circumstances. Prohibits a county from charging agricultural lands for stormwater management assessments and fees under certain circumstances. Allows an assessment to be collected if credits against the assessment are provided for implementation of best management practices. Creates the "Agricultural Land Acknowledgement Act," etc. AG 03/07/2011 Fav/CS CA 03/21/2011 BC	
9	**SB 1098** Hays (Identical H 1031)	Collective Bargaining For Certain Public Employees; Specifies that for purposes of resolving an impasse the sheriff, the tax collector, the property appraiser, the supervisor of elections, and the clerk of the circuit court are each deemed the "legislative body" for their respective employees. Provides that in a county that has expressly abolished the office of any constitutional officer, such duties are transferred to the officer as provided for under the county charter if the charter is not inconsistent with general law or a special law approved by a vote of the electors. CA 03/21/2011 JU GO	
10	**SB 1512** Bennett (Compare H 1427)	Growth Management; Requires that certain local governments update the future land use plan element by a specified date and address the compatibility of lands adjacent or proximate to a military installation or airport. Provides that the amount of land required to accommodate anticipated growth in local comprehensive plans may not be limited solely by projected population. Specifies how to calculate the proportionate-share contribution for a transportation facility, etc. CA 03/21/2011 MS TR BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 1142** Dockery (Identical H 927, S 918)	Adverse Possession; Specifies that occupation and maintenance of property satisfies the requirements for possession for purposes of gaining title to property via adverse possession without color of title. Requires that the property appraiser add certain information related to the adverse possession claim to the parcel information on the tax roll and prescribing conditions for removal of that information. Excludes property subject to adverse possession claims without color of title from provisions authorizing the tax collector not to send a tax notice for minimum tax bills, etc. JU 03/09/2011 Favorable CA 03/21/2011 BC	
12	**SB 814** Richter (Similar H 275)	Ad Valorem Tax Exemptions; Provides partial ad valorem tax exemptions for nonexempt owners of real property leased or gratuitously provided to exempt entities for exclusive use for charitable purposes. Authorizes nonexempt owners of real property to apply for ad valorem tax exemptions relating to real property leased or gratuitously provided for charitable purposes. Provides eligibility criteria for partial ad valorem tax exemptions relating to real property leased or gratuitously provided for charitable purposes, etc. CA 03/21/2011 BC	
13	**SB 1120** Norman (Identical H 713)	Special Districts; Revises provisions relating to merger and dissolution procedures for special districts. Requires certain merger and dissolution procedures to include referenda. Provides an exception. Provides that such provisions preempt certain special acts. Provides for a local government to assume the indebtedness of, and receive the title to property owned by, a special district under certain circumstances. Revises dissolution procedures for special districts declared inactive by a governing body. CA 03/21/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**SB 1210** Norman (Compare H 1003)	Counties and Municipalities; Authorizes the board of county commissioners and the governing body of a municipality to pursue the collection of delinquent fees, service charges, fines, or costs through the use of a private attorney or a collection agent. Provides that the collection fee, including attorney's fees, may be added to the balance owed. Limits the amount of the fee. CA 03/21/2011 BC	
	Consideration of proposed committee bill (Interim Project 2011-110 - Merger of Independent Special Districts):		
15	**SPB 7072**	Special Districts; Provides for the merger of special districts. Provides definitions. Provides that the merger or dissolution of dependent districts created by special act may be effectuated only by the Legislature. Provides that the Legislature may merge independent special districts created by special act. Provides for the voluntary merger of independent districts pursuant to a joint resolution of the governing bodies of the districts or upon initiative of the district electors, etc.	
16	**CS/SB 426** Judiciary / Latvala (Compare H 291)	Service of Process; Authorizes certified process servers to serve writs of possession in actions for possession of residential property. Authorizes a landlord to select a certified process server to serve a writ of possession. Requires a certified process server to provide notice of the posting of the writ to the sheriff. JU 02/08/2011 Fav/CS CA 03/21/2011 RC	

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 968
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Dean
SUBJECT:	Boating Safety
DATE:	March 15, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	**Fav/CS**
2.	Gizzi	Yeatman	CA	**Pre-meeting**
3.			BC	
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) allows boaters who can present proof of boater safety course completion and photo identification to operate a motor vessel without waiting to receive the Florida Fish and Wildlife Conservation Commission Boating Identification card in the mail. The Boater Education Certificate must include the student's first and last name, date of birth, and the date he or she passed the course examination.

This CS amends sections 327.395 and 327.54 of the Florida Statutes.

II. Present Situation:

Section 327.395, F.S., requires a person born after January 1, 1988, to have a boater safety identification card to operate a vessel powered by a motor of 10 horsepower or greater. In order to obtain a boater safety identification card the person must have completed a commission approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators. A person may also obtain a boater safety identification card by passing a course equivalency examination approved

by the Florida Fish and Wildlife Conservation Commission (FWC) or pass a temporary certificate examination developed or approved by FWC.

The boater safety course may be taken in person at one of FWC's state offices at no charge. An applicant may also take the course online at a cost of up to $30. FWC lists the approved online courses on their website.[1] The United States Coast Guard also offers an FWC approved course for $35.

FWC may appoint liveries, marinas, or other agents to administer the boater safety course as long as the entities adhere to FWC's established guidelines. These private entities offer the course for approximately $30. However, these entities may not issue a boater safety card on the premises. These private entities must send a $2 exam fee to FWC in addition to providing proof that the applicant successfully passed the course. FWC also allows the private entities to charge and keep an additional $1 service fee.[2]

Once FWC has received documented proof that the applicant successfully completed the course then FWC will mail a boater safety identification card to the applicant. It currently takes FWC up to 10 days to mail a card to an applicant who has successfully completed the boating safety course and has provided all of the necessary identification documentation. Incomplete applications may take longer as FWC must contact the applicant and retrieve any missing information.

III. Effect of Proposed Changes:

Section 1 amends s. 327.395(6), F.S., to allow the operation of a vessel without an FWC issued Boater Identification card, for up to 90 days, for a boater who can prove boater safety course completion and provide photo identification. In order to prove boater safety course completion, the boater must be able to provide a Boater Education Certificate that includes the student's first and last name, date of birth, and the date he or she passed the course examination.

Section 2 amends s. 327.54(2), F.S., to provide an exemption to allow liveries to accept boater education certificates that contain specific data, under specified conditions outlined in s. 327.395, F.S., as proof of successfully completing the Boater Education Course.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[1] The Florida Fish and Wildlife Conservation Commission, *Boating Safety Education*, available online at http://myfwc.com/boating/safety-education/boating-courses/ (last visited on March 15, 2011).
[2] *See* s. 327.395(4), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS would allow liveries to accept the Boater Education Certificate as proof that the course was successfully completed. The Boater Education Certificate must include the boater's first and last name, date of birth, and the date that he or she passed the course.

Private entities may see an increase in business if they are allowed to accept the Boater Education Certificate as individuals may rent boats on the premises after successfully completing the boater education course.

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.)

CS by the Committee on Environmental Preservation and Conservation on March 10, 2011:
The CS provides boaters who can present proof of boater safety course completion and photo identification to begin boating without waiting to receive the FWC Boating ID card.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 468
INTRODUCER:	Senator Bullard
SUBJECT:	Community Redevelopment
DATE:	February 7, 2011
REVISED:	

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

I. Summary:

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

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

II. Present Situation:

Community Redevelopment Act

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

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

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

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

Community Redevelopment Plans and Initiation

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

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

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

> An area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:
>
> (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
> (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;
> (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
> (d) Unsanitary or unsafe conditions;
> (e) Deterioration of site or other improvements;
> (f) Inadequate and outdated building density patterns;
> (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
> (h) Tax or special assessment delinquency exceeding the fair value of the land;
> (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
> (j) Incidence of crime in the area higher than in the remainder of the county or municipality;

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

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

Disposal of Military Real Property

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

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

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

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

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

There are four Florida cities which have been affected by BRAC closures, all resulting from the 1993 BRAC process. Homestead Air Force Base was realigned in 1992; Pensacola's Naval Aviation Depot and Fleet and Industrial Supply Center were closed in 1996; Jacksonville's Cecil Field was closed in 1999; and Orlando's Naval Training Center and Naval Hospital were closed in 1999.[5] A total of 20,973 acres were declared surplus from 1988 to present as a result of the BRAC process, and all of that has been transferred to non-federal agencies with the exception of 182 acres that were a part of Cecil Field in Jacksonville and remain undisposed.[6]

III. Effect of Proposed Changes:

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

Section 2 of the bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[4] Congressional Research Service, *Base Realignment and Closure (BRAC): Transfer and Disposal of Military Property* (Mar. 31, 2009), http://www.fas.org/sgp/crs/natsec/R40476.pdf (last visited Mar. 14, 2011).
[5] United States Department of Defense, *Major Base Closure Summary*, http://www.defense.gov/faq/pis/17.html (last visited Mar. 14, 2011).
[6] Email from David F. Witschi, Associate Director, Secretary of Defense Office of Economic Adjustment (Mar. 16, 2011) (on file with the Senate Committee on Community Affairs).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

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

C. Government Sector Impact:

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

VI. Technical Deficiencies:

The bill provides for the definition to include land used as a military facility and undeveloped. Land used as a military facility would typically be considered developed land, which may unintentionally exclude military land which has buildings from consideration under the new definition of blighted area.

VII. Related Issues:

Miami-Dade County has expressed interest in developing the area around Metrozoo as a recreation destination.[7] The family entertainment center, as considered in 2004, was projected to

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

bring 9,000 permanent jobs to the area.[8] Coast Guard property adjacent to current Metrozoo property could be part of this development, and tax increment financing through a CRA could help finance such improvements. The Richmond Coast Guard Base, which is currently open, is reportedly considering a deal where the county would help them attain a new location while selling the land to private developers who would then build this new development.[9]

VIII. Additional Information:

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

None.

B. Amendments:

None.

[8] Susan Stabley, *Zoo Entertainment Park Planned*, South Florida Business Journal, Dec. 27, 2004, *available at* http://www.bizjournals.com/southflorida/stories/2004/12/27/story1.html (last visited Mar. 14, 2011).
[9] Conversation with Kevin Asher, Special Project Manager, Miami-Dade Parks and Recreation Department (Mar. 16, 2011).

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 402
INTRODUCER:	Committee on Criminal Justice, Senator Negron, and Senator Evers
SUBJECT:	Regulation of Firearms and Ammunition
DATE:	February 18, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Pre-meeting**
3.			JU	
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:

CS/SB 402 expands and clarifies state preemption of the regulation of firearms and ammunition. The bill creates certain exceptions to its application for employers and law enforcement agencies.

The CS creates a third degree felony offense for knowingly and willfully violates provisions of s. 790.33, F.S., which generally prohibits policy-making or enforcement of any firearms rules or regulations in excess of those proscribed by law or the Florida Constitution. The CS also provides for up to a $5 million fine under certain enumerated circumstances.

The bill further provides for injunctive and declaratory judgments, actual and consequential damages, costs and treble attorney's fees, with 15 percent interest per annum from the date upon which a civil suit is filed.

This bill substantially amends and reorganizes section 790.33 of the Florida Statutes.

II. Present Situation:

The Joe Carlucci Uniform Firearms Act, as s. 790.33, F.S., is known, became law in 1987. The policy and intent of the Act is stated as follows:

> It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.[1]

The Act accomplished its stated purpose by "occupying the whole field of regulation of firearms and ammunition," as stated in subsection (1) of the Act:

> PREEMPTION.—Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void.[2]

Section 790.33, F.S., contains a limited exception for local ordinances governing a three-day handgun purchase waiting period.[3] Since 1990 there has been a statewide three-day waiting period as set forth in the Constitution of the State of Florida.[4] The constitutional provision prevails over any local ordinances which may have been enacted. There are statutory exemptions from the waiting period in the Act. Of these exemptions, two were adopted in s. 790.0655, F.S., as required by the Florida Constitution.[5] The other exemptions are:

- Individuals who already lawfully own another firearm and who show a sales receipt for another firearm or who are known to own another firearm through a prior purchase from the retail establishment;
- A law enforcement or correctional officer as defined in s. 943.10, F.S.;
- A law enforcement agency as defined in s. 934.02, F.S.;
- Sales or transactions between dealers or between distributors or between dealers and distributors who have current federal firearms licenses; or

[1] Section 790.33(3), F.S.
[2] Section 790.33(1), F.S.
[3] Section 790.33(2), F.S. (1988). Note: At the time of enactment in 1987 the Act provided the exception for a 48-hour waiting period.
[4] There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph. … This restriction shall not apply to a trade in of another gun. Art. 1, Sec. 8(b), 8(d), Fla. Const..
[5] The exemptions apply to persons who hold a valid concealed weapons permit at the time of the purchase or who are trading in another handgun. s. 790.0655(2), F.S., Art. 1, Sec. 8(b), 8(d), Fla. Const..

- Any individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such threat has been duly reported to local law enforcement.[6]

Since these specific exemptions were not included in the constitutional amendment, and because the Carlucci Act's exemptions pre-date the amendment to the Florida Constitution, they are essentially null and void.

Despite the provisions of the 1987 Joe Carlucci Act and a Florida appellate court opinion upholding the Act[7], local governments have enacted or considered enacting ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits to certain sporting goods stores, and banned recreational shooting.

Criminal or Civil Liability for Official Conduct

Historically, policy-making activities and certain other official government functions have been shielded from even civil liability.[8] Although this protection does not extend to actions clearly prohibited by the law,[9] policy-making functions are rarely if ever opened up to civil or criminal sanctions. However, there are a number of statutes that criminalize official action when it arises out of an abuse or wrongful usurpation of authority. These crimes include:

- Official misconduct.[10]
- Solicitation of bribes.[11]
- Extortion.[12]
- Approving or paying commissions on public funds that are collected, and not paid over as required by law.[13]
- Failing to make a sworn report of fees.[14]
- Unlawful sale of property by certain state officials.[15]
- Speculating in county warrants or certificates.[16]
- Failing to keep a record of costs.[17]
- Falsifying records.[18]
- Withholding records from successor.[19]
- Assuming the actions of an office before qualification.[20]

[6] Section 790.33(2)(d), F.S.
[7] *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).
[8] *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800 (1981).
[9] *Id*.
[10] Section 838.022, F.S.
[11] Sections 838.015, 838.016, F.S.
[12] Section 839.11, F.S.
[13] Section 116.02, F.S.
[14] Section 116.04, F.S.
[15] Section 116.13, F.S.
[16] Section 839.04, F.S. *See also* s. 839.05, F.S.
[17] Section 839.12, F.S.
[18] Section 839.13, F.S.
[19] Section 839.14, F.S.
[20] Section 839.18, F.S.

- Failure to execute general[21] or criminal[22] process.
- Misuse of confidential information.[23]

III. Effect of Proposed Changes:

CS/SB 402 expands and clarifies state preemption of the regulation of firearms and ammunition. In the process, s. 790.33, F.S., is also reorganized.

The bill expands "the whole field of regulation of firearms and ammunition" to include the storage of those items. Although the preemption language relating to zoning ordinances is stricken from subsection (1) of s. 790.33, F.S., on lines 49-55 of the bill, that language is re-inserted on lines 205-210.

The bill enumerates governmental or publicly-funded private entities that are prohibited from regulating or attempting to regulate firearms or ammunition. Those entities are:

- A local government.
- A special district.
- A political subdivision.
- A governmental authority, commission, or board.
- A state governmental agency.
- Any official, agent, employee, or person, whether public or private, who works or contracts with any state or other governmental entity.
- Any entity that serves the public good when such service is provided in whole or in part by any governmental entity or utilizes public support or public funding.
- Any public entity other than those specified in this subsection, including, but not limited to, libraries, convention centers, fairgrounds, parks, and recreational facilities.
- Any body to which authority or jurisdiction is given by any unit or subdivision of any government or that serves the public good in whole or in part with public support, authorization, or funding or that has the authority to establish rules or regulations that apply to the public use of facilities, property, or grounds.

The bill also sets forth the methods by which those entities are prohibited from regulating or attempting to regulate firearms or ammunition as the enactment or enforcement of any:

- ordinance,
- regulation,
- measure,
- directive,
- rule,
- enactment,
- order,
- policy, or
- exercise of proprietary authority, or

[21] Section 839.14, F.S.
[22] Section 839.20, F.S.
[23] Section 839.26, F.S.

- by any other means except as specifically authorized by general law.

To the extent that the listed entities or methods of regulation exceed the parameters of the current preemption language found in s. 790.33(1), F.S., the bill will broaden the reach of the State's preemption of the "whole field of regulation of firearms and ammunition."[24]

Subsection (2) of s. 790.33, F.S., is stricken by the bill. This is the subsection of the Joe Carlucci Act that requires a three-day waiting period for the purchase of a handgun state-wide. It pre-dates the constitutional amendment and constitutionally-required statutory enactment.[25] Eliminating this subsection of the Act merely clarifies the current state of the law regarding the three-day waiting period, which is found in the Florida Constitution and s. 790.0655, F.S.

The bill retains the policy and intent language from the original Act, currently found in subsection (3) of s. 790.33, F.S. It also adds language setting forth the 2011 Legislature's intent to deter and prevent the knowing violation of the preemption law.

The bill addresses deterrence and prevention in a new subsection (4) setting forth potential penalties, both criminal and civil, for the violation of the preemption law.

The bill creates a third degree felony of a knowing and willful violation of s. 790.33, F.S., by any person or entity. A third degree felony is generally punishable by up to 5 years imprisonment and a fine of up to $5,000.[26] The bill provides that a fine of up to $5 million may be assessed against a governmental entity if the violation is willful and any person with oversight of the offending official, designee, contractee, or employee knew or should have known that the act was a violation.

The bill specifies that the state attorney is responsible for the investigation and prosecution of violations of the preemption law, and provides that he or she may be held accountable under the rules of professional conduct if his or her duties are not carried out. The bill also prohibits the use of public funds, other than for the services of the public defender or conflict counsel, in defense of a criminal prosecution. An exception is made where the defendant is found not guilty at trial or the charges are dismissed.

Additionally, the bill provides that a knowing and willful violation of the preemption law shall be grounds for the immediate termination of employment or contract or removal from office by the Governor.

Civil actions are also provided for in the bill. A person or organization whose membership is adversely affected by an alleged violation of the preemption law may seek declaratory and injunctive relief. The bill also provides for the assessment of actual and consequential damages.

[24] Current preemption language applies "to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto." s. 790.33(1), F.S.
[25] Art. 1, Sec. 8, Fla. Const.; s. 790.0655, F.S.
[26] Sections 775.082, 775.083, F.S.

The court is required to award a prevailing plaintiff's attorney fees at three times the federal district court rates as well as related costs. Additionally, the bill provides that 15 percent interest per annum shall accrue on the fees, costs and damages awarded the plaintiff, retroactive to the date the suit is filed. Payment may be secured by the seizure of vehicles used by elected officeholders or officials in the appropriate jurisdiction if the fees, costs, and damages are not paid within 72 hours of the court's ruling having been filed. It is presumed that the term "appropriate municipality" means the jurisdiction wherein the violation occurred.

In subsection (5) of s. 790.33, F.S., as created by the bill, a provision excepting certain zoning ordinances in the original Carlucci Act has been relocated and other exceptions to the prohibitions are set forth in the bill. Specifically, the bill does not prohibit:

- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities listed in paragraphs (2) (a)-(i) from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S.[27]; or
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction.

Although the last exception provided, regarding courts and administrative law judges, is somewhat vague, presumably the intent is to convey jurisdiction in cases or controversies arising from the enactment of the bill.

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.

[27] Section 790.251, F.S., is entitled 'Protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes; prohibited acts; duty of public and private employers; immunity from liability; enforcement.'— (1) SHORT TITLE.—This section may be cited as the "Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008." *See specifically* s. 790.251(4), F.S., for the acts of public or private employers that are prohibited.

B. Private Sector Impact:

Among those specifically prohibited from violating the provisions of the bill are: entities or persons who accept public funds through a contractual arrangement; who work with any state or other governmental entity; or any body that serves the public good with public support, authorization, or funding. To the extent that the listed entity or person can be prosecuted for a criminal violation or against whom a civil cause of action may be brought, there is the potential for the levying of in excess of $5 million in fines, fees, costs and damages.

C. Government Sector Impact:

Governmental entities that violate the prohibitions in the bill face in excess of $5 million in fines, fees, costs and damages.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on February 8, 2011:

- Inserts acknowledgement of the Florida Constitution's explicit authority in the regulation of firearms. This is a technical amendment that brings s. 790.33, F.S., which became law in 1987, into conformity with current law.
- Deletes a provision in the bill that specified accounts into which fines assessed in a criminal case would be deposited.
- Clarifies and specifies both the interest rate on money damages, fees and costs, as well as what property may be seized to secure payment of same.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 790.33, Florida Statutes, is amended to read:

790.33 Field of regulation of firearms and ammunition preempted.—

(1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer,

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taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void. ~~This subsection shall not affect zoning ordinances which encompass firearms businesses along with other businesses. Zoning ordinances which are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited.~~

~~(2) LIMITED EXCEPTION; COUNTY WAITING-PERIOD ORDINANCES.—~~

~~(a) Any county may have the option to adopt a waiting-period ordinance requiring a waiting period of up to, but not to exceed, 3 working days between the purchase and delivery of a handgun. For purposes of this subsection, "purchase" means payment of deposit, payment in full, or notification of intent to purchase. Adoption of a waiting-period ordinance, by any county, shall require a majority vote of the county commission on votes on waiting-period ordinances. This exception is limited solely to individual counties and is limited to the provisions and restrictions contained in this subsection.~~

~~(b) Ordinances authorized by this subsection shall apply to all sales of handguns to individuals by a retail establishment except those sales to individuals exempted in this subsection. For purposes of this subsection, "retail establishment" means a gun shop, sporting goods store, pawn shop, hardware store,~~

~~department store, discount store, bait or tackle shop, or any other store or shop that offers handguns for walk-in retail sale but does not include gun collectors shows or exhibits, or gun shows.~~

~~(c) Ordinances authorized by this subsection shall not require any reporting or notification to any source outside the retail establishment, but records of handgun sales must be available for inspection, during normal business hours, by any law enforcement agency as defined in s. 934.02.~~

~~(d) The following shall be exempt from any waiting period:~~

~~1. Individuals who are licensed to carry concealed firearms under the provisions of s. 790.06 or who are licensed to carry concealed firearms under any other provision of state law and who show a valid license;~~

~~2. Individuals who already lawfully own another firearm and who show a sales receipt for another firearm; who are known to own another firearm through a prior purchase from the retail establishment; or who have another firearm for trade-in;~~

~~3. A law enforcement or correctional officer as defined in s. 943.10;~~

~~4. A law enforcement agency as defined in s. 934.02;~~

~~5. Sales or transactions between dealers or between distributors or between dealers and distributors who have current federal firearms licenses; or~~

~~6. Any individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such threat has been duly reported to local law enforcement.~~

(2) ~~(3)~~ POLICY AND INTENT.—

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(a) It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.

(b) It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are knowingly passed in violation of state law or under color of local or state authority.

(3) PROHIBITIONS; PENALTIES. -

(a) Any person who knowingly and willfully violates the Legislature's occupation of the whole field of regulation of firearms and ammunition, as declared in subsection (1), by enacting or enforcing any local ordinance or administrative rule or regulation commits a noncriminal violation as defined in s. 775.08 and punishable as provided in s. 775.082 and s. 775.083.

(b) The state attorney in the appropriate jurisdiction shall investigate complaints of noncriminal violations of this section and, where the state attorney determines that probable cause of a violation exists, shall prosecute violators in the circuit court where the complaint arose. Any state attorney who fails to execute his or her duties under this section may be

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held accountable under the appropriate Florida rules of professional conduct.

(c) If the court determines that the violation was knowing and willful the court shall assess a fine of not less than $5,000 and not more than $100,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred. The elected or appointed local government official or officials or administrative agency head shall be personally liable for the payment of all fines, costs and fees assessed by the court for the noncriminal violation.

(d) Except as required by s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, public funds may not be used to defend the unlawful conduct of any person charged with a knowing and willful violation of this section.

(e) A knowing and willful violation of any provision of this section by a person acting in an official capacity for any of the entities specified in this section or otherwise under color of law shall be cause for immediate termination of employment or contract or removal from office by the Governor.

(f) A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or enforced in violation of this section may file suit in an appropriate court for declarative and injunctive relief and for all actual and consequential damages attributable to the violation. A court shall award the prevailing plaintiff in any such suit:

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1. Attorney's fees in the trial and appellate courts to be determined by the rate used by the federal district court with jurisdiction over the political subdivision for civil rights actions;

2. Liquidated damages of three times the attorney's fees under subparagraph 1.; and

3. Litigation costs in the trial and appellate courts.

Interest on the sums awarded pursuant to this subsection shall accrue at 15 percent per annum from the date on which suit was filed. Where applicable, payment may be secured by seizure of any vehicles used or operated for the benefit of any elected officeholder or official found to have violated this section if not paid within 72 hours after the order's filing.

(4) EXCEPTIONS.—This section does not prohibit:

(a) Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited;

(b) A duly organized law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties;

(c) Except as provided in s. 790.251, any entity covered by this section from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties; or

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(d) A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge.

(e) The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the Commission.

(5) ~~(b)~~ SHORT TITLE.—As created by chapter 87-23, Laws of Florida, this section ~~shall be known and~~ may be cited as the "Joe Carlucci Uniform Firearms Act."

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the regulation of firearms and ammunition; amending s. 790.33, F.S.; clarifying and reorganizing provisions that preempt to the state the entire field of regulation of firearms; prohibiting specified persons and entities, when acting in their official capacity, from regulating or attempting to regulate firearms or ammunition in any manner except as specifically authorized by s. 790.33, F.S., by general law, or by the State Constitution; providing additional intent of the section; eliminating provisions authorizing counties to adopt an ordinance


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requiring a waiting period between the purchase and delivery of a handgun; providing a penalty for knowing and willful violations of prohibitions; providing for investigation of complaints of violations of the section and prosecution of violators by the state attorney; providing that public funds may not be used to defend the unlawful conduct of any person charged with a knowing and willful violation of the section; providing exceptions; providing for termination of employment or contract or removal from office of a person acting in an official capacity who knowingly and willfully violates any provision of the section; providing for declarative and injunctive relief for specified persons or organizations; providing for specified damages and interest; providing for seizure of certain vehicles for specified nonpayment of damages; providing exceptions to prohibitions of the section; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 650
INTRODUCER:	Regulated Industries Committee and Senators Jones and Latvala
SUBJECT:	Mobile Home Park Lot Tenancies
DATE:	March 16, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Pre-meeting**
3.			RC	
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:

The committee substitute (CS) provides that local governments must cite the responsible party for violations of local codes or ordinances. The CS makes it clear that mobile home owners and mobile home *park* owners have distinct statutory obligations and can only be penalized for violations of their respective obligations (i.e., mobile home owners should not be punished for statutory violations applying to mobile home park owners and vice versa).

The bill provides mobile home park homeowners' associations a right of first refusal to purchase a mobile home park in situations in which a mobile home park is subject to a change in land use. The bill also establishes notice procedures.

The bill would take effect upon becoming law.

This bill substantially amends section 723.061, Florida Statutes. The bill creates section 723.024, Florida Statutes.

II. Present Situation:

Mobile Home Act

Chapter 723, F.S., is known as the "Florida Mobile Home Act" (act) and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department).

The act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The act provides in part that:

> Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.[1]

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[2]

Mobile Home Park Owner's Obligations

Section 723.022, F.S., sets for the park owners obligations. Park owners must:

> (1) Comply with the requirements of applicable building, housing, and health codes.
> (2) Maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness.
> (3) Provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests.
> (4) Maintain utility connections and systems for which the park owner is responsible in proper operating condition.
> (5) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and conduct themselves in a manner that does not unreasonably disturb the park residents or constitute a breach of the peace.

[1] Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.
[2] Section 723.002(1), F.S.

Mobile Home Owner's Obligations

Section 723.023, F.S., sets forth the mobile home owner's general obligations. A mobile home owner must:

> (1) Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes.
> (2) Keep the mobile home lot which he or she occupies clean and sanitary.
> (3) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and to conduct themselves in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Eviction of a Mobile Home Owner by a Park Owner

Section 723.061(1), F.S., specifies the following grounds that a mobile home park owner may rely on to evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home:

- Nonpayment of lot rental amount;
- Conviction of a violation of a federal or state law or local ordinance, which violation may be deemed detrimental to the health, safety, or welfare of other residents of the mobile home park;
- Violation of a park rule or regulation, the rental agreement, or ch. 723, F.S.;
- Change in use of the land comprising the mobile home park; or
- Failure of the purchaser, prospective tenant, or occupant of a mobile home situated in the mobile home park to be qualified as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

In order to evict mobile home owners due to a change in the use of the land where the mobile home park is located, the park owner is required to give all affected tenants at least six months written notice of the projected change in land use to provide tenants with enough time to secure other accommodations.[3] The notice of a change in land use must be in writing, posted on the premises, and sent to the mobile home owner, tenant, or occupant by certified or registered mail.[4] The mobile home park owner is not required to disclose the proposed land use designation for the park in the eviction notice.[5]

In addition to the notice required for a proposed change in land use, a park owner must provide written notice to the mobile home owner or the directors of the homeowners' association, if one has been established, of any application for a change in zoning of the mobile home park within five days after filing for such zoning change with the zoning authority.[6]

[3] Section 723.061(1)(d), F.S.
[4] Section 723.061(5), F.S.
[5] *See Harris v. Martin Regency, Ltd.*, 576 So. 2d 1294, 1296 (Fla. 1991) (recognizing that "the legislature did not intend to require the park owner to specify what the 'change in use' would be").
[6] Section 723.081, F.S.

Sale of Mobile Home Park: Mobile Home Owner's Rights

A mobile home park owner who offers[7] his or her park for sale to the general public must notify[8] the officers of the homeowners' association of the offer, asking price, and terms and conditions of sale.[9] The mobile home owner's right to purchase the park must be exercised by and through the mobile homeowners' association created pursuant to ss. 723.075-723.079, F.S.

The mobile homeowners' association must be given 45 days from the date the notice is mailed, to execute a contract with the park owner that meets the price and terms and conditions, as set forth in the notice. If the homeowners' association and the park owner fail to execute a contract within those 45 days, the park owner has no further obligation, unless he or she subsequently agrees to accept a lower price.[10] However, if the park owner agrees to sell the park at a lower price than specified in the notice to the homeowners' association, then the homeowners' association will have an additional 10 days to meet the price and terms and conditions.[11]

The mobile home park owner is also required to notify the homeowners' association of any unsolicited bona fide offer to purchase the park which the owner intends to consider or make a counteroffer to, and allow the homeowners' association to purchase the park under the price and terms and conditions of the bona fide offer to purchase.[12] Although the park owner must consider subsequent offers by the homeowners' association, he or she is free to execute a contract to sell the park to a party other than the association at any time if the offer is unsolicited.[13]

Florida Mobile Home Relocation Corporation

In 2001, the Legislature created the Mobile Home Relocation Program in response to concerns associated with the closure of mobile home parks.[14] The Florida Mobile Home Relocation Corporation (corporation) is a public corporation that governs the collection and payment of relocation expenses for mobile home owners displaced by a change in land use for a mobile home park.[15]

Moving Expenses Available to Mobile Home Owners

Under current law, a displaced mobile home owner is entitled to certain relocation expenses paid by the corporation.[16] The amount of payment includes the lesser of the actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or $3,000 for a single-section mobile home and $6,000 for a multi-section mobile home. Moving

[7] Section 723.071(3)(b), F.S., defines the term "offer" to mean any solicitation by the park owner to the general public.
[8] Section 723.071(3)(a), F.S., defines the term "notify" to mean the placing of a notice in U.S. mail addressed to the officers of the homeowners' association. The notice is deemed to have been given upon the mailing.
[9] Section 723.071(1)(a), F.S.
[10] Section 723.071(1)(b), F.S.
[11] Section 723.071(1)(c), F.S.
[12] Section 723.071(2), F.S.
[13] *Id.*
[14] Chapter 2001-227, L.O.F.
[15] Section 723.0611, F.S.
[16] *Id.*

expenses incorporate the cost of taking down, moving, and setting up the mobile home in a new location.[17]

In order to obtain payment for moving expenses, the mobile home owner must submit an application for payment to the corporation along with a copy of the notice of a change in use and a contract with a moving company for relocating the mobile home.[18] If the corporation does not approve payment within 45 days of receipt, it is deemed approved. Upon approval, the corporation issues a voucher in the amount of the contract price to relocate the mobile home, which the moving contractor may redeem upon completion of the move and approval of the relocation by the mobile home owner.[19]

Once a mobile home owner's application for funding has been approved by the corporation, he or she is barred from filing a claim or cause of action under ch. 723, F.S., directly relating to or arising from the proposed change in land use of the mobile home park against the corporation, the park owner, or the park owner's successors in interest.[20] Likewise, the corporation may not approve an application for funding if the applicant has either:

- Filed a claim or cause of action;
- Is actively pursuing such claim or cause of action; or
- Has a judgment against the corporation, park owner, or the park owner's successors in interest – unless the claim or cause of action is dismissed with prejudice.[21]

In lieu of collecting moving expenses from the corporation, a mobile home owner can elect to abandon the home and collect payment from the corporation in the amount of $1,375 for a single section mobile home or $2,750 for a multi-section mobile home. If the mobile home owner chooses to abandon the mobile home, he or she must deliver to the park owner an endorsed title with a valid release of all liens on the title to the mobile home.[22]

Payments to the Florida Mobile Home Relocation Corporation[23]

A mobile home park owner is required to contribute $2,750 per single-section mobile home and $3,750 per multi-section mobile home to the corporation for each application that is submitted for moving expenses due to a change in land use.[24] These payments must be made within 30 days after receipt of the invoice from the corporation, and they are deposited into the Florida Mobile Home Relocation Trust Fund under s. 723.06115, F.S.[25]

The mobile home park owner is not required to make payments, nor is the mobile home owner entitled to compensation, if:

[17] Section 723.0612(1), F.S.
[18] Section 723.0612(3), F.S.
[19] Section 723.0612(3)-(4), F.S.
[20] Section 723.0612(9), F.S.
[21] *Id.*
[22] Section 723.0612(7),F.S.
[23] Payments made to the corporation are deposited into the Florida Mobile Home Relocation Trust Fund under s. 723.06115, F.S., to be used by the Department of Business and Professional Regulation to carry on the purposes of the corporation.
[24] Section 723.06116(1), F.S.
[25] *Id.*

- The mobile home owner is moved to another location in the park or to another mobile home park at the park owner's expense;
- The mobile home owner notified the park owner, prior to the notice of a change in land use, that he or she was vacating the premises;
- The mobile home owner abandoned the mobile home, as stated in s. 723.0612(7), F.S.; or
- The mobile home owner had an eviction action filed against him or her for nonpayment of the lot rental amount under s. 723.061(1)(a), F.S., prior to the date that the notice of a change in land use was mailed.[26]

In addition to the above payments, the Florida Mobile Home Relocation Trust Fund receives revenue from mobile home park owners through a $1 annual surcharge levied on the annual fee the park owners remit to the department for each lot they own within the mobile home park. Mobile home owners also contribute to the trust fund through a $1 annual surcharge on the decal fee remitted to the Department of Highway Safety and Motor Vehicles.[27]

III. Effect of Proposed Changes:

Section 1 creates s. 723.024, F.S., to specify that local governments must cite the responsible party for violations of local codes or ordinances. The CS makes it clear that mobile home owners and mobile home *park* owners have distinct statutory obligations and can only be penalized (via a lien, penalty, fine, or other administrative or civil proceeding) for violations of their respective obligations (i.e., mobile home owners should not be punished for statutory violations applying to mobile home park owners and vice versa).

Section 2 amends s. 723.061(1)(d), F.S., relating to eviction due to change in land use. Section 723.061(1)(d)1., F.S., requires the park owner to provide written notice to the officers of the homeowners' association of the right to purchase the mobile home park at the price and terms and conditions set forth in the notice.

The CS requires that the notice be delivered to the officers of the homeowners' association by mail. It gives the homeowners' association the right to execute and deliver a contract for purchase of the park to the park owner within 45 days after the written notice was mailed. The contract must be for the same price and terms and conditions set forth in the notice, which may also require the purchase of other real estate that is contiguous or adjacent to the mobile home park. If the park owner and the homeowners' association do not execute a contract within 45 days, the park owner is under no further obligation unless the park owner elects to offer or sell the park at a lower rate. If the park owner does elect to offer or sell the park at a price less than the price specified in the written notice to the homeowners' association, then the homeowners' association has an additional 10 days to meet the revised price and terms and conditions.

The CS clarifies that the park owner has no obligation under ss. 723.061(1)(d) or 723.071, F.S., to provide any further notice to, or to negotiate with, the homeowners' association for the sale of the mobile home park after six months from the date of mailing the initial notice.

[26] Section 723.06116(2), F.S.
[27] Section 723.06115(1), F.S.

The CS amends s. 723.061(1)(d)2., F.S., to clarify that the six months notice of an eviction due to a projected change in land use must be provided by the park owner to the affected mobile home owners instead of to the affected tenants.

The CS deletes subsection (3) of s. 723.061, F.S. Currently, this subsection provides that the provisions of 723.083, F.S.,[28] do not apply to any park where the provisions of "this subsection" apply. There are no provisions governing parks under the subsection. Prior to its amendment in 2001, this provision was included in a paragraph within subsection (2) of 723.061, F.S.[29] The provisions in subsection (2) were deleted in 2001.[30] Therefore, the language in subsection (3) appears to have been mistakenly preserved after the 2001 amendment. However, courts have interpreted this provision as precluding the application of s. 723.083, F.S., when a mobile home park owner gives notice under s. 723.061, F.S.[31] Therefore, the bill clarifies that the provisions of s. 723.083, F.S., which requires the government to consider the adequacy of parks for relocation, apply when a mobile home park owner gives notice under s. 723.061, F.S.

The bill amends s. 723.061(4), F.S., to exempt the notice provided to officers of the homeowners' association under s. 723.061(1)(d)1., F.S., from the notice requirements provided under s. 723.061(4), F.S. The notice requirements under s. 723.061(4), F.S., require that the notice be posted on the premises, and sent and addressed to the mobile home owner, tenant, or occupant by certified or registered mail, return receipt requested at his or her last known address.

Section 3 provides that the bill would take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill provides that the mobile home park owner must offer to sell the park to the home owners if the park owner intends to change to use of the land comprising the mobile

[28] Section 723.083, F.S., provides that no agency of municipal, local, county, or state government may approve any application for rezoning, or take other action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.
[29] Section 6, ch. 2001-227, L.O.F.
[30] *Id.*
[31] *DeFalco v. City of Hallandale Beach*, 18 So. 3d 1126, 1128 (Fla. DCA 2009).

home park and the home owners meet the price and terms and conditions of the park owner for the sale of the mobile home park. The bill does not require that a park owner intend to sell the park as a prerequisite to requiring the park owner to offer to sell the park to the homeowners' association. This may implicate situations in which the park owner does not intend to sell the land. For example, a situation in which the park owner plans to personally develop the land for a different use and does not plan to sell the property to another developer. This requirement may implicate prohibitions contained in the Sixth Amendment of the U.S. Constitution if applied to deny an application for a change in land use. The Sixth Amendment prohibits the taking of private property for public use without just compensation. A regulatory taking may occur when government regulation "does not substantially advance a legitimate state interest, but instead singles out mobile home park owners to bear an unfair burden, and therefore constitutes an unconstitutional regulatory taking of their property."[32]

A private taking to benefit a private party without any public purpose is void under the 5th Amendment of the U.S. Constitution.[33] A park owner may raise a takings claim under the Fifth and Fourteenth Amendments to the U.S. Constitution. However, in *Kelo v. City of New London Conn.*, the U.S. Supreme Court found that a city's taking of private residences to allow redevelopment under the city's multiuse plan for sale for private development satisfied the public use test and did not violate the 5th Amendment.[34] The property owner may not prevail if the legislature finds and states a clear public purpose and provides a due process mechanism. For example, in *Hawaii Housing Auth. v. Midkiff*, the U.S. Supreme Court held that a Hawaiian statute that permitted a housing authority to take private land under eminent domain proceedings and to sell it to the tenant in fee simple did not violate the 5th or 14th amendments of the U.S. Constitution because the public purpose was to end the evil of land oligopoly.[35]

In *Aspen-Tarpon Springs v. Stuart*, the First District Court of Appeals held that s. 723.061(2), F.S., was unconstitutional as a regulatory taking of property without compensation.[36] This provision, since amended,[37] required a mobile home park owner who wished to change the land use of a park to either pay to have the tenants moved to another comparable park within 50 miles or purchase the mobile home from the tenants at a statutorily determined value. In *Aspen-Tarpon Springs*, the court found that neither the "buy" or "relocation" options were economically feasible, and were, as a practical matter, confiscatory because it authorized a permanent physical occupation of the owner's property. This issue has not been addressed by the Florida Supreme Court.

Based on the analysis in *Aspen-Tarpon Springs*, it is not clear whether the requirement that the home park owner offer to sell the park to the home owners if they meet his or her price, terms, and conditions of sale, especially in circumstances in which the park owner does not intend to sell the property to effectuate the change in use of the land, would be

[32] *Aspen-Tarpon Springs v. Stuart*, 635 So. 2d 61 (Fla. 1st DCA 1994).
[33] *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 245 (1984).
[34] *Kelo v. City of New London Conn.*, 545 U.S. 469 (2005).
[35] *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 245 (1984).
[36] *Aspen-Tarpon Springs v. Stuart*, 635 So. 2d 61 (Fla. 1st DCA 1994).
[37] Section 6, ch. 2001-227, L.O.F.

economically feasible, and if not economically feasible, whether the requirement would be an unconstitutional taking under the Sixth Amendment of the U.S. Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

See the "Effect of Proposed Changes" section of this bill analysis for a discussion of the rights of mobile home owners and the responsibilities for mobile home park owners created by the bill, which may affect them financially through the purchase and sale of property in a mobile home park.

C. Government Sector Impact:

The bill would require that local governments to cite the responsible party for violations of local codes or ordinances. It would also prohibit local governments from assessing a lien, penalty, or fine, or initiating an administrative or civil proceeding against the mobile home owner or park owner who does not have a duty or responsibility relating to the alleged violation.

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 Regulated Industries on March 9, 2011:
The committee substitute amends s. 723.024(1), F.S., to require local governments to cite the responsible party for violations of local codes or ordinances instead of authorizing local governments to enforce the statutory obligations in ss. 723.022 and 723.023, F.S., through local government ordinances.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 384
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Tangible Personal Property Taxes
DATE:	January 14, 2011 REVISED:

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

I. Summary:

This bill authorizes a person who engages in the business of renting heaving equipment to collect a tangible personal property tax recovery fee on the rental of heavy equipment. The bill defines the term "heavy equipment" and limits the application of this act to short-term rental agreements or at will-contracts.

This bill creates an undesignated section of law.

II. Present Situation:

Property Tax Assessments

Article VII, section 1(a), of the Florida Constitution, grants exclusive authority to local governments to levy ad valorem taxes on real and tangible personal property, by providing that ". . . [n]o state ad valorem taxes shall be levied upon real estate or tangible personal property. . ."[1] Article VII, section 2, of the State Constitution further requires that all ad valorem taxation be at a uniform rate within each taxing district.[2]

Tangible Personal Property Tax

Section 192.001(11)(d), F.S., defines the term "tangible personal property" to mean:

[1] FLA. CONST. art. VII, s. 1(a).
[2] FLA. CONST. art. VII, s. 2.

> All goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII, of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.[3]

With the exception of certain household goods and inventory, tangible personal property is subject to ad valorem taxation.[4] Section 193.052, F.S., requires all tax returns for tangible personal property to be filed in the county where the property is located by April 1 of each year.[5] In completing the return, the owner of the tangible personal property is required to indicate his/her estimate of the value of property owned or otherwise taxable to him/her and covered by such return.[6]

Department of Revenue form DR-405 for tangible personal property instructs taxpayers to report the value of all personal property located in the county as of January 1, at 100% of the original total cost, including any applicable sales tax, transportation, and handling and installation charges incurred.[7] The Florida Department of Revenue (Department) requires a separate personal property return for each location of personal property in the county, with the exception of owners of vending machines, propane tanks and similar free-standing property at many locations, who may submit a single return.[8]

Property appraisers are authorized to accept tangible personal property tax returns in a form initiated through an electronic data interchange, subject to prescribed rules by the Department. The Department's rules must provide a uniform format for all counties which closely resembles form DR-405 and that adequate safeguards for verification of taxpayers' identities be established to avoid unauthorized filing.[9]

At the taxpayer's request, the property appraiser shall grant a 30-day, and at his/her discretion an additional 15-day, extension for filing tangible personal property tax returns. The request for extension, at the option of the property appraiser, must include any or all of the following:

- The name of the taxable entity,
- The taxable entity's tax identification number, and
- The reason a discretionary extension should be granted.[10]

In 2010, 1,237,106 tangible personal property tax returns were filed with a total taxable value of $101.1 billion.[11]

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[3] Section 192.001(11)(d), F.S.
[4] *See* FLA. CONST. art. VII, ss. 1(b), 3(b) and (d), and 5(b).
[5] Sections 193.052 and 193.062(1), F.S.
[6] Section 193.052(4), F.S.
[7] Florida Department of Revenue, Form DR-405, Tangible Personal Property Tax Return, available online at http://dor.myflorida.com/dor/forms/2007/dr405a.pdf (last visited on Jan. 14, 2011).
[8] *Id.*
[9] Section 193.052(7), F.S.
[10] Section 193.063, F.S.
[11] Florida Department of Revenue website, *Florida Property Tax Data Portal: Statewide Ad Valorem Summary Reports,* available online at http://dor.myflorida.com/dor/property/resources/data.html (last visited on March 11, 2011).

North American Industry Classification System (NAICS) Code 532412

The North American Industry Classification System (NAICS) "is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy."[12] The NAICS Code was adopted in 1997 under the Office of Management and Budget (OMB) to replace the then-existing Standard Industrial Classification (SIC) System. The 2007 version of the NAICS Code is the current version of the code that is utilized today. Code 532412 of the NAICS applies to "construction, mining, and forestry machinery and equipment rental and leasing."

NAICS code 532412 states:

> **532412 Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing—**This U.S. industry comprises establishments primarily engaged in renting or leasing heavy equipment without operators that may be used for construction, mining, or forestry, such as bulldozers, earthmoving equipment, well-drilling machinery and equipment, or cranes.[13]

III. Effect of Proposed Changes:

Section 1 authorizes a person who engages in the business of renting heavy equipment to collect a tangible personal property tax recovery fee on the rental of heavy equipment in order to allow the owner of the heavy equipment to recover the tangible personal property taxes imposed upon the equipment. The amount of the fee must be disclosed in the rental agreement and be based on the rental business's estimate of the pro rata annual tangible personal property taxes that will be imposed on the equipment. The bill states that the personal property tax recovery fee may not exceed the tangible personal property tax imposed on the heavy equipment.

The bill defines "heavy equipment" to mean industrial or construction equipment, including, but not limited to, equipment described in the North American Industry Classification System (NAICS) Code 532412, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

The bill states that this act shall only apply to short-term rental agreements that are a lease or rental for a term of 365 days or less, or at-will contracts that do not specify a term. The bill clarifies that a short-term rental agreement does not include any extension or renewal of a lease contract having an original term of one year or longer.

Section 2 provides that this act shall take effect on July 1, 2011.

[12] U.S. Census Bureau, North American Industry Classification System (NAICS), website available online at http://www.census.gov/eos/www/naics/ (last visited on March 11, 2011).
[13] *Id.*

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 will allow individuals who engage in the business of renting heavy equipment to collect a tangible personal property tax recovery fee on short-term rentals of heavy equipment in an amount not to exceed the tangible personal property tax imposed on the heavy equipment.

B. Private Sector Impact:

Individuals that enter into short-term rental agreements or at-will contracts for the rental of heavy equipment may be required to pay a fee, the amount of which would be disclosed in the rental agreement between the two private parties.

C. Government Sector Impact:

The Department of Revenue has indicated that it does not anticipate an operation impact as a result of the provisions of this bill.[14]

In a previous analysis conducted on a similar bill from the 2010 Legislative Session (2010 HB 557), the Department of Revenue stated that since the fee proposed under this bill will be a part of the amount paid for the rental, then the amount of the fee will be subject to a sales tax pursuant to ch. 212, F.S.[15] The Department further stated that "this fee would not be paid to, paid by, or administered by the property appraiser, tax collector, or any other public entity involved in assessing, administering, or collection of property taxes [and that the] Department has no authority to administer or enforce the fees collected by rental companies."[16]

[14] Department of Revenue, *SB 384 Fiscal Analysis*, at 2 (Jan. 26, 2011) (on file with the Senate Committee on Community Affairs).
[15] Fla. H.R. Comm. on General Gov't Policy Council, CS/CS/HB 557 (2010) Staff Analysis 4 (final March 25, 2010) (on file with comm.) *citing* Department of Revenue, *HB 556 Fiscal Analysis*, at 2 (Feb. 2, 2010) (on file with the Senate Committee on Community Affairs).
[16] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Heavy equipment rental; tangible personal property tax recovery fee.—

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

(a) "Heavy equipment" means industrial or construction equipment, including, but not limited to, equipment described in the North American Industry Classification System (NAICS) Code 532412 as published in 2007 by the Office of Management and Budget within the Executive Office of the President of the

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United States.

(b) "Lessee" means the person who rents or leases the heavy equipment.

(c) "Short-term rental agreement" means a lease or rental agreement having a term of less than 365 days or an at-will contract that does not specify a term. However, the term "short-term rental agreement" does not include any extension or renewal of a lease or rental agreement having an original term of 365 days or more.

(2) For the purpose of recovering the tangible personal property tax imposed on heavy equipment, a person engaging in the business of leasing or renting heavy equipment may collect a recovery fee in an amount equal to 2 percent of the total rental transaction fee generated in each county of operation. The recovery fee may be collected and retained after payment of the personal property tax assessed for the previous year only if:

(a) The heavy equipment is subject to a short-term rental agreement that discloses the amount and purpose for the collection of the recovery fee; and

(b) The person engaging in the business of renting or leasing heavy equipment may not seek additional recoupment of the recovery fee for the current year if the actual recovery fee collected in the current year exceeds the tangible personal property tax paid in the prior year.

If, during the current year, the recovery fee collected by the person engaging in the business of renting or leasing heavy equipment exceeds the tax paid in the prior year, the excess recovery fee amount collected shall be applied to reduce the

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following year's recovery fee recoupment by that amount.

Section 2. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to tangible personal property taxation; providing definitions; authorizing collection of a tangible personal property tax recovery fee by a person engaging in the business of renting or leasing heavy equipment; providing requirements for collection, retention, and reimbursement of the recovery fee; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 828
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Public Records
DATE:	March 6, 2011
REVISED:	

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

I. Summary:

This bill creates an exemption from the public records requirements of s. 119.0713(2), F.S., and s. 24(a), Art. I of the State Constitution for information received as part of active investigations of the inspector general on behalf of a unit of local government.

The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.[1]

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.[2]

This bill substantially amends section 119.0713 of the Florida Statutes.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.

Section 24(a), Art. I, of the State Constitution, provides that:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record[3] must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency[4] records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public records" to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."[5]

Only the Legislature is authorized to create exemptions to open government requirements.[6] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[7] A bill enacting an exemption[8] may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.[9]

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be

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[3] Section 119.011(12), F.S.

[4] Section 119.011(2), F.S., defines "agency" as "…any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[5] *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

[6] Article I, s. 24(c) of the State Constitution.

[7] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

[8] Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[9] Section 24(c), Art. I of the State Constitution.

maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.[10] If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[11]

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Local Government Auditing

Section 218.32 (1), F.S., requires that local governments submit to the Department of Financial Services (DFS) an Annual Financial Report covering their operations for the preceding fiscal year. DFS makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database. Section 218.39, F.S., provides that if a local government will not be audited by the Auditor General, the local government must provide for an annual financial audit to be completed within 12 months after the end of the fiscal year. The audit must be conducted by an independent certified public accountant retained by the entity and paid for from public funds.

Under s. 119.0713, F.S., the audit report of an internal auditor prepared for or on behalf of a unit of government becomes a public record when the audit becomes final. Audit work papers and notes related to the audit are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the Florida Constitution until the audit report becomes final.

Local Government Investigations: Public Records

If certified pursuant to statute, an investigatory record of the Chief Inspector General within the Executive Office of the Governor or of the employee designated by an agency head as the agency inspector general (which would include local government entities)[12] has a public records exemption until the investigation ceases to be active, or a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received, whichever first occurs. Investigatory records are those records that are related to the investigation of an alleged, specific act or omission or other wrongdoing, with respect to an identifiable person or group of persons, based on information compiled by the Chief Inspector General or by an agency inspector general, as named under the provisions of s. 112.3189, F.S., in the course of an investigation. Under s. 112.31901, F.S., an

[10] Op. Att'y Gen. Fla. 85-62 (1985).
[11] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).
[12] Section 112.312, F.S., defining "agency" as any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.

investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.[13] At the local government level there is concern that sixty days is too little time to carry out an investigation, particularly if it is a criminal investigation. Additionally, the Palm Beach County Inspector General is an independent entity responsible for the county, 38 municipalities (by referendum), and the Solid Waste Authority (by interlocal agreement).[14] As a result, there is no single agency head to certify the investigation as exempt.

Section 112.3188, F.S., governs the confidentiality of information given to inspectors general in whistleblower cases. Certain specified information is confidential until the conclusion of an investigation when the investigation is related to whether an employee or agent of an agency or independent contractor:

- Has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or
- Has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

Information, other than the name or identity of a person who discloses certain types of incriminating information about a public employee, may be disclosed when the investigation is no longer active. Section 112.3188, F.S., defines what constitutes an active investigation.

Section 112.324(2), F.S., (recently amended by ch. 2010-130, Laws of Florida) provides local governments with a public records exemption for ethics investigations.[15] A recent Florida Attorney General's Opinion responded to the following question, "Do the public records and meeting exemptions provided for in Chapter 2010-130, Laws of Florida, apply to the investigatory process of the Palm Beach County Inspector General?"[16] The opinion concluded that to the extent that the inspector general is investigating complaints involving the violation of ethics codes the provisions of Chapter 2010-130 would apply. Confidentiality under s. 112.324, F.S. does not extend beyond ethics investigations. However, the Attorney General Opinion did note that similar investigations would be covered under s. 112.3188, F.S., discussed above.

III. Effect of Proposed Changes:

Section 1 amends s. 119.0713, F.S., to expand the public records exemptions for audit records (covering records until the audit report becomes final) to include information received, produced, or derived from an investigation until the investigation is complete or when the investigation is no longer active. This exemption for audits and investigations is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a statement of public necessity required by the Florida Constitution. The exemption is necessary because the release of such information could potentially be defamatory to an individual or entity under audit or investigation, causing unwarranted damage to the good

[13] Section 112.31901, F.S.
[14] Email from the Palm Beach County Inspector General, on record with the Senate Committee on Community Affairs.
[15] *See also* s. 112.31901, F.S. (related to investigatory records of ethics violations).
[16] Op. Att'y Gen. Fla. 2010-39, September 16, 2010.

name or reputation of an individual or company, or could significantly impair an administrative or criminal investigation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Vote Requirement: Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Subject Requirement: Section 24(c), Art. I of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

Public Necessity Statement: Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

Breadth: A public records exemption must be no broader than necessary to accomplish the stated purpose of the law.[17] This bill does not specify what agencies[18] it applies to or what emergency notification programs it is intended to include. To survive constitutional scrutiny, the bill must be narrowly tailored to protect individuals or entities from the release of defamatory information.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[17] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

[18] By default it will apply to "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Section 119.011, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because of the level of scrutiny afforded to public record exemptions, the Legislature may want to consider defining what constitutes an active investigation or importing the definition of active investigation from s. 112.3188, F.S., or s. 112.31901, F.S.

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.

356244

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment

Delete line 51
and insert:
investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1234
INTRODUCER:	Senator Smith
SUBJECT:	Special Assessment for Law Enforcement Services
DATE:	March 14, 2011 REVISED:

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

I. Summary:

This bill grants municipalities explicit authorization to levy special assessments for law enforcement services so long as the municipality (1) adopts an ordinance that apportions the costs among parcels proportionately and (2) reduces the municipal ad valorem taxes for the fiscal year in which the municipality implements the special assessment and retains that reduction for at least one year.

This bill substantially creates section 166.212, of the Florida Statutes.

II. Present Situation:

Ad Valorem Taxes

Article VII, section 9, of the Florida Constitution, provides that counties, cities, and special districts may levy ad valorem taxes as provided by law and subject to the following millage limitations:

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage rate fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by the voters for special districts.

- A millage of not more than 1 mill for water management purposes in all areas of the state except the northwest portion of the state which is limited to 1/20th of 1 mill (.05).[1]

The statutory authority for local governments and schools to assess millage is provided in s. 200.001, F.S. The statutory authority and the maximum rate at which water management districts may assess millage is provided in s. 373.503, F.S.[2]

Municipal Millages[3]**—** County government millages are composed of four categories of millage rates:

1. General millage is the non-voted millage rate set by the municipality's governing body.
2. Debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Article VII, section 12, of the Florida Constitution.
3. Voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Article VII, section 9(b), of the Florida Constitution.
4. Dependent special district millage is set by the municipality's governing body pursuant to s. 200.001(5), F.S., and added to the municipal millage to which the district is dependent and included as municipal millage for the purpose of the ten-mill cap.

Method of Fixing Millage— 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.[4] 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.

Special Assessments[5]

Special assessments are a revenue source that may be used by local governments to fund certain services and maintain capital facilities. Unlike taxes, these assessments are directly linked to a particular service or benefit. Examples of special assessments include fees for garbage disposal,

[1] FLA. CONST. art. VII, s. 9.
[2] *See* ss. 200.001 and 373.503, F.S., for more information.
[3] The following information was obtained from The Florida Legislature's Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 5 (Oct. 2010) (on file with Senate Committee on Community Affairs) *referencing* s. 200.001(1), F.S.
[4] Section 200.065, F.S.
[5] The following information was obtained from The Florida Legislature's Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 15 (Oct. 2010) (on file with Senate Committee on Community Affairs).

sewer improvements, fire protection, and rescue services.[6] Counties and municipalities have the authority to levy special assessments based on their home rule powers. Special districts derive their authority to levy these assessments through general law or special act.

As established in Florida case law, an assessment must meet two requirements in order to be classified as a valid special assessment:

1) The assessment must directly benefit the property, and
2) The assessment must be apportioned fairly and reasonably amongst the beneficiaries of the service.[7]

These special assessments are generally collected on the annual ad valorem tax bills, characterized as a "non-ad valorem assessment" under the statutory procedures in ch. 197, F.S. [8] Section 197.3632(1)(d), F.S., defines a non-ad valorem assessment as "those assessments that are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X, of the State Constitution."[9]

***Supplemental Method of Making Local Improvements*—**Independent of a municipality's authority to impose special assessments under its home rule powers, chapter 170, F. S., provides a supplemental and alternative method for making municipal improvements. Specifically, s. 170.201(1), F.S., provides that:

> The governing body of a municipality may levy and collect special assessments to fund capital improvements and municipal services including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement and parking facilities. The governing body of a municipality may apportion costs of such special assessment on:
> a) The front or square footage of each parcel of land; or
> b) An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.

Although subsection (1) of s. 170.201, F.S., does not explicitly list law enforcement services, the language "including, but not limited to" provides that this is not an exclusive list.

Chapter 125, F.S. allows counties to establish municipal service taxing or benefit units (MSTU's) for any part or all of the county's unincorporated area in order to provide a number of county or municipal services. Such services can be funded, in whole or in part, from special

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[6] *See Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So. 2d 578 (Fla. 2d DCA 1977); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380 (Fla. 1973); and *Sarasota County v. Sarasota Church of Christ*, 641 So. 2d 900 (Fla. 2d DCA 1994).
[7] *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).
[8] *Primer on Home Rule & Local Government Revenue Sources* at 35 (June 2008).
[9] Article X, section 4(a), of the Florida Constitution, provides, in pertinent part that "[t]here shall be exempt from forced sale under process of any court, and no judgment, decree, or execution shall be a lien thereon, except for the payment of taxes and assessments thereon …"

assessments.[10] To the extent not inconsistent with general or special law, counties may also create special districts to include both incorporated and unincorporated areas, upon the approval of the affected municipality's governing body, which may be provided municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.[11]

Special Assessments for Law Enforcement Services— In 1998, the Attorney General's Office issued Opinion 98-57, stating that "the imposition of special assessments to fund general law enforcement would not appear to be permissible in light of the" Florida Supreme Court decision, *Lake County v. Water Oak Management*.[12] In *Lake County*, the Fifth District Court of Appeal struck down a special assessment for fire protection services provided by the county on the grounds that there was no special benefit to the properties on which the fire protection special assessment was imposed.

On appeal, the Florida Supreme Court stated that the "test is not whether the services confer a 'unique' benefit or are different in type or degree . . . rather the test is whether there is a logical relationship between services provided and the benefit to real property."[13] In support of a previous 1969 Supreme Court decision, the court held that "fire protection services do, at a minimum, specifically benefit real property by providing for lower insurance premiums and enhancing the value of the property."[14] The Court further stated that the assessment still must meet the second prong of the test and be properly apportioned to the benefit received. Absent the proper apportionment, the assessment becomes an unauthorized tax.

In conclusion the court held that:

> Clearly, services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property.[15]

In 2005, the First District Court of Appeal held that special assessments for law enforcement services in a MSTU that benefited leaseholds were a valid special assessment.[16] In that case, the leaseholds subject to the special assessment were located on an island with "unique tourist and crowd control needs requiring specialized law enforcement services to protect the value of the leasehold property." For these reasons, the court held that the "unique nature and needs of the subject leaseholds" made the special assessments valid.

Based on these court decisions and the 1998 Attorney General Opinion, it would appear that a municipality currently does not have the authority to levy assessments for general law

[10] Section 125.01(1)(q)-(r), F.S.
[11] Section 125.01(5), F.S.
[12] Op. Atty. Gen. Fla. 98-57 (Sept. 18, 1998) *citing* 695 So. 2d 667 (Fla. 1997).
[13] *Lake County* 695 So. 2d at 669.
[14] *Id.* citing *Fire Dist. No. 1 v. Jenkins*, 221 So. 2d 740, 741 (Fla. 1969).
[15] *Id. at 670.*
[16] *Quietwater Entertainment, Inc. v. Escambia County*, 890 So. 2d 525 (Fla. 1st DCA 2005).

enforcement services if the assessment does not provide a special benefit to the property at interest that is properly apportioned to such benefit.

III. Effect of Proposed Changes:

Section 1 creates s. 166.212, F.S., to allow a municipality to levy a special assessment to fund the costs of providing law enforcement services. The municipality must do the following:

- Apportionment Methodology Adopt an ordinance that apportions funds in reasonable proportion to the benefit received by each parcel. The apportionment is considered using the following factors:
  - The size of structures on the parcel.
  - The location and use of the parcel.
  - The projected amount of time that the municipal law enforcement agency will spend protecting the property, grouped by neighborhood, zone, or category of use.
  - The value of the property (however this factor may not be a sole or major factor).
  - Any other factor that may reasonably be used to determine the benefit of law enforcement services to a parcel of property.
- Reduction in Ad Valorem Millage Reduce its ad valorem millage as follows:
  - For the initial fiscal year the municipality implements the special assessment, reduce the ad valorem millage by the millage that would be required to collect revenue equal to the revenue that is forecast to be collected from the special assessment.
  - After the initial fiscal year of implementation, the assessment may only be increased in the same manner prescribed for the increase of ad valorem revenue in s. 200.065, F.S.
  - However, excluding millage approved by a vote of the electors and millage pledged to repay bonds, a municipality is not required to reduce its millage:
    - By more than 75 percent, or
    - By more than 50 percent, if the resolution imposing the special assessment is approved by a two-thirds vote of the governing body of the municipality.

Future Ad Valorem Millage Increases The rolled-back rate for the fiscal year immediately after the initial year of implementation is the millage imposed for the year that the special assessment is implemented, adjusted for the change in per capita personal income.

Construction The authorization provided in this Act shall be construed to be general law authorizing a municipality to levy taxes under Article VII, sections 1 and 9, of the Florida Constitution.

Section 2 states that this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Municipalities will be permitted to levy special assessments for law enforcement services so long as they meet the provisions of this Act.

B. Private Sector Impact:

Individuals that reside in municipalities that levy special assessments for law enforcement services as provided in this Act may be required to pay such special assessments for the law enforcement services they receive.

C. Government Sector Impact:

See Tax/Fee Issues above.

The Department of Revenue has indicated that the current effective date would cause a very small window of opportunity for a municipality to adopt an ordinance to implement this assessment for 2011 tax year and that the Department would need to be granted emergency rule-making authority to prescribe and create the new forms in order for the levy to apply in the 2012 tax year.[17]

VI. Technical Deficiencies:

The Department of Revenue has recommended the following amendments:

- On page 3, line 72 of the bill, specifically reference s. 200.065 (5), F.S.
- Change the effective date from "upon becoming law" to January 1, 2013.[18]

The Department has further noted that subsection (5) of the newly created s.166.212, F.S., provides that "the authorization provided herein shall be construed to be general law authorizing a municipality to levy taxes under Article VII, sections 1 and 9, of the Florida Constitution." The Department states that these constitutional provisions provide for the levy of taxes and do not reference the levy of special assessments, which is a term used for levies made under a municipality's home rule power and not under the power of taxation. The Department states that the term "special assessment" as it is used in this bill will cause confusion and therefore suggests

[17] Department of Revenue, *SB 1234 Fiscal Analysis*, at 3-4 (March 9, 2011) (on file with the Senate Committee on Community Affairs).
[18] *Id.*

removing all references to the term "special assessment" made in the bill.[19] However, the provision of the bill referenced by the Department (lines 77-80) does state "the authorization provided in this section . . ."

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.

[19] *Id.*

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 858
INTRODUCER:	Agriculture Committee and Senator Hays
SUBJECT:	Agriculture
DATE:	March 14, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Spalla	AG	**Fav/CS**
2.	Wood	Yeatman	CA	**Pre-meeting**
3.			BC	
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 includes the following provisions related to agriculture:

- Prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by best management practices, interim measures, or regulations adopted as rules under chapter 120, Florida Statutes.
- Prohibits counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the operation has a National Pollutant Discharge Elimination System permit, an environmental resource permit, a works-of-the-district permit, or implements best management practices. The committee substitute provides an exception under specified circumstances for counties that adopted a stormwater ordinance before March 1, 2009, provided credits are given.
- Allows a county to enforce its wetland protection acts adopted before July 1, 2003.
- Creates the Agricultural Land Acknowledgement Act to ensure that agricultural practices will not be subject to interference by residential use of land contiguous to agricultural land.
- Requires an applicant for certain development permits to sign and submit an acknowledgement of certain contiguous sustainable agricultural lands as a condition of the political subdivision issuing the permits.

- Expands eligibility for exemption from a local business tax for persons who sell farm, aquacultural, grove, horticultural, floricultural, or tropical fish farm products.
- Expands the definition of "farm tractor" to include any motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.
- Reverses legislation enacted in 2005 to return tropical foliage to exempt status from the provisions of the License and Bond law.
- Exempts farm fences from the Florida Building Code and expands the definition of nonresidential farm buildings that are exempt from county or municipal codes and fees.
- Allows additional fiscally sound multi-peril crop insurers to sell crop insurance in Florida.
- Makes section 823.145, Florida Statutes, consistent with section 403.707, Florida Statutes, relating to the disposal of certain materials used in agricultural operations.

This committee substitute amends sections 163.3162, 205.064, 322.01, 604.15, 604.50, 624.4095 and 823.145 of the Florida Statutes.

This committee substitute creates section 163.3163, Florida Statutes.

II. Present Situation:

Agricultural Lands and Practices Act

In 2003, the Legislature passed the Agricultural Lands and Practices Act, codified in s. 163.3162, F.S., to prohibit counties from adopting any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation on agricultural land if such activity is regulated through best management practices (BMPs), interim measures, or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, some counties had enacted measures to regulate various agricultural operations in the state which were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. While the Agricultural Land and Practices Act banned the adoption of future local government restrictive measures, it did not explicitly prohibit the enforcement of existing local government measures.

Stormwater Utility Fees

A number of counties have adopted stormwater utility fees to provide a funding source for stormwater management and water quality programs, and have imposed these fees on agricultural lands even though the land owner has a permitted stormwater management system or has implemented BMPs. The revenue generated directly supports maintenance and upgrade of existing storm drain systems, development of drainage plans, flood control measures, water-quality programs, administrative costs, and sometimes construction of major capital improvements. Unlike a stormwater program that draws on the general tax fund or uses property taxes for revenue, the people who benefit from stormwater utility fees are the only ones who pay. This may create a duplicative financial burden for the agricultural operation that is already

paying to manage its own permitted stormwater management system, yet has to pay again for a county program.

Right to Farm Act

Section 823.14, F.S., also known as the Florida Right to Farm Act (RTFA), has been law since 1979. In the RTFA, the Legislature recognized the importance of agricultural production to Florida's economy and the importance of the preservation of agriculture. It found that as Florida's population has grown, development of rural areas often places subdivision and multi-family dwellings near farming operations. The residents of these developments sometimes consider existing agricultural operations to be a noise, odor, or visual nuisance, even when the operations adhere to generally accepted agricultural practices. Some residents lodge complaints with local government, state agencies or other entities. In most cases where the Department of Agriculture and Consumer Services has responded to a complaint, a site visit has revealed that the operation is conducting its activities appropriately. The purpose of the RTFA was to protect reasonable agricultural activities on farm land from nuisance suits. Generally, no farm in operation for a year or more since its established date of operation, which was not a nuisance at the established date of operation, can be a public or private nuisance if the farm operations conform to generally accepted agricultural and management practices. If an existing farm's operations expand to a more excessive operation with regard to noise, odor, dust, or fumes, it can be considered a nuisance if it is adjacent to an established homestead or business as of March 15, 1982. Growers and farmers report that the RTFA has not stopped neighbors and local governments from leveling complaints and making attempts to obstruct agriculture operations. There is further conflict in some instances when there is a lack of record as to whether the farming operation or the urban area was in existence first.

Local Business Tax

Section 205.022, F.S., defines "person" to mean any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular. Section 205.064, F.S., provides an exemption from local business taxes to "natural persons" engaged in the selling of certain agricultural products. Currently, cities and one county are interpreting the term "natural person" to exclude corporations, partnerships and other non-natural persons for exemption purposes.

Dealers in Agricultural Products

The Agricultural License and Bond Law, ss. 604.15-604.34, F.S., gives market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults. In the 2005 Legislative Session, the definition of the term "agricultural products" was amended to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by the growers or groups of growers selling their own products; all persons who buy for cash and pay at

the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than $1,000 in product per month from Florida producers. Due to the manner by which the foliage business is conducted, the change has not been proven beneficial to the foliage industry and it has requested a reenactment of the exemption.

Nonresidential Farm Buildings

Sections 553.73 and 604.50, F.S., exempt nonresidential farm buildings located on a farm from the Florida Building Code and any county or municipal building code, making building permits unnecessary for such buildings. In 1974, the Legislature established statewide standards known as the State Minimum Building Codes, and in 1998, the Legislature created a statewide unified building code.[1] Nonresidential farm buildings have been exempt from building codes since 1998. In 2001, Attorney General Robert Butterworth opined:

> The plain language of sections 553.73(7)(c)[2] and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm.[3]

Despite the Attorney General Opinion, there have been instances of some counties and municipalities assessing fees and requiring permits for nonresidential buildings, even though the buildings are exempt from building codes and are not inspected.

Crop Insurance

Crop insurance is purchased by agricultural producers, to protect themselves against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the U.S., a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430). Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs.

[1] Fla. Att'y Gen. Opinion 2001-71, 2001 WL 1194681 (Fla. A.G. 2001).
[2] The cited statute has since changed to s. 553.73(9)(c), F.S.
[3] Fla. Att'y Gen. Opinion 2001-71.

Disposal of Agricultural Waste

Polyethylene plastic has long been used in numerous forms by the agricultural industry. Polyethylene mulch plastic is commonly disposed of by burning. Chapters 823 and 403, F.S., both regulate open burning of materials used in agricultural production. The Department of Environmental Protection does not require a permit for burning certain solid wastes if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders. Section 403.707(2)(e), F.S., provides an exemption for disposal of solid waste resulting from normal farm operations, including polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled. Section 823.145, F.S., under the Department of Agriculture and Consumer Services, differs in that it only lists mulch plastic as approved for open burning.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3162, F.S., to prohibit a county from enforcing any regulations on agricultural land if the activity is regulated by Best Management Practices, interim measures or regulations adopted as rules under chapter 120, F.S., by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program; or if the activity is regulated by the U.S. Department of Agriculture, the U.S. Army Corps of Engineers, or the U.S. Environmental Protection Agency.

This section prohibits a county government from charging an assessment or fee for stormwater management on a farm operation on agricultural land, if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit or implements best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program.

Under specified circumstances, this section allows a county to charge an assessment on a bona fide farm operation for water quality or flood control benefit if credits against the assessment are provided for implementation of one of the following.

- Best management practices.
- Stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit or works-of-the-district permit.
- Best management practices or alternative measures that the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than those provided by implementation of best management practices.

The powers of a county to enforce applicable wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003, are not limited by the provisions of the bill. It does not limit a county's powers to enforce wetlands, springs protection or stormwater ordinances, regulations, or rules pertaining to the Wekiva River Protection Area. In addition, it does not limit the powers of a county to enforce ordinances, regulations, or rules as directed by

law or implemented consistent with the requirements of a program operated under a delegation agreement from a state agency or water management district. The provisions of this bill do not apply to a municipal services benefit unit established before March 1, 2009, predominantly for flood control or water supply benefits.

Section 2 creates s. 163.3163, F.S., to create the Agricultural Land Acknowledgement Act to ensure that generally accepted agricultural practices will not be subject to interference by residential use of land contiguous to sustainable agricultural land. This section defines the terms "contiguous," "farm operation," and "sustainable agricultural land." It requires that before a political subdivision issues a local land use permit for nonagricultural land contiguous to agricultural land, that as a condition of issuing the permit, the permit applicant must sign and submit to the political subdivision, in a format that is recordable, a written Acknowledgement of Contiguous Sustainable Agricultural Land. The acknowledgement must be filed and recorded in the official records of the county in which the political subdivision is located. It also authorizes the Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, to adopt rules to administer this section.

Section 3 amends s. 205.064, F.S., to exempt farms that operate as business entities other than sole proprietorships from being required to obtain a local business tax receipt to sell their own agricultural products.

Section 4 amends s. 322.01, F.S., to expand the definition of "farm tractor" to include any motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another. Under s. 322.04, F.S., the driver or operator of a "farm tractor" is exempt from obtaining a driver's license.

Section 5 amends s. 604.15, F.S., to revise the definition of "agricultural products" to make tropical foliage exempt from regulation under provisions relating to dealers in agricultural products such as license and bond laws.

Section 6 amends s. 604.50, F.S., to exempt farm fences from the Florida Building Code and farm fences and nonresidential farm buildings and fences from county or municipal codes and fees, except floodplain management regulations. It provides that a nonresidential farm building may include, but not be limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Section 7 amends s. 624.4095, F.S., to allow additional fiscally sound multi-peril crop insurers to meet the statutorily required capital and surplus requirements for admission into the state and allows the Office of Insurance Regulation latitude in considering financial accounting matters for crop insurers. It provides that gross written premiums for certain crop insurance not be included when calculating the insurer's gross writing ratio. It requires that liabilities for ceded reinsurance premiums be netted against the assets for amounts recoverable from reinsurers, and requires that insurers who write other insurance products must disclose a breakout of the gross written premiums for federal multi-peril crop insurance.

Section 8 amends s. 823.145, F.S., to remove inconsistent statutory language relating to the materials used in agricultural operations that may be disposed of by open burning. The changes in this section would make s. 823.145, F.S., consistent with s. 403.707, F.S., which is administered by the Department of Environmental Protection.

Section 9 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This committee substitute reduces the authority of counties and municipalities to collect stormwater fees and local business taxes. This bill falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate.

Subsection (d) of section 18 of Article VII, Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact. An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2009-2010 $1.88 million).

If it is determined that this committee substitute has more than an insignificant fiscal impact, the committee substitute will require a two-thirds vote of the membership of each house of the Legislature.

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:

The committee substitute removes tropical foliage from the definition of agriculture products and eliminates the requirements that those who sell tropical foliage are required to be licensed. This will result in a cost savings to the dealers. Florida tropical foliage producers will see an increase in financial risk as a result of the exemption.

There should also be some undetermined financial relief to agricultural operations via specific exemptions from or reductions in stormwater assessments and municipal code requirements and fees for farm fences and certain farm buildings.

C. Government Sector Impact:

This committee substitute will reduce revenues by $18,900 in the General Inspection Trust Fund within the Department of Agriculture and Consumer Services due to the elimination of the licensing requirements on sellers of tropical foliage.

The committee substitute will limit the ability of local governments to collect stormwater assessments, fees and local business taxes. This fee limitation will differ from county to county.

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 Agriculture Committee on March 7, 2011:
A technical change was recommended that did not change the substance of the original bill.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1098
INTRODUCER:	Senator Hays
SUBJECT:	Collective Bargaining for Certain Public Employees
DATE:	March 7, 2011 REVISED:

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

I. Summary:

For purposes of resolving collective bargaining impasses, the bill specifies that the sheriff, the tax collector, the property appraiser, the supervisor of elections, and the clerk of the circuit court are each deemed to be the "legislative body" for their respective employees.

The bill substantially amends s. 447.203(10), of the Florida Statutes.

II. Present Situation:

Collective Bargaining

Collective bargaining, pursuant to ch. 447, F.S., consists of a series of negotiations between a public employer's chief executive officer[1] and the selected bargaining agent[2] for an employee organization regarding the terms and conditions of employment.[3] The purpose of collective bargaining is to encourage "cooperative relationships between the government and its

[1] Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer."

[2] The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employers Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S, or its representative. Section 447.203(8) F.S., defines "bargaining unit" as a unit determined by either the Public Employer Relations Commission, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization and approved by the commission to be appropriate for the purposes of collective bargaining.

[3] Section 447.203(14), F.S.

employees" and provide public employees with a means to participate in the establishment of their employment conditions.[4]

Employees have the right to collectively bargain under Article I, section 6 of the Florida Constitution.[5] Statewide regulations for collective bargaining amongst public employees are addressed in part II of ch. 447, F.S.[6] Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.[7]

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse to The Public Employees Relations Commission (Commission).[8]

Impasse Resolution Process

The procedural guidelines to resolve a collective bargaining impasse between public employees are outlined in s. 447.403, F.S. Once an impasse has been declared, the parties may appoint a mediator to resolve the dispute. If mediation does not resolve the impasse or if the parties choose not to appoint a mediator, the Commission will appoint and submit the unresolved disputes to a Special Magistrate selected by both parties, or by the Commission if the parties cannot agree.[9]

The appointed Special Magistrate conducts a series of hearings and renders a recommended decision within 15 days after the final hearing.[10] Upon receiving the special magistrate's recommended decision, the parties have 20 days to accept or reject each recommended item or it is considered to be approved by both parties. If either party rejects all or part of the recommendations, the employer's chief executive officer is required to direct the dispute to the appropriate "legislative body" for a final disposition.[11]

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[4] Section 447.201, F.S. *See also,* Public Employees Relations Commission, *A Practical Handbook on Florida's Public Employment Collective Bargaining Law*, 6 (2d ed. 2004).

[5] FLA. CONST. art. I, § 6 (1968) (amendment to the "Right to Work" section: "[t]he right of employees, by and through a labor organization, to bargain collectively [which] shall not be denied or abridged").

[6] *See* s. 447.201, F.S. The Public Employees Relations Act provided statutory implementation of the 1968 amendment to s 6, Art. I of the State Constitution.

[7] Section 447.309(5), F.S. ("Any collective bargaining agreement shall not provide for a term of existence of more than 3 years …").

[8] The Pubic Employees Relations Commission (PERC) is an independent agency that was created pursuant to s. 447.205, F.S., to assist in resolving disputes between public employers and their employees.

[9] This section does not apply if the public employer is the Governor; in that case, the parties may proceed directly to the Legislature for resolution. *See* s. 447.403(2)(b), F.S.

[10] Under s. 447.403(2)(a), F.S., both parties can waive the appointment of a special magistrate and proceed directly to the legislative body upon written agreement between the parties.

[11] *See* s. 447.403(3) and (4), F.S. (If a party rejects the recommendation, then the party must file a written notice of rejection with the Commission and to the other party that includes a statement of the cause for each rejection.)

The "legislative body" holds a public hearing where each party is given an opportunity to present their argument, before the legislative body issues a final resolution pursuant to "the public interest [and] the interest of the public employees involved."[12]

"Legislative Body"

Section 447.203(10), F.S., defines "legislative body" as:

> … the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and, which as the case may be, is the appropriate legislative body for the bargaining unit. For purposes of s. 447.403, the Board of Governors of the State University System, or the board's designee, shall be deemed to be the legislative body with respect to all employees of each constituent state university. For purposes of s. 447.403 the board of trustees of a community college shall be deemed to be the legislative body with respect to all employees of a community college.[13]

This statutory definition contains two different classes: specifically named entities and unnamed entities. For an unnamed entity to classify as a "legislative body," it must meet all three of the following elements outlined in s. 447.203(10), F.S.:

(1) It must have authority to appropriate funds;
(2) It must have authority to establish policy governing the entity's terms and conditions of employment; and
(3) It must be the appropriate legislative body for the bargaining unit. [14]

Of these three elements, courts have considered the power to appropriate funds to be an essential requirement for "legislative body" status.[15] The Commission has determined that an entity's ability to *disperse* or *transfer* funds already appropriated by the county or municipality does not suffice as having actual appropriation authority.[16]

[12] Section 447.403(4)(c)-(e), F.S.
[13] Section 447.203(10), F.S.
[14] *Fla. State Lodge, Fraternal Order of Police, Inc. (FOP) v. Sheriff of Pasco County*, Case No. CA-2008-026 at *3-4 (Fla. PERC May 22, 2009) (The Commission determined that the statutory use of the word "and" in s. 447.203, F.S., denotes a three prong conjunctive assessment. Prior to this decision, the Commission only considered the first and second prong).
[15] *Fla. Sch. for the Deaf and the Blind v. Teachers United, FTP-NEA*, 483 So.2d 58, 60 (Fla. 1st DCA 1986) (citing *United Faculty of Fla., FEA/United, AFT, AFL-CIO v. Bd. of Regents*, 365 So.2d 1073, 1075 (Fla. 1st DCA 1979)).
[16] *Id*. (The Board's ability to transfer monies between categories of appropriations does not constitute appropriation authority.) *See also Florida State Lodge, Fraternal Order of Police, Inc (FOP)*, Case No. CA-2008-026 at *4 (Sheriff of Pasco County did not have actual appropriations authority since he only had the power to disperse funds that were already appropriated by the Pasco County Commission).

Constitutional Officers

Constitutional officers are elected governmental officials whose duties and responsibilities are established by the State Constitution rather than the Legislature.[17] With the exception of certain charter counties,[18] Article VII, section 1 of the Florida Constitution, directs each county to elect the following constitutional officers: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.[19]

Constitutional officers were given the right to collectively bargain with their employees in 2003.[20] Under current law, the "legislative body" responsible for resolving impasses between a constitutional officer and their employees is generally the county commission or municipality - not the constitutional officer.[21]

III. Effect of Proposed Changes:

Section 1 amends the definition of "legislative body" under s. 447.203(10), F.S., to specify that the following constitutional officers would be deemed a "legislative body" for their respective employees:

- The sheriff,
- The tax collector,
- The property appraiser,
- The supervisor of elections, and
- The clerk of the circuit court.

The bill allows these constitutional officers to provide the final resolution on collective bargaining impasses amongst their respective employees instead of the county commission or municipality.

The provisions of this bill do not apply to charter counties where constitutional officers have been replaced with elected or appointed charter officers by referendum.

Section 2 provides that this act shall take effect on July 1, 2011.

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[17] BLACK'S LAW DICTIONARY 312 (6th ed. 1990).

[18] *Demings v. Orange County Citizens Review Bd.,* 15 So.3d 604,606 (Fla. 5th DCA 2009) ("In charter counties, the electorate has an option of either maintaining these independent constitutional offices or abolishing them [all together] and transferring their responsibilities to the board of the charter county or to local offices created by the charter.").

[19] FLA. CONST. art. III, § 1(g).

[20] *Coastal Fla. Police Benevolent Assoc., Inc v. Williams*, 838 So.2d 543 (Fla. 2003) (overturning long term precedent that constitutional officers were excluded from collective bargaining rights on the premises that their employees were not considered "public employees" under ch. 447, F.S.). *See Murphy v. Mack*, 358 So.2d 882 (Fla.1978) (deputy sheriffs are not public employees). *See also Fla. Public Employees Council 79, AFSCME v. Martin County Prop. Appraiser*, 521 So.2d 243 (Fla. 1st DCA 1988) (individuals employed by property appraisers are not public employees). *See also Fed'n of Pub. Employees, Dist. No 1, Pacific Coast Dist., M.E.B.A., AFL-CIO v. Pub. Employees Relations Comm'n* (Fla. 4th DCA 1985) (deputy clerks of circuit court are not public employees).

[21] *See Florida State Lodge, Fraternal Order of Police, Inc (FOP)*, No. CA-2008-026 at *2 (The Commission (PERC) determined that the Pasco County Commission was the appropriate "legislative body" to resolve an impasse between the Sheriff and the FOP because the Sheriff did not satisfy the definition of a "legislative body" under s. 447.203(10), F.S.).

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:

This bill will allow certain constitutional officers to resolve collective bargaining impasses amongst their employees instead of the county commission or municipality.

The fiscal impact of this bill is undetermined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1512
INTRODUCER:	Senator Bennett
SUBJECT:	Growth Management
DATE:	March 16, 2011
REVISED:	

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

I. Summary:

The bill:

- Creates definitions for a transit oriented development (TOD) and mobility plan.
- Revises the definition of financial feasibility.
- Sets a deadline for transmitting a comprehensive plan amendment for airport compatibility.
- Specifies the role population projections should play in land use planning (i.e., revises the needs test).
- Requires a binding interlocal agreement for population assessments.
- Requires local governments to designate long-term transportation management systems if transportation deficiencies are projected to occur within 10 years.
- Changes the term backlog to transportation deficiency.
- Revises the methodology for calculating proportionate-share and proportionate fair-share.
- Requires local governments to revise their proportionate fair-share mitigation ordinances.
- Allows for mass transit projects to extend outside a transportation deficiency area.
- Exempts transit-oriented developments from transportation impact review in the development of regional impact process.

This bill amends the following sections of the Florida Statutes: 163.3164, 163.3177, 163.3180, 163.3182, 380.06, 163.3162, 163.32465, 186.513, 186.515, 287.042, 288.975, 369.303, 420.5095, 420.9071, and 420.9076.

II. Present Situation:

Growth Management

Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[1] 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."[2] 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).

Capital Improvements Element – Financial Feasibility

In 2005, the Legislature implemented the requirement that municipalities annually adopt a financially feasible Capital Improvements Element (CIE). The deadline for adoption of a financially feasible CIE is December 1, 2011. The purpose of the annual update is to maintain a financially feasible 5-year schedule of capital improvements. The principal is that local governments should be prepared to commit the financial resources necessary to provide the infrastructure to support planned development. Failure to update the CIE can result in penalties.

The definition of financial feasibility in s. 163.3164(32), F.S., provides the framework for the DCA to review these CIE updates. It notes that sufficient revenues must comply with one of the following criteria:

- Currently available; or
- Will be available from committed funding sources for the first 3 years; or
- Will be available from committed or planned funding sources for years 4 and 5 of a five-year capital improvement schedule for financing capital improvements.

> One reasonable approach a local government could employ to comply with this requirement is to provide projections of committed funding sources used to finance capital improvements. The revenue projections could be based on historical trends or other professionally accepted methodologies that demonstrate that adequate revenue is available to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that

[1] *See* Chapter 163, Part II, F.S.
[2] Section 163.3177(5), F.S.

adopted level-of-service standards are achieved and maintained within the period covered by the five-year schedule of capital improvements.[3]

Many local governments have existing transportation concurrency deficiencies that require special attention and longer time frames to overcome. In such cases, local governments may adopt a long-term transportation concurrency management system with a planning period of up to 10 years.[4] This allows local governments time to set priorities and fund projects to reduce the backlog of transportation projects. For severe backlogs and under specific conditions, a local government may request DCA's approval for a planning period of up to 15 years.[5]

Population Projections – Needs Assessment

The needs assessment is a part of the land use planning process that provides a mechanism for local governments to determine the appropriate supply of land uses necessary to accommodate anticipated demand. The "need" issue is one of the factors to be considered in any urban sprawl analysis.[6] To determine need, the reviewer analyzes: the categories of land use and their densities or intensities of use, the estimated gross acreage needed by category, and a description of the methodology used.[7] This methodology is then submitted to DCA for review with the proposed comprehensive plan amendment. When reviewing this methodology, DCA reviews both the numerical population and policy factors.

Market Factor

Residential: A market factor (also known as an allocation number or multiplier) is a numerical tool used by professional planners to determine the amount of land use supply needed to accommodate anticipated growth.[8] For residential land, a market factor is calculated by dividing the amount of dwelling unit capacity by the amount of dwelling unit demand.[9] In the past, DCA has recommended a market factor of 1.25 which means a plan allows for land uses to support 125% of the projected population.[10] The additional 25% is designed to allow for market flexibility. If the market factor goes above 1.25 it may cause the plan amendment to be subject to a heightened review to see if it meets the indicators of urban sprawl.[11]

Commercial/Industrial: Similar to residential, examining the market factor for commercial and industrial lands is a significant factor in determining need. However, case law has indicated that the need for additional commercial or industrial land may also be demonstrated by other factors such as the suitability of the property for change, locational criteria, and community desires.[12]

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[3] DEPT OF COMMUNITY AFFAIRS, CAPITAL IMPROVEMENTS ELEMENT, *available at* http://www.dca.state.fl.us/fdcp/dcp/cie/FAQ.cfm; see also DEPT. OF COMMUNITY AFFAIRS, A GUIDE TO THE ANNUAL UPDATE OF THE CAPITAL IMPROVEMENTS ELEMENT, *available at* http://www.dca.state.fl.us/fdcp/dcp/publications/Files/AnnualUpdateGuideCIE81606.pdf.
[4] Section 163.3180(9), F.S.
[5] *Id*.
[6] Rule 9J-5.006(5)(g)1, F.A.C.
[7] Rule 9J-5.006(2)(c), F.A.C. For an example of how the methodolgy is analyzed, see page 5.
[8] *The Role of Need in Comprehensive Planning*, Department of Community Affairs Presentation, June 26, 2009.
[9] *Id*.
[10] *Id*.
[11] *Sierra Club v. St. Johns County & DCA*, DOAH 01-1851GM (May 20, 2002).
[12] *O'Connell v. Martin County*, DOAH 01-4826GM (Oct. 16, 2002).

For industrial land use changes, rural communities are also provided a special exception. Section 163.3177(6)(a) F.S., states that "the amount of land designated for future planned industrial use should be based on surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies and should not be limited solely by the projected population of the rural community."

Planning Time Horizon

The Florida Growth Management Act of 1985 requires each local government comprehensive plan to 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 ten-year period.[13] In planning for the amount of land needed for a particular land use, the local government must analyze it within the adopted planning time horizon applicable to that portion of the comprehensive plan. Other local governments have also adopted a third planning time horizon for longer range planning. These longer range planning time horizons have been extended out as far as 40 years, and DCA has approved comprehensive plan amendments that have incorporated these longer term planning time horizons.[14]

Population Projections

A key component of the needs issue is the population projection. In 1986, rulemaking required comprehensive plans to be based on resident and seasonal population estimates provided by the University of Florida, Bureau of Economic and Business Research, the Executive Office of the Governor, or generated by the local government.[15] If the local government chooses to base its plan on the figures provided by the University of Florida or the Executive Office of the Governor, medium range projections should be utilized.[16] If the local government chooses to base its plan on either low or high range projections provided by the University of Florida or the Executive Office of the Governor, a detailed description of the rationale for such a choice shall be included with such projections.[17]

Alternative Methodologies (for Population Projections)

If a local government chooses to prepare its own estimates and projections, it is required to submit estimates and projections and a description of the methodologies utilized to generate the projections and estimates to the Department of Community Affairs with its plan amendments for compliance review, unless it has submitted them for advance review. The Department will evaluate the alternative methodology to determine whether the methodology is professionally accepted. In addition, the Department is required to make available examples of methodologies for resident and seasonal population estimates and projections that it deems to be professionally acceptable. Finally, in its review of any population estimates, projections, or methodologies proposed by local governments, DCA must be guided by the Executive Office of the Governor, in particular the State Data Center.[18]

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[13] Section 163.3177(5)(a), F.S.
[14] "There is not a prohibition against analyzing more time frames than just one planning horizon." *Sierra Club & Panhandle Citizens v. DCA and Franklin County,* DOAH 05-2731GM (June 12, 2006).
[15] Rule 9J-5.005(2)(e), F.A.C.
[16] *Id.*
[17] *Id.*
[18] Rule 9J-5.005(2)(e), F.A.C.

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 (FDOT) 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.

In 1992, Transportation Concurrency Management Areas (TCMA) were authorized, allowing an area-wide LOS standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems. Subsequently, two additional relaxations of concurrency were authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to "reduce the adverse impact transportation concurrency may have on urban infill and redevelopment" by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs.

In 2009, Senate Bill 360, also known as the Community Renewal Act, made certain local government areas TCEAs.[19] Senate Bill 360 also requires those local governments to amend their comprehensive plans within two years of becoming a TCEA to address land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation (often referred to as a "mobility plan"). Several local governments have challenged the constitutionality of SB 360. The appeal is pending in the courts and the provisions of SB 360 remain in effect until the appellate court renders a decision.

The Transportation Impact Assessment Process

For the purposes of assessing the degree to which land development projects affect the transportation system, the FDOT and local governments estimate and quantify the specific transportation-related impacts of a development proposal on the surrounding transportation network. The basic process consists of the following components:

1. *Existing Conditions* of the physical characteristics of the transportation system and traffic operating conditions of roadways and intersections are identified using accepted level of

[19] These areas are municipalities that are designated as dense urban land areas and the urban service area of counties designated as dense urban land areas. Section 163.3164, F.S., defines "dense urban land area" as (1) "A municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;" (2) "A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or" (3) "A county, including the municipalities located therein, which has a population of at least 1 million."

service (LOS) measurement techniques, guidelines, standards, and the latest traffic volume counts.

2. *Background traffic*, *i.e.*, the expected increase in traffic from other development, is estimated for future years. Background traffic is manually determined using a trend of historical volumes or a travel demand forecasting model.
3. The *Trip Generation* step estimates the amount of travel associated with the proposed land use. A trip is defined as "a single or one-direction vehicle movement with either the origin or destination inside the study site."[20] Due to a mix of land uses contained within a development, some trips may be made between land uses wholly within the development. This interaction is referred to as internal capture and is expressed as a rate (percentage of trips that occur within the site).
4. Once the amount of travel associated with a land use is determined in trip generation, *Trip Distribution* is performed to allocate these trips to origin and destination land uses and areas external to the site. Pass-by trips are then estimated. Pass-by trips are external to the development but are already on the transportation system (*i.e.*, not new trips on the roadway). These trips enter the site as an intermediate stop *e.g.*, stopping at the grocery store on the way home from work. Trips are then assigned to the transportation system manually or using a model.
5. Analysis of *Future Conditions* assesses the impacts of the development-generated traffic on the transportation system using the LOS guidelines and standards. If the development causes the LOS on a roadway to be unacceptable or is a significant portion of the traffic on a roadway with an existing unacceptable LOS, the effects of the traffic impacts are required to be mitigated through physical or operational improvements, travel demand management strategies, fair-share contributions, or a combination of these and other strategies.
6. Finally, if a *Mitigation Analysis* is required, it includes an improvement plan that identifies a specific phasing of projects and level of project development which may be permitted before system improvements are necessary. This plan also identifies the responsible party or agency for implementing the improvements.

Backlog

Sections 163.3180 and 163.3182, F.S., govern transportation concurrency backlogs. Section 162.3180(12)(b) and (16)(i), F.S., define backlog as "a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected background trips from any source other than the development project under review that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review." In s. 163.3182, F.S., transportation concurrency backlog is defined as a deficiency where the existing extent of traffic volume exceeds the level-of-service standard adopted in a local government comprehensive plan for a transportation authority.[21]

[20] "Trip Generation Handbook, 2nd Edition, An ITE Recommended Practice", Institute of Transportation Engineers.
[21] Section 163.3182(1)(d), F.S.

A county or municipality with an identified transportation concurrency backlog can create a transportation concurrency backlog authority to address the backlog within an area or areas designated in the local comprehensive plan. The local government's governing board serves as the authority's membership. The authority is tasked with developing and implementing a plan to eliminate all backlogs within its jurisdiction. The plan must identify all roads designated as failing to meet concurrency requirements and include a schedule for financing and construction to eliminate the backlog within 10 years of plan adoption. The plan is not subject to the twice-per-year restrictions on comprehensive plan amendments. To fund the plan's implementation, each authority must collect and earmark, in a trust fund, tax increment funds equal to 25% of the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created. Upon adoption of the transportation concurrency backlog plan, all backlogs within the jurisdiction are deemed financed and fully financially feasible for purposes of calculating transportation concurrency and a landowner may proceed with development (if all other requirements are met) and no proportionate share or impact fees for backlogs may be assessed. The authority is dissolved upon completion of all backlogs.

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

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.[22] 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 mitigating conditions, or not approving proposed developments. There are numerous exemptions from the DRI process specified in statute.

[22] Section 380.06(1), F.S.

Proportionate Share Mitigation

Section 380.06, F.S., governs the development-of-regional-impact (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.[23] Multi-use DRIs, *i.e.*, those containing a mix of land uses, are eligible to satisfy transportation concurrency requirements under s. 163.3180(12), F.S., when certain criteria are met. 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.

Transit Oriented Development (TOD)

The DCA and FDOT have been developing transit oriented development design guidelines to provide general parameters and strategies to local governments and agencies to promote and implement 'transit ready' development patterns.[24] On July 13, 2010, these agencies published a draft document entitled "A Framework for Transit Oriented Development in Florida." The document describes TODs as moderate to high density, mixed-use development patterns designed to maximize walking trips and access to transit. The document goes on to describe in detail the characteristics that make up an effective TOD.

III. Effect of Proposed Changes:

Throughout the bill, the term backlog is changed to "transportation deficiency" or "deficiency". Therefore, all references to deficiency mean: a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected background trips from any source other than the development project under review which are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

Section 1 amends s. 163.3164, F.S., to alphabetize the definitions section and to add the following definitions:

- Mobility plan means an integrated land use and transportation plan that promotes compact, mixed-use, and interconnected development served by a multimodal transportation system that includes roads, bicycle, and pedestrian facilities and, where feasible and appropriate, frequent transit and rail service in order to provide individuals with viable transportation options and to not have to rely solely on a motor vehicle for personal mobility.
- Transit-oriented development means projects in areas identified in a local government comprehensive plan which are served by existing or planned transit service as delineated

[23] Section 380.06(1), F.S.
[24] FLORIDA DEPT OF TRANSPORTATION, TRANSIT ORIENTED DEVELOPMENT, *available at* http://www.floridatod.com/docs/Products/TODGuide041409.pdf.

in the plan's capital improvements element. These areas must be compact, have moderate to high density developments, be of mixed-use character, interconnected, bicycle and pedestrian friendly, and designed to support frequent transit service operating through, collectively or separately, rail, fixed guideway, streetcar, or bus systems on dedicated facilities or available roadway connections.

The bill also amends the definition of "financial feasibility" to change the requirement that committed or planned funding sources be available for years 4 through 10 (current law requires the funding sources be available for years four and five) of the capital improvement schedule. Under the bill, the entire definition would cover a 10-year period rather than a five-year period.

Section 2 amends s. 163.3177, F.S., to clarify that a local government's schedule of capital improvements should include publicly funded federal, state, or local government projects. The bill requires a mobility plan be a part of the capital improvements element.

The bill requires each local government that is required to update or amend its comprehensive plan to address the compatibility of lands adjacent or closely proximate to an existing military installation, or lands adjacent to an airport in its future land use plan element, shall transmit the update or amendment to the state land planning agency by June 30, 2012.

The bill specifies that the future land use plan element should reflect the *resident and seasonal* population of the area. The bill explicitly states that the amount of land required to accommodate anticipated growth may not be limited solely by the projected population. At a minimum, the future land use plan must provide at least the amount of land needed for each land use category in order to accommodate anticipated growth using medium population projections for a 25-year planning period from the Bureau of Economic and Business Research (BEBR) of the University of Florida and incorporating a minimum 25 percent market factor based upon the total population of the jurisdiction. A 25 percent market factor is determined by multiplying the amount of land necessary to accommodate the total population at the end of the planning period by 125 percent. Population projections must be reconciled at the county level. Within each county, the county and each municipality shall, by December 1, 2011, enter into a binding interlocal agreement regarding the allocation of projected county population among the various local government jurisdictions. The sum of the population projections of the unincorporated county and each municipality may not be less than the BEBR medium population for the county as a whole. The interlocal agreement may be part of the statutorily required public school interlocal agreement and may serve as the required agreement if it is binding on and enforceable by each of the local governments. If a binding population allocation agreement is not reached among all of the local governments within a county by December 1, 2011, those local governments are not eligible for revenue sharing funds pursuant to ss. 206.60, 210.20, and 218.61 and chapter 212, F.S., to the extent that the funds are not pledged to pay bonds.

Section 3 amends provisions in s. 163.3180, F.S., relating to long-term transportation concurrency management systems. It requires local governments to designate long-term transportation management systems if transportation deficiencies are projected to occur within 10 years. This differs from current law in that currently these long-term management systems are optional for areas where transportation deficiencies actually exist.

The bill modifies the definition of proportionate-share and proportionate fair-share contribution. When a developer places trips on a road the amount of trips is currently applied in the following manner:
((Development Trips – Available Capacity)/(Service Volume Increase)) × Cost of Roadway Segment Improvement.

The bill would remove from this calculation impacts to any road that is already transportation deficient. The responsibility for improvements to rectify the existing deficiency is the responsibility of the local government. The calculation would be repeated using theoretical traffic capacity that would be available if the local government added the new improvement necessary to correct the deficiency. If the trips from the proposed development rendered the needed road deficient then the new development would be responsible for paying for its impacts on those theoretical improvements that would be significantly and adversely affected.

Due to the modifications the bill makes on the calculation of proportionate share and proportionate fair-share, the bill moves the deadline for adopting an ordinance for assessing proportionate fair-share mitigation to December, 1, 2011.

Section 4 amends s. 163.3182, F.S., to change the term backlog to deficiency. The bill then revises the definition of transportation deficiency to include areas where the *projected* traffic volume exceeds the level of service standard adopted in a local government comprehensive plan for a transportation facility.

The bill would revise language relating to the schedule for financing and construction of projects that will eliminate deficiencies as part of a transportation deficiency plan. Specifically, the bill language states that if mass transit is selected as all or part of the system solution, the improvements and service may extend outside the transportation deficiency areas to the planned terminus of the improvement as long as the improvement provides capacity enhancements to a larger intermodal system.

Section 5 amends s. 380.06, F.S., to create an exemption for DRI transportation impacts within any transit-oriented development adopted into the comprehensive plan. The exemption does not apply within areas of critical state concern, the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area.

Sections 6-15 amend ss. 163.3162, 163.32465, 186.513, 186.515, 287.042, 288.975, 369.303, 420.5059, 420.9071, and 420.9076, F.S., to conform cross references.

Section 16 provides an effective date.

Other Potential Implications:
The bill requires financial commitment and planning for areas where a transportation deficiency is projected to occur. This is a significant commitment of resources for roads where the level of service has not yet failed and a departure from the way things are currently done. The efficacy of this approach will depend heavily on how accurate these projections turn out to be. It may be a positive way of planning for future transportation needs or it may be an allocation of resources for an anticipated problem that never occurs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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 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. This bill requires local governments to have a 10-year financially feasible CIE, a long-term concurrency management plan for projected deficiencies, adopt a mobility plan containing specifically defined requirements into the CIE, and adopt/revise proportionate fair-share calculations. Therefore, it is likely a mandate and will require a two-thirds vote and a finding of important state interest.

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 bill requires local governments to commit financial resources to fix roadways when the level of service for the roadway is projected to fall below the required level of service.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (32) of section 163.3164, Florida Statutes is amended, and subsections (35) and (36) are added to that section to read:

163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.—As used in this act:

(32) "Financial feasibility" means that sufficient revenues are currently available or will be available from committed funding sources of any local government for the first 3 years,

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or will be available from committed or planned funding sources for years 4 through 10, of a 10-year ~~and 5, of a 5-year~~ capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements. A comprehensive plan shall be deemed financially feasible for transportation and school facilities throughout the planning period addressed by the capital improvements schedule if it can be demonstrated that the level-of-service standards will be achieved and maintained by the end of the planning period even if in a particular year such improvements are not concurrent as required by s. 163.3180.

(35) "Transit-oriented development" means a project or projects, in areas identified in a local government comprehensive plan, that are served by existing or planned transit service as delineated in the capital improvements element. These designated areas shall be compact, moderate to high-density developments, of mixed-use character, interconnected, bicycle-friendly and pedestrian-friendly, and designed to support frequent transit service operating through, collectively or separately, rail, fixed guideway, streetcar, or bus systems on dedicated facilities or available roadway connections.

(36) "Mobility plan" means an integrated land use and transportation plan that promotes compact, mixed-use, and

interconnected development served by a multimodal transportation system that includes roads, bicycle and pedestrian facilities, and, where feasible and appropriate, frequent transit and rail service, to provide individuals with viable transportation options without sole reliance upon a motor vehicle for personal mobility.

Section 2. Subsection (1), subsection (2), paragraph (a) of subsection (3) and paragraph (a) of subsection (6) of section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(1) The comprehensive plan shall consist of materials in such descriptive form, written or graphic, as may be appropriate to the prescription of principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area. The comprehensive plan shall be based upon resident and seasonal population estimates and projections which shall accommodate at a minimum the medium population projections provided by the University of Florida Bureau of Economic and Business Research or population projections generated by a local government based upon a professionally accepted methodology which are equal to or greater than the University of Florida Bureau of Economic and Business Research.

(3)(a) The comprehensive plan shall contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities and set forth:

1. A component that outlines principles for construction,

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extension, or increase in capacity of public facilities, as well as a component that outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. The components shall cover at least a 5-year period.

2. Estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities.

3. Standards to ensure the availability of public facilities and the adequacy of those facilities including acceptable levels of service.

4. Standards for the management of debt.

5. A schedule of capital improvements which includes any project publicly funded by federal, state, or local government ~~projects~~, and which may include privately funded projects for which the local government has no fiscal responsibility, necessary to ensure that adopted level-of-service standards are achieved and maintained. For capital improvements that will be funded by the developer, financial feasibility shall be demonstrated by being guaranteed in an enforceable development agreement or interlocal agreement pursuant to paragraph (10)(h), or other enforceable agreement. These development agreements and interlocal agreements shall be reflected in the schedule of capital improvements if the capital improvement is necessary to serve development within the 5-year schedule. If the local government uses planned revenue sources that require referenda or other actions to secure the revenue source, the plan must, in the event the referenda are not passed or actions do not secure

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the planned revenue source, identify other existing revenue sources that will be used to fund the capital projects or otherwise amend the plan to ensure financial feasibility.

6. The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 339.175(8) to the extent that such improvements are relied upon to ensure concurrency or implementation of a mobility plan as defined in s. 163.3164(36) and financial feasibility. The schedule must also be coordinated with the applicable metropolitan planning organization's long-range transportation plan adopted pursuant to s. 339.175(7).

(6) In addition to the requirements of subsections (1)-(5) and (12), the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land. Counties are encouraged to designate rural land stewardship areas, pursuant to paragraph (11)(d), as overlays on the future land use map. Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by

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goals, policies, and measurable objectives. The future land use plan shall be based upon surveys, studies, and data regarding the area, and include ~~including~~ the amount of land required to accommodate projected ~~anticipated~~ growth as specified by this subsection; the projected resident and seasonal population of the area; the character of undeveloped land; the availability of water supplies, public facilities, and services; the need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community; the need for job creation, capital investment, and economic development that will strengthen and diversify the economy; the compatibility of uses on lands adjacent to or closely proximate to military installations; lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02; the discouragement of urban sprawl; energy-efficient land use patterns accounting for existing and future electric power generation and transmission systems; and greenhouse gas reduction strategies~~; and, in rural communities, the need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.~~ The future land use plan may designate areas for future planned development use involving combinations of types of uses for which special regulations may be necessary to ensure development in accord with the principles and standards of the comprehensive plan and this act. The future land use plan element shall include criteria to be used to achieve the compatibility of lands adjacent or closely proximate to military installations, considering factors identified in s. 163.3175(5), and lands adjacent to an airport as defined in s.

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330.35 and consistent with s. 333.02. ~~In addition, for rural communities,~~ The amount of land designated for future planned land uses should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and businesses and ~~industrial use shall be based upon surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies, and~~ may not be limited solely by the projected population ~~of the rural community~~. The element shall accommodate at least the minimum amount of land required to accommodate the medium projections of the Bureau of Economic and Business Research for at least a 10-year planning period. The future land use plan of a county may also designate areas for possible future municipal incorporation. The land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection. For coastal counties, the future land use element must include, without limitation, regulatory incentives and criteria that encourage the preservation of recreational and commercial working waterfronts as defined in s. 342.07. The future land use element must clearly identify the land use categories in which public schools are an allowable use. When delineating the land use categories in which public schools are an allowable use, a local government shall include in the categories sufficient land proximate to residential development to meet the projected needs for schools in coordination with public school boards and may establish differing criteria for schools of different type or size. Each local government shall include lands contiguous to existing school sites, to the

maximum extent possible, within the land use categories in which public schools are an allowable use. The failure by a local government to comply with these school siting requirements will result in the prohibition of the local government's ability to amend the local comprehensive plan, except for plan amendments described in s. 163.3187(1)(b), until the school siting requirements are met. Amendments proposed by a local government for purposes of identifying the land use categories in which public schools are an allowable use are exempt from the limitation on the frequency of plan amendments contained in s. 163.3187. The future land use element shall include criteria that encourage the location of schools proximate to urban residential areas to the extent possible and shall require that the local government seek to collocate public facilities, such as parks, libraries, and community centers, with schools to the extent possible and to encourage the use of elementary schools as focal points for neighborhoods. For schools serving predominantly rural counties, defined as a county with a population of 100,000 or fewer, an agricultural land use category is eligible for the location of public school facilities if the local comprehensive plan contains school siting criteria and the location is consistent with such criteria. Local governments required to update or amend their comprehensive plan to include criteria and address compatibility of lands adjacent or closely proximate to existing military installations, or lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02, in their future land use plan element shall transmit the update or amendment to the state land planning agency by June 30, 2012.

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Section 3. Paragraphs (a) and (b) of subsection (9), paragraph (c) of subsection (11), subsection (12), and paragraphs (a), (b), (f) and (i) of subsection (16) of section 163.3180, Florida Statutes, are amended to read:

163.3180 Concurrency.—

(9)(a) Each local government shall ~~may~~ adopt as a part of its plan~~,~~ long-term transportation and school concurrency management systems with a planning period of up to 10 years for specially designated districts or areas in which transportation deficiencies are projected to ~~where significant backlogs~~ exist for 10 years. The plan shall ~~may~~ include interim level-of-service standards on certain facilities and shall rely on the local government's schedule of capital improvements for up to 10 years as a basis for issuing development orders that authorize commencement of construction in these designated districts or areas. Pursuant to subsection (12), the concurrency management system must be designed to correct existing or projected deficiencies and set priorities for addressing deficient ~~backlogged~~ facilities. The concurrency management system must be financially feasible and consistent with other portions of the adopted local plan, including the future land use map.

(b) If a local government has a transportation deficiency or school facility deficiency ~~backlog~~ for existing development which cannot be adequately addressed in a 10-year plan, the state land planning agency may allow it to develop a plan and long-term schedule of capital improvements covering up to 15 years for good and sufficient cause, based on a general comparison between that local government and all other similarly situated local jurisdictions, using the following factors:

1. The extent of the deficiency ~~backlog~~.

2. For roads, whether the deficiency ~~backlog~~ is on local or state roads.

3. The cost of eliminating the deficiency ~~backlog~~.

4. The local government's tax and other revenue-raising efforts.

(11) In order to limit the liability of local governments, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy transportation concurrency, when all the following factors are shown to exist:

(c) The local plan includes a financially feasible capital improvements element that ~~provides for~~ identifies transportation facilities adequate to serve the proposed development, and the local government has not implemented that element, or the local government determines that the transportation facilities or facility segments identified as mitigation for traffic impacts will significantly benefit the impacted transportation system.

(12)(a) A development of regional impact may satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06 by payment of a proportionate-share contribution for local and regionally significant traffic impacts, if:

1. The development of regional impact which, based on its location or mix of land uses, is designed to encourage pedestrian or other nonautomotive modes of transportation;

2. The proportionate-share contribution for local and regionally significant traffic impacts is sufficient to pay for

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one or more required mobility improvements that will benefit a regionally significant transportation facility;

3. The owner and developer of the development of regional impact pays or assures payment of the proportionate-share contribution; and

4. If the regionally significant transportation facility to be constructed or improved is under the maintenance authority of a governmental entity, as defined by s. 334.03(12), other than the local government with jurisdiction over the development of regional impact, the developer is required to enter into a binding and legally enforceable commitment to transfer funds to the governmental entity having maintenance authority or to otherwise assure construction or improvement of the facility.

The proportionate-share contribution may be applied to any transportation facility to satisfy the provisions of this subsection and the local comprehensive plan, but, for the purposes of this subsection, the amount of the proportionate-share contribution shall be calculated based upon the cumulative number of trips from the proposed development expected to reach roadways during the peak hour from the complete buildout of a stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain the adopted level of service, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service. In utilizing the proportionate-share formula provided in this paragraph, the applicant, in its traffic analysis, shall establish those roads

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or facilities that have a transportation deficiency in accordance with the transportation deficiency definition provided in paragraph (b). If any road is determined to be transportation deficient, it shall be removed from the development-of-regional-impact list of significantly and adversely impacted road segments and from the proportionate-share calculation. The identified improvement to correct the transportation deficiency is the funding responsibility of the effected state or local government. The proportionate-share formula provided in this paragraph shall be applied to those facilities that are not deficient but are determined to be significantly and adversely impacted by the project under review. If additional improvements beyond those improvements necessary to correct the existing deficiency would be needed for an identified deficient facility, the necessary improvements to correct the existing deficiency for that facility will be considered to be in place, and the development-of-regional-impact proportionate share shall be calculated only for the needed improvements that are above the deficient improvements. For purposes of this subsection, "construction cost" includes all associated costs of the improvement. Proportionate-share mitigation shall be limited to ensure that a development of regional impact meeting the requirements of this subsection mitigates its impact on the transportation system but is not responsible for the additional cost of reducing or eliminating deficiencies ~~backlogs~~. This subsection also applies to Florida Quality Developments pursuant to s. 380.061 and to detailed specific area plans implementing optional sector plans pursuant to s. 163.3245.

(b) As used in this subsection, the term "transportation deficiency" ~~"backlog"~~ means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected background trips from any source other than the development project under review that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

(16) It is the intent of the Legislature to provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. The methodology used to calculate proportionate fair-share mitigation under this section shall be as provided for in subsection (12).

(a) By December 1, 2011 ~~2006~~, each local government shall adopt by ordinance a methodology for assessing proportionate fair-share mitigation options. By December 1, 2005, the Department of Transportation shall develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options.

(b)1. In its transportation concurrency management system, a local government shall, by December 1, 2006, include methodologies that will be applied to calculate proportionate fair-share mitigation. A developer may choose to satisfy all transportation concurrency requirements by contributing or paying proportionate fair-share mitigation if transportation

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facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the 5-year schedule of capital improvements in the capital improvements element of the local plan or the long-term concurrency management system or if such contributions or payments to such facilities or segments are reflected in the 5-year schedule of capital improvements in the next regularly scheduled update of the capital improvements element, or in a binding proportionate-share agreement as provided in subparagraph (f). Updates to the 5-year capital improvements element which reflect proportionate fair-share contributions may not be found not in compliance based on ss. 163.3164(32) and 163.3177(3) if additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.

2. Proportionate fair-share mitigation shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government’s impact fee ordinance.

(f) If the funds in an adopted 5-year capital improvements element are insufficient to fully fund construction of a transportation improvement required by the local government’s concurrency management system, a local government and a developer may still enter into a binding proportionate-share agreement authorizing the developer to construct that amount of development on which the proportionate share is calculated if the proportionate-share amount in such agreement is sufficient

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to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. In the event that the transportation facilities or facility segments identified as mitigation for traffic impacts are not included within the adopted 5-year capital improvement element but are determined to significantly benefit the impacted transportation system in the opinion of the governmental entity or entities maintaining the transportation facilities, a local government and a developer may still enter into a binding proportionate-share agreement authorizing the developer to construct that amount of development on which the proportionate share is calculated. In all events the ~~The~~ improvements funded by the proportionate-share component must be adopted into the 5-year capital improvements schedule of the comprehensive plan at the next annual capital improvements element update, or the developer must contribute its proportionate share for the transportation facilities or facility segments identified as mitigation for the traffic impacts of the development on which the proportionate share is calculated. The funding of any improvements that significantly benefit the impacted transportation system satisfies concurrency requirements as a mitigation of the development's impact upon the overall transportation system even if there remains a failure of concurrency on other impacted facilities.

(i) As used in this subsection, the term "transportation deficiency" ~~"backlog"~~ means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected background trips from

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any source other than the development project under review that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review. Transportation deficiency shall be determined in the same manner as provided in subsection (12).

Section 4. Section 163.3182, Florida Statutes, is amended to read:

163.3182 Transportation deficiency ~~concurrency backlogs~~.—

(1) DEFINITIONS.—For purposes of this section, the term:

(a) "Transportation deficiency ~~concurrency backlog~~ area" means the geographic area within the unincorporated portion of a county or within the municipal boundary of a municipality designated in a local government comprehensive plan for which a transportation deficiency ~~concurrency backlog~~ authority is created pursuant to this section. A transportation deficiency ~~concurrency backlog~~ area created within the corporate boundary of a municipality shall be made pursuant to an interlocal agreement between a county, a municipality or municipalities, and any affected taxing authority or authorities.

(b) "Authority" or "transportation deficiency ~~concurrency backlog~~ authority" means the governing body of a county or municipality within which an authority is created.

(c) "Governing body" means the council, commission, or other legislative body charged with governing the county or municipality within which a transportation deficiency ~~concurrency backlog~~ authority is created pursuant to this

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section.

(d) "Transportation deficiency ~~concurrency backlog~~" means an identified deficiency where the existing extent of traffic or projected traffic volume exceeds the level of service standard adopted in a local government comprehensive plan for a transportation facility.

(e) "Transportation deficiency ~~concurrency backlog~~ plan" means the plan adopted as part of a local government comprehensive plan by the governing body of a county or municipality acting as a transportation deficiency ~~concurrency backlog~~ authority.

(f) "Transportation deficiency ~~concurrency backlog~~ project" means any designated transportation project that will mitigate a deficiency identified in a transportation deficiency plan ~~identified for construction within the jurisdiction of a transportation concurrency backlog authority~~.

(g) "Debt service millage" means any millage levied pursuant to s. 12, Art. VII of the State Constitution.

(h) "Increment revenue" means the amount calculated pursuant to subsection (5).

(i) "Taxing authority" means a public body that levies or is authorized to levy an ad valorem tax on real property located within a transportation deficiency ~~concurrency backlog~~ area, except a school district.

(2) CREATION OF TRANSPORTATION DEFICIENCY ~~CONCURRENCY BACKLOG~~ AUTHORITIES.—

(a) A county or municipality may create a transportation deficiency ~~concurrency backlog~~ authority if it has an identified transportation deficiency ~~concurrency backlog~~.

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(b) Acting as the transportation deficiency ~~concurrency backlog~~ authority within the authority's jurisdictional boundary, the governing body of a county or municipality shall adopt and implement a plan to eliminate all identified transportation deficiencies ~~concurrency backlogs~~ within the authority's jurisdiction using funds provided pursuant to subsection (5) and as otherwise provided pursuant to this section.

(c) The Legislature finds and declares that there exist in many counties and municipalities areas that have significant transportation deficiencies and inadequate transportation facilities; that many insufficiencies and inadequacies severely limit or prohibit the satisfaction of adopted transportation level-of-service ~~concurrency~~ standards; that the transportation insufficiencies and inadequacies affect the health, safety, and welfare of the residents of these counties and municipalities; that the transportation insufficiencies and inadequacies adversely affect economic development and growth of the tax base for the areas in which these insufficiencies and inadequacies exist; and that the elimination of transportation deficiencies and inadequacies and the satisfaction of transportation level-of-service ~~concurrency~~ standards are paramount public purposes for the state and its counties and municipalities.

(3) POWERS OF A TRANSPORTATION DEFICIENCY ~~CONCURRENCY BACKLOG~~ AUTHORITY.—Each transportation deficiency ~~concurrency backlog~~ authority has the powers necessary or convenient to carry out the purposes of this section, including the following powers in addition to others granted in this section:

(a) To make and execute contracts and other instruments

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necessary or convenient to the exercise of its powers under this section.

(b) To undertake and carry out transportation deficiency ~~concurrency backlog~~ projects for transportation facilities that have transportation deficiencies ~~a concurrency backlog~~ within the authority's jurisdiction. ~~Concurrency backlog~~ Projects may include transportation facilities that provide for alternative modes of travel including sidewalks, bikeways, and mass transit which are related to a deficient ~~backlogged~~ transportation facility.

(c) To invest any transportation deficiency ~~concurrency backlog~~ funds held in reserve, sinking funds, or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to the control of the authority and to redeem such bonds as have been issued pursuant to this section at the redemption price established therein, or to purchase such bonds at less than redemption price. All such bonds redeemed or purchased shall be canceled.

(d) To borrow money, including, but not limited to, issuing debt obligations such as, but not limited to, bonds, notes, certificates, and similar debt instruments; to apply for and accept advances, loans, grants, contributions, and any other forms of financial assistance from the Federal Government or the state, county, or any other public body or from any sources, public or private, for the purposes of this part; to give such security as may be required; to enter into and carry out contracts or agreements; and to include in any contracts for financial assistance with the Federal Government for or with

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respect to a transportation deficiency ~~concurrency backlog~~ project and related activities such conditions imposed under federal laws as the transportation deficiency ~~concurrency backlog~~ authority considers reasonable and appropriate and which are not inconsistent with the purposes of this section.

(e) To make or have made all surveys and plans necessary to the carrying out of the purposes of this section; to contract with any persons, public or private, in making and carrying out such plans; and to adopt, approve, modify, or amend such transportation deficiency ~~concurrency backlog~~ plans.

(f) To appropriate such funds and make such expenditures as are necessary to carry out the purposes of this section, and to enter into agreements with other public bodies, which agreements may extend over any period notwithstanding any provision or rule of law to the contrary.

(4) TRANSPORTATION DEFICIENCY ~~CONCURRENCY BACKLOG~~ PLANS.—

(a) Each transportation deficiency ~~concurrency backlog~~ authority shall adopt a transportation deficiency ~~concurrency backlog~~ plan as a part of the local government comprehensive plan within 6 months after the creation of the authority. The plan must:

1. Identify all transportation facilities that have been designated as deficient and require the expenditure of moneys to upgrade, modify, or mitigate the deficiency.

2. Include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy deficiency ~~concurrency~~ requirements pursuant to s. 163.3180, and the applicable local government comprehensive plan.

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3. Establish a schedule for financing and construction of transportation deficiency ~~concurrency backlog~~ projects that will eliminate transportation deficiencies ~~concurrency backlogs~~ within the jurisdiction of the authority within 10 years after the transportation deficiency ~~concurrency backlog~~ plan adoption. If the utilization of mass transit is selected as all or part of the system solution, the improvements and service may extend outside the area of the transportation deficiency areas to the planned terminus of the improvement as long as the improvement provides capacity enhancements to a larger intermodal system. The schedule shall be adopted as part of the local government comprehensive plan.

(b) The adoption of the transportation deficiency ~~concurrency backlog~~ plan shall be exempt from the provisions of s. 163.3187(1).

Notwithstanding such schedule requirements, as long as the schedule provides for the elimination of all transportation deficiencies ~~concurrency backlogs~~ within 10 years after the adoption of the deficiency ~~concurrency backlog~~ plan, the final maturity date of any debt incurred to finance or refinance the related projects may be no later than 40 years after the date the debt is incurred and the authority may continue operations and administer the trust fund established as provided in subsection (5) for as long as the debt remains outstanding.

(5) ESTABLISHMENT OF LOCAL TRUST FUND.—The transportation deficiency ~~concurrency backlog~~ authority shall establish a local transportation deficiency ~~concurrency backlog~~ trust fund upon creation of the authority. Each local trust fund shall be


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administered by the transportation deficiency ~~concurrency backlog~~ authority within which a transportation deficiencies have ~~concurrency backlog~~ has been identified. Each local trust fund must continue to be funded under this section for as long as the projects set forth in the related transportation deficiency ~~concurrency backlog~~ plan remain to be completed or until any debt incurred to finance or refinance the related projects is no longer outstanding, whichever occurs later. Beginning in the first fiscal year after the creation of the authority, each local trust fund shall be funded by the proceeds of an ad valorem tax increment collected within each transportation deficiency ~~concurrency backlog~~ area to be determined annually and shall be a minimum of 25 percent of the difference between the amounts set forth in paragraphs (a) and (b), except that if all of the affected taxing authorities agree under an interlocal agreement, a particular local trust fund may be funded by the proceeds of an ad valorem tax increment greater than 25 percent of the difference between the amounts set forth in paragraphs (a) and (b):

(a) The amount of ad valorem tax levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the jurisdiction of the transportation deficiency ~~concurrency backlog~~ authority and within the transportation deficiency ~~backlog~~ area; and

(b) The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable

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real property within the transportation deficiency ~~concurrency backlog~~ area as shown on the most recent assessment roll used in connection with the taxation of such property of each taxing authority prior to the effective date of the ordinance funding the trust fund.

(6) EXEMPTIONS.—

(a) The following public bodies or taxing authorities are exempt from the provisions of this section:

1. A special district that levies ad valorem taxes on taxable real property in more than one county.

2. A special district for which the sole available source of revenue is the authority to levy ad valorem taxes at the time an ordinance is adopted under this section. However, revenues or aid that may be dispensed or appropriated to a district as defined in s. 388.011 at the discretion of an entity other than such district shall not be deemed available.

3. A library district.

4. A neighborhood improvement district created under the Safe Neighborhoods Act.

5. A metropolitan transportation authority.

6. A water management district created under s. 373.069.

7. A community redevelopment agency.

(b) A transportation deficiency ~~concurrency exemption~~ authority may also exempt from this section a special district that levies ad valorem taxes within the transportation deficiency ~~concurrency backlog~~ area pursuant to s. 163.387(2)(d).

(7) TRANSPORTATION DEFICIENCY ~~CONCURRENCY~~ SATISFACTION.—Upon adoption of a transportation deficiency ~~concurrency backlog~~

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plan as a part of the local government comprehensive plan, and the plan going into effect, the area subject to the plan shall be deemed to have achieved and maintained transportation level-of-service standards, and to have met requirements for financial feasibility for transportation facilities~~, and for the purpose of proposed development transportation concurrency has been satisfied~~. Proportionate fair-share mitigation shall be limited to ensure that a development inside a transportation deficiency ~~concurrency backlog~~ area is not responsible for the additional costs of eliminating deficiencies ~~backlogs~~.

(8) DISSOLUTION.—Upon completion of all transportation deficiency ~~concurrency backlog~~ projects and repayment or defeasance of all debt issued to finance or refinance such projects, a transportation deficiency ~~concurrency backlog~~ authority shall be dissolved, and its assets and liabilities transferred to the county or municipality within which the authority is located. All remaining assets of the authority must be used for implementation of transportation projects within the jurisdiction of the authority. The local government comprehensive plan shall be amended to remove the transportation deficiency ~~concurrency backlog~~ plan.

Section 5. Paragraph (u) is added to subsection (24) of section 380.06, Florida Statutes, to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(u) Any transit-oriented development as defined in s. 163.3164 incorporated into the county or municipality comprehensive plan that has adopted land use and transportation strategies to support and fund the local government concurrency

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or mobility plan identified in the comprehensive plan, including alternative modes of transportation, is exempt from review for transportation impacts conducted pursuant to this section. This paragraph does not apply to areas:

1. Within the boundary of any area of critical state concern designated pursuant to s. 380.05;

2. Within the boundary of the Wekiva Study Area as described in s. 369.316; or

3. Within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592(2).

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 6. The Legislature finds that this act fulfills an important state interest.

Section 7. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

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A bill to be entitled

An act relating to growth management; amending s. 163.3164, F.S.; revising and providing definitions relating to the Local Government Comprehensive Planning and Land Development Regulation Act; amending s. 163.3177, F.S.; revising requirements for comprehensive plans relating to capital improvements and future land use plan elements; amending s. 163.3180, F.S.; revising transportation concurrency requirements relating to transportation planning and proportionate share; amending s. 163.3182, F.S.; revising the definition of the term "transportation concurrency backlog" to "transportation deficiency"; revising other definitions and provisions to conform; revising provisions relating to transportation deficiency plans and projects; amending s. 380.06, F.S.; exempting transit-oriented developments from review of transportation impacts in the developments-of-regional-impact process; providing a finding of important state interest; providing an effective date.

511736

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment to Amendment (285126)

Delete line 300

and insert:

maintain the adopted level of service. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis. In using the

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment to Amendment (285126)

Delete lines 307 - 320

and insert:

development's list of significantly and adversely impacted road segments and from the proportionate-share calculation. The identified improvement to correct the transportation deficiency is the funding responsibility of the effected state or local government. The proportionate-share formula provided in this paragraph shall be applied to those facilities that are not deficient but are determined to be significantly and adversely impacted by the project under review. If additional improvements

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beyond those improvements necessary to correct the existing deficiency would be needed for an identified deficient facility, the necessary improvements to correct the existing deficiency for that facility will be considered to be in place, and the development's proportionate share shall be calculated only for the

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1142
INTRODUCER:	Senator Dockery
SUBJECT:	Adverse Possession
DATE:	March 10, 2011
REVISED:	

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

I. Summary:

This bill amends the current statutory process for gaining title to real property via an adverse possession claim without color of title. Specifically, the bill:

- Includes occupation and maintenance as one of the forms of proof of possession of property subject to an adverse possession claim;
- Requires the property appraiser to provide notice to the owner of record that an adverse possession claim was made;
- Specifies that the Department of Revenue must develop a uniform adverse possession return;
- Requires the adverse possessor to provide a "full and complete" legal description on the return;
- Requires the adverse possessor to attest to the truthfulness of the information provided in the return under penalty of perjury;
- Requires an adverse possessor to describe, on the return, how he or she is using the property subject to the adverse possession claim;
- Includes emergency rulemaking authority for the Department of Revenue related to the adverse possession return;
- Prescribes procedures governing an adverse possession claim against a portion of an identified parcel of property, or against property that does not currently have a unique parcel identification number;
- Specifies when the property appraiser may add and remove the adverse possessor to and from the parcel information on the tax roll;
- Requires property appraisers to include a notation of an adverse possession claim in any searchable property database maintained by the property appraiser;

- Provides for priority of property tax payments made by owners of record by allowing for refunds of tax payments made by adverse possessors who submit a payment prior to the owner of record; and
- Provides that tax notices must be sent to the owner of property subject to an adverse possession claim even if the county commission has authorized the tax collector to not send out tax notices for bills under a certain amount.

This bill substantially amends sections 95.18 and 197.212, Florida Statutes, and creates section 197.3335, Florida Statutes.

II. Present Situation:

Origins of Adverse Possession

The doctrine of adverse possession "dates back at least to sixteenth century England and has been an element of American law since the country's founding."[1] The first adverse possession statute appeared in the United States in North Carolina in 1715.[2]

Adverse possession is defined as "'[a] method of acquisition of title to real property by possession for a statutory period under certain conditions.'"[3] Under the common law, an adverse possessor must generally establish five elements in relationship to possession. The possession must be:

- Open;
- Continuous for the statutory period;
- For the entirety of the area;
- Adverse to the record owner's interests; and
- Notorious.[4]

In most jurisdictions, state statutory law prescribes the limitations period – the period in which the record owner must act to preserve his or her interests in the property – while the state's body of common law governs the nature of use and possession necessary to trigger the running of the statutory time period.[5] As legal scholars have noted, "[a]dverse possession decisions are inherently fact-specific."[6] Therefore, an adverse possessor must establish "multiple elements whose tests are elastic and provide the trier of fact with flexibility and discretion."[7]

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[1] Alexandra B. Klass, *Adverse Possession and Conservation: Expanding Traditional Notions of Use and Possession*, 77 U. COLO. L. REV. 283, 286 (Spring 2006).
[2] Brian Gardiner, *Squatters' Rights and Adverse Possession: A Search for Equitable Application of Property Laws,* 8 IND. INT'L & COMP. L. REV. 119, 129 (1997).
[3] *Id*. at 122 (quoting BLACK'S LAW DICTIONARY 53 (6th ed. 1990)).
[4] *Id.*
[5] Klass, *supra* note 1, at 287.
[6] Geoffrey P. Anderson and David M. Pittinos, *Adverse Possession After House Bill 1148*, 37 COLO. LAW 73, 74 (Nov. 2008).
[7] *Id.*

Adverse Possession in Florida

In Florida, there are two ways to acquire land by adverse possession, which are prescribed by statute.[8] First, an individual adversely occupying property may claim property under color of title if he or she can demonstrate that the claim to title is the derivative of a recorded written document and that he or she has been in possession of the property for at least seven years.[9] It is irrelevant whether the recorded document is legally valid or is fraudulent or faulty. To demonstrate possession, the adverse possessor must prove that he or she cultivated or improved the land, or protected the land by a substantial enclosure.[10] Alternatively, in the event a person occupies land continuously without color of title – i.e., without any legal document to support a claim for title – the person may seek title to the property by filing a return with the county property appraiser's office within one year of entry onto the property, and paying all property taxes and any assessed liens during the possession of the property for seven consecutive years.[11] Similar to claims made with color of title, the adverse possessor may demonstrate possession of the property by showing that he or she:

- Protected the property by a substantial enclosure (typically a fence); or
- Cultivated or improved the property.[12]

Florida courts have noted that "[p]ublic policy and stability of our society . . . requires strict compliance with the appropriate statutes by those seeking ownership through adverse possession."[13] Adverse possession is not favored, and all doubts relating to the adverse possession claim must be resolved in favor of the property owner of record.[14] The adverse possessor must prove each essential element of an adverse possession claim by clear and convincing evidence.[15] Therefore, the adverse possession claim cannot be "established by loose, uncertain testimony which necessitates resort to mere conjecture."[16]

Abuse of the Adverse Possession Process

Despite certain policy considerations supporting the application of adverse possession in Florida,[17] abuse of the statute may be occurring in certain contexts because the adverse possessor

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[8] *Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.*, 947 So. 2d 1231, 1234 (Fla. 1st DCA 2007). In addition to adverse possession, a party may gain use of adversely possessed property by acquiring a prescriptive easement upon a showing of 20 years of adverse use.

[9] Section 95.16, F.S. *See also Bonifay v. Dickson*, 459 So. 2d 1089 (Fla. 1st DCA 1984). The Florida Legislature, by acts now embodied in statute, reduced the period of limitations as to adverse possession to seven years but left at 20 years the period for acquisition of easements by prescription. *Crigger v. Florida Power Corp*., 436 So. 2d 937, 945 (Fla. 5th DCA 1983).

[10] Section 95.16, F.S.

[11] Section 95.18(1), F.S. The 1939 Legislature added to what is now s. 95.18(1), F.S., a provision which required that an adverse possessor without color of title must file a tax return and pay the annual taxes on the property during the term of possession. Chapter 19254, s. 1, Laws of Fla. (1939). A 1974 amendment to the statute eliminated the requirement that taxes be paid annually. Chapter 74-382, s. 1, Laws of Fla.

[12] Section 95.18(2), F.S.

[13] *Candler Holdings Ltd. I*, 947 So. 2d at 1234.

[14] *Id.*

[15] *Id.* (citing *Bailey v. Hagler*, 575 So. 2d 679, 681 (Fla. 1st DCA 1991)).

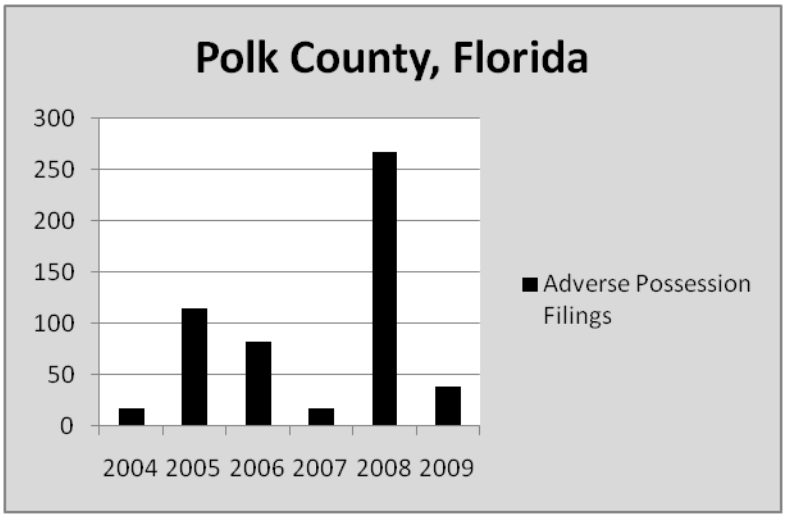
[16] *Id.* (quoting *Grant v. Strickland*, 385 So. 2d 1123, 1125 (Fla. 1st DCA 1980)).

[17] *See* Comm. on Judiciary, Fla. Senate, *Review of the Requirements for Acquiring Title to Real Property through Adverse Possession* (Interim Report 2010-123) (Oct. 2009), 2, *available at* http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-123ju.pdf.

may acquire title to property in instances where the record owner attempts to pay taxes and monitors the property. Some landowners in Florida[18] have expressed concern that individuals are capitalizing on the current adverse possession laws to gain title to adjoining properties, and that the burden to overcome these claims unfairly rests with the property owner of record. For example, in some counties, adjoining landowners have filed numerous adverse possession returns on several properties and have paid property taxes on those parcels in an attempt to claim title to the property by adverse possession despite any good faith claim to title. There is no boundary line dispute or other good faith belief that the title to the property lawfully belongs to the adverse possessor. In order to protect the owner's property interests, he or she may be required to initiate litigation to eject the adverse possessor or to receive a judgment declaring his or her rights to the property. Significant legal fees and other costs may be associated with countering adverse possession claims.

Adverse Possession Trends in Florida

Some counties in Florida have experienced an influx of adverse possession claims, while other counties have received very few filings, or none at all, in recent years. For example, the following figure illustrates the number of adverse possession returns submitted to the Polk County Property Appraiser's Office in recent years:[19]



Currently, Polk County has more than 500 adverse possession returns on record. In Orange County, there are 51 adverse possession returns on record out of 434,940 total parcels. The Brevard County Property Appraiser's Office has between 100 and 150 adverse possession returns on record. Although the incidence of adverse possession claims appears to be more prevalent in rural areas in Florida, urban areas also experience adverse possession claims.

Senate Review of the Adverse Possession Framework

[18] Senate professional staff interviewed landowners subject to adverse possession claims, as well as real property practitioners, to gauge their experiences with the process. In some instances the record landowner may reside in another state. This absence from Florida may further impair the landowner's ability to oppose an adverse possession claim.
[19] Data provided by the Polk County Property Appraiser's Office.

During the 2009-10 interim, the Florida Senate Committee on Judiciary (committee) studied the current adverse possession framework in Florida and identified potential reforms to the adverse possession process for landowners, particularly those who are subject to adverse possession claims.[20] Problems associated with the current adverse possession framework identified by the report include:

- **Notice to owners of record.** In some counties, owners of record may not receive notice that an adverse possession claim is being pursued against their property. The report recommended requiring the adverse possessor or the property appraiser to provide actual or constructive notice to the owner of record of the disputed property, if the owner can be determined, upon the submission of an adverse possession return to the property appraiser.
- **Enhancements to adverse possession return.** The adverse possession return, the first step in initiation of the adverse possession process, is not used uniformly throughout the state and does not require adverse possessors to submit significant information that protects the interests of owners of record without interfering with a person's right to pursue legitimate adverse possession claims. To address these concerns, the report recommended:
    - Adopting a uniform return for adverse possession claims to promote uniformity throughout the state;
    - Providing that the adverse possessor must give a detailed description of his or her possession and use of the disputed property on the return; and
    - Requiring adverse possessors to attest to the truthfulness of the information required in the return under penalty of perjury.
- **Adverse possession notations.** Some property appraisers do not provide a clear notation in the public property database maintained on their websites of an adverse possession claim. In these counties, a property owner cannot search the property appraiser's website to quickly discern whether an adverse possession claim has been filed against a particular parcel. The report recommended requiring property appraisers to include clear notations that adverse possession filings have been made in their public searchable property databases.
- **Administration of adverse possession claims.** Property appraisers do not currently have guidance regarding how to administer the adverse possession return once it has been submitted by the adverse possessor. The report noted that the Legislature could explore the option of prescribing the process for adding the adverse possessor to the parcel information on the tax roll, as well as when a property appraiser may remove the adverse possessor from that parcel information and remove the adverse possession return from the official records.
- **Priority of tax payments.** Under the current statutory framework, if an adverse possessor makes an annual property tax payment prior to the owner of record, the tax collector cannot accept a subsequent payment from the owner of record. The report noted that the Legislature could explore the option of establishing priority of tax payments to improve an owner of record's ability to pay taxes on his or property even if the adverse possessor makes the first tax payment.

[20] Comm. on Judiciary, Fla. Senate, *supra* note 17.

The committee report included additional options available to the Legislature to discourage abuse of the adverse possession process and to improve the administration of these claims for the benefit of record landowners, adverse possessors, and those governmental entities that are responsible for the administration of these claims.

III. Effect of Proposed Changes:

The bill amends the current process for gaining title to real property via an adverse possession claim without color of title.

Possession of the Property

The bill makes several changes to the current language included in the adverse possession (without color of title) statute for clarity, including a change designed to account for the establishment of "possession" in urban areas, and to make clear that property will be deemed to be possessed by the adverse possessor when:

- It is protected by a substantial enclosure;
- It has been usually cultivated or improved; or
- It has been occupied and maintained.

In effect, a person claiming adverse possession may establish possession under the statute by satisfying any of these three criteria. Because properties subject to adverse possession claims in urban areas may not, in some instances, be amenable to protection by a substantial enclosure, or cultivation or improvement, the bill allows the adverse possessor to establish possession by occupying and maintaining the property.

Adverse Possession Return

The bill makes several changes to the information contained in the adverse possession return submitted by an adverse possessor to initiate the adverse possession claim. The bill requires the Department of Revenue (DOR) to develop a uniform adverse possession return to be used throughout the state. In addition to the information contained on the current form developed by DOR, the bill requires the adverse possessor to provide a "full and complete legal description of the property" on the return.[21] The adverse possessor must also attest to the truthfulness of the information contained on the form under penalty of perjury.[22]

Finally, under the bill, the adverse possessor must provide a description of his or her use of the property in the return. For example, the adverse possessor may state in the return that he or she has fenced in the property subject to the claim, or is allowing his or her cattle to graze over the subject property.

[21] The Department of Revenue created a sample return form for use by property appraisers, which included the following information: date of filing; date of entering into possession of the property; name and address of the claimant; legal description of the property; notarization clause; and receipt (to be completed by the property appraiser or a designated representative upon submission of the return). *See* Florida Dep't of Revenue, Form DR-452, *Form for Return of Real Property in Attempt to Establish Adverse Possession without Color of Title* (rev. Aug. 1993).

[22] A person who knowingly made a false declaration on the return would be guilty of the crime of perjury by false written declaration, which is a third-degree felony, punishable by imprisonment not to exceed five years and a fine not to exceed $5,000. Section 92.525(3), F.S.

Emergency Rulemaking Authority

The bill grants the Department of Revenue (DOR) the authority to adopt emergency rules related to the changes to the adverse possession return. More specifically, the bill provides that the executive director of the DOR is authorized to adopt emergency rules for the purpose of implementing the additions and changes to the adverse possession return form created by DOR. These emergency rules may remain in effect for six months after the rules are adopted and may be renewed during the pendency of procedures to adopt final rules addressing the adverse possession return.

Notice to Owner of Record

The bill requires the property appraiser to provide notice to the owner of record that an adverse possession return was submitted. The property appraiser must send to the owner of record a copy of the return, via regular mail. The property appraiser is also required to inform the owner of record that, under the provisions created in the bill and discussed in greater detail below, any tax payment made by the owner of record prior to April 1 following the year in which the tax is assessed will have priority over any tax payment made by the adverse possessor.

Property Appraiser's Administration of the Return

Upon submission of the return, the property appraiser must complete a receipt acknowledging submission of the return. The bill authorizes the property appraiser to refuse to accept a return if it fails to comply with the requirements prescribed in the bill. Under the bill, upon receipt of the adverse possession return, the property appraiser must add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been initiated. Until a recent bulletin by the Department of Revenue advising otherwise, some property appraisers were adding the adverse possessor as an additional "owner" on the tax roll.[23] The property appraiser is also required to maintain the adverse possession return in the property appraiser's records.

Claim Against a Portion of a Parcel or Against Property Without a Parcel Number

The bill prescribes procedures when an adverse possession claim is made against a *portion* of property with a unique parcel identification number. The person claiming adverse possession shall provide a legal description of the portion sufficient for the property appraiser to identify the portion. If property appraiser cannot identify the portion of property from the description, the person must obtain a survey of the portion of property. If the whole property already has been assigned a parcel identification number, the property appraiser may not assign a new parcel number to the portion of the property subject to the claim. The property appraiser shall assign a fair and just value to the portion of the property subject to the claim.

The bill also prescribes procedures when an adverse possession claim is made against property that does not yet have a parcel identification number. The person claiming adverse possession shall provide a legal description of the property sufficient for the property appraiser to identify it.

[23] Florida Dep't of Revenue, *Florida Department of Revenue Property Tax Information Bulletin*: *Return of Real Property in Attempt to Establish Adverse Possession without Color of Title, Form DR-452* (Jan. 25, 2010).

If the property appraiser cannot identify the property from the description, the person must obtain a survey of the property. The property appraiser shall assign a parcel identification number to the property and assign a fair and just value to the property.

Removal of Notation from Parcel Information

The bill also delineates when the property appraiser may remove the adverse possessor from the parcel information contained in the tax roll. Under the bill, the property appraiser must remove the notation to the legal description on the tax roll that an adverse possession return has been submitted if:

- The adverse possessor notifies the property appraiser in writing that he or she is withdrawing the claim;
- The owner of record provides a certified copy of a court order, entered after the date of the submission of the return, establishing title in the owner of record;
- The property appraiser receives a recorded deed, filed after the date of the submission of the return, transferring title of the same property subject to the claim from the adverse possessor to the owner of record; or
- The tax collector or owner of record submits to the property appraiser a receipt demonstrating that the owner of record has made an annual tax payment for the property subject to the adverse possession claim during the period that the person is claiming adverse possession.

If any one of these events occurs, the property appraiser must also remove the adverse possession return from the property appraiser's records.

Adverse Possession Filing Notation

The bill requires every property appraiser who maintains a public searchable database to provide a clear and obvious notation in the parcel information of the database maintained by the property appraiser that an adverse possession return has been submitted for the particular parcel. Those property appraisers who do not currently offer a searchable database to the public are not subject to this requirement, unless they offer a searchable database to the public in the future.

Tax Payments

The bill provides for priority of property tax payments made by owners of record whose property is subject to an adverse possession claim. Under current law, if an adverse possessor makes a tax payment prior to the owner of record, the tax collector is not authorized to accept a subsequent payment by the owner of record. Under the bill, if an adverse possessor makes an annual tax payment on property subject to the adverse possession claim, and the owner of record subsequently makes a tax payment prior to April 1, the tax collector is required to accept the owner of record's payment. Within 60 days, the tax collector must then refund the adverse possessor's tax payment. The bill specifies that the refund to the adverse possessor is not subject to approval from the Department of Revenue.[24]

[24] Currently, certain refunds of $400 or more must be approved by the Department of Revenue prior to the tax collector's remittance of the refund. *See* s. 197.182(1)(i), F.S.

The bill also specifies that, upon receipt of a subsequent payment for the same annual tax assessment for a particular parcel, the tax collector must determine if an adverse possession return has been submitted on the particular parcel. If a return has been submitted, the tax collector must refund the payment made by the adverse possessor and afford the owner of record priority of payment as specified in the bill.

In addition, the bill sets forth the tax-payment and refund procedures when only a portion of an identified parcel of property is subject to an adverse possession claim.

The bill excludes properties subject to adverse possession claims from the minimum tax bill provision. Therefore, tax notices must be sent to the owner of property subject to an adverse possession claim even if the county commission has authorized the tax collector to not send out tax notices for bills under a certain amount.

Effective Date

The bill has an effective date of July 1, 2011, and applies to adverse possession claims in which the return was submitted on or after this date, except for the procedural provisions governing the property appraiser's administration of the adverse possession claims included in proposed s. 95.18(4)(c) and (d) (requiring the property appraiser to add a notation of the adverse possession filing and maintain a copy of the return) and (7), F.S. (delineating when the property appraiser may remove the adverse possession notation). These provisions will apply to adverse possession claims in which the return was submitted before, on, or after July 1, 2011.

Other Potential Implications:

Establishment of priority of tax payments made by owners of record whose properties are subject to an adverse possession claim would represent a significant policy shift that could effectively preclude an adverse possessor from obtaining title to property, because the adverse possessor may be unable to satisfy the tax-payment element of the adverse possession statute. The current statutory framework contemplates that the tax payment is a necessary step for the person claiming adverse possession to gain title to the property. Therefore, current practice by tax collectors is to accept a payment made by an adverse possessor if made prior to a payment by the owner of record.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

By requiring a property appraiser to send a notice by regular mail to the owner of record when an adverse possession return is submitted, local governments are required to take action requiring the expenditure funds. However, the measure would appear to be exempt from the State Constitution's restrictions governing local mandates because the fiscal impact appears to be insignificant due to the minimal number of adverse possession claims generally submitted in a county each year.[25]

[25] FLA. CONST. art. VII, s. 18(d).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill specifically applies some of its procedural provisions retroactively to existing cases in which a person has submitted an adverse possession return to the property appraiser. 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."[26] 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?
- 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?[27]

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.[28] The provisions that this bill applies retroactively relate to the property appraisers' administration of the return by adding or removing the return from their records. These procedural steps by the property appraiser would not appear to impair the vested rights of persons pursuing adverse possession claims.

Additionally, 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."[29] A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.[30] This bill does not appear to do any of these things.

Accordingly, the retroactive application of certain procedural provisions included in the bill does not appear to raise constitutional concerns.

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[26] Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).
[27] *Weingrad v. Miles*, 29 So. 3d 406, 409 (Fla. 3d DCA 2010) (internal citations omitted).
[28] *See Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).
[29] *Weingrad*, 29 So. 3d at 410.
[30] *Id.* at 411.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some landowners whose properties are subject to adverse possession claims may be relieved from certain litigation costs associated with opposing the claim.

C. Government Sector Impact:

Those property appraisers maintaining a public database may experience a minimal fiscal impact associated with the new requirement to provide a clear-and-obvious notation in the parcel information of any public searchable property database maintained by the property appraiser that an adverse possession return has been submitted. In addition, the property appraiser may experience a minimal increase in administrative costs associated with providing notice to the owner of record that the claim has been filed, as well as determining when an adverse possessor may be removed from the parcel information on the tax roll.

Tax collectors may also experience an increase in administrative costs associated with processing payments by adverse possessors and remitting refunds to adverse possessors when duplicate tax payments are made by owners of record. Because the number of adverse possession filings in most counties is minimal, these costs are not likely to be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 814
INTRODUCER:	Senator Richter
SUBJECT:	Ad Valorem Tax Exemptions
DATE:	March 11, 2011 REVISED:

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

I. Summary:

This bill provides a partial ad valorem tax exemption for nonexempt owners of real property that is leased or gratuitously provided, either exclusively or partially, for an exempt charitable purpose. The bill also provides criteria to be used by property appraisers and value adjustment boards in determining whether a nonexempt entity applying for a charitable exemption is a nonprofit or profit-making venture or whether the property is used for a profit-making purpose. The bill provides additional exceptions for ad valorem taxation of certain properties used for profit-making purposes.

This bill substantially amends the following sections of the Florida Statutes 196.192, 196.195, and 196.196.

II. Present Situation:

Property Tax Assessments

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

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

[2] *See* s. 193.011(1)-(8), F.S.

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

Article VII, sections 3 and 6, of the Florida Constitution permits a number of tax exemptions. These include 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 property's taxable value.

Exemptions from Ad Valorem Taxation

Section 196.192, F.S., provides in part, that:

(1) All property owned by an exempt entity, including educational institutions, and used *exclusively* for exempt purposes shall be totally exempt from ad valorem taxation.

(2) All property owned by an exempt entity, including educational institutions, and used *predominately* for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominate use bears to the nonexempt use.[5]

Property Entitled to Charitable, Religious, Scientific, or Literary 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.[6] 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

[3] Section 196.185, F.S.
[4] *See* FLA. CONST. art. VII, s. 4(d) & (g) (stating that the assessed value of homestead property may not increase over the prior year's assessment more than 3 percent or the percentage change in the Consumer Price Index, and levies for non-school tax purposes, the assessment of residential real property and non-residential real property may not increase more than 10 percent over the prior year.).
[5] Section 196.192(1)-(2), F.S.
[6] Section 196.196(1)(a)-(b), F.S.

other similar activities that demonstrate a commitment of the property to a religious use as a house of public worship."[7]

In 2009, the Legislature 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.[8] The 2009 amendment 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.

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 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.

Determining Profit vs. Non-Profit Status of an Entity

Section 196.195, F.S., outlines the statutory criteria that a property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture. When applying for an exemption under this section, an applicant is required to provide the property appraiser with "such fiscal and other records showing in reasonable detail the financial condition, record of operations, and exempt and nonexempt uses of the property . . . for the immediately preceding fiscal year."[9]

The applicant must show that "no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose."[10]

Based on the information provided by the applicant, the property appraiser must use the specified statutory criteria outlined in subsection (2) of s. 196.195, F.S., to determine whether the applicant is a nonprofit or profit-making venture or if the property is used for a profit-making purpose.[11]

A religious, literary, scientific, or charitable exemption may not be granted until the property appraiser, or value adjustment board on appeal, has determined the applicant to be nonprofit under s. 196.195, F.S.[12]

[7] Section 196.196(3), F.S.
[8] Chapter 2009-96, Laws of Fla. (2009 SB 360).
[9] Section 196.195(1), F.S.
[10] Section 196.195(3), F.S.
[11] Section 196.195(2)(a)-(e), F.S.
[12] Section 196.195(4), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 196.192, F.S., to provide partial ad valorem tax exemptions for nonexempt owners of real property that is leased or gratuitously provided exclusively or partially for an exempt charitable purpose.

- Real property leased or gratuitously provided for the *exclusive use* of the property for exempt charitable purposes shall be exempted in an amount equal to 50 percent of the amount exempted under 196.192(1), F.S.
- In instances where a *portion of* the property is leased or gratuitously provided for exempt charitable purposes, the property shall be exempt from ad valorem taxation to the extent of 50 percent of the ratio that such use bears to the nonexempt use of other portions of the property.

Section 2 amends s. 196.195, F.S., to clarify the distinctions between exempt and nonexempt entities. The bill provides that the criteria to be used by property appraisers and value adjustment boards in determining whether a *nonexempt* entity applying for a charitable exemption is a nonprofit or profit-making venture or whether the property is used for a profit-making purpose, shall be the same criteria used for exempt entities, which are currently provided under subsection (2), of s.196.195, F.S.

Similar to the statutory requirements currently provided for exempt entities under s. 196.195(1), (3) and (4), F.S., the bill also provides that:

- A nonexempt entity applying for a total or partial exemption shall supply such fiscal and other records showing in reasonable detail the financial condition, record of operations, and exempt and nonexempt uses of the property, where appropriate, for the immediately preceding fiscal year.[13]
- The nonexempt entity must affirmatively show that no part of the subject property, or the proceeds generated by the exclusive or partial use of the property for exempt charitable purposes will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose, with the exception of a reasonable rental payment to the nonexempt entity.[14]
- An application submitted by an exempt entity for a partial exemption as provided in this bill may not be granted for charitable use of property until the exempt charitable lessee or donee has been found by the property appraiser, or value adjustment board on appeal, to be nonprofit under s. 196.195, F.S.[15]

Section 3 amends s. 196.196, F.S., to add a cross reference to ss. 196.192 and 196.195, as amended in the bill, as additional exceptions for the ad valorem taxation of certain properties used for profit-making purposes.

Section 4 provides that this act shall take effect July 1, 2011.

[13] Currently provided under s.196.195(1), F.S.
[14] Similarly provided for exempt entities in s.196.195(3), F.S.
[15] Similarly provided for total use by an exempt entity in s. 196.195(4), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b), of the Florida Constitution, requires any general law that reduces a local government's authority to raise revenues in the aggregate, to be passed by a two-thirds vote of the membership of each house of the Legislature.[16] By reducing the tax base upon which counties and municipalities may raise ad valorem revenue, this bill will reduce a local government's revenue-raising authority.

Article VII, section 18(d), of the Florida Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact.[17] An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2011-2012 $1.9 million).[18] A fiscal estimate is not available for this bill. If it is determined that this bill has more than an insignificant fiscal impact, it will require a two-thirds vote of the membership of each house of the Legislature for passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Non-exempt owners of real property that is leased or gratuitously provided, exclusively or partially for an exempt charitable purpose, will now be exempt from ad valorem taxation in an amount equivalent to 50 percent of the amount exempted under s. 196.192(1), F.S., for exclusive charitable use, or 50 percent of the ratio that such use bears to the nonexempt use of other portions of the property for partial charitable use.

B. Private Sector Impact:

Non-exempt owners of real property that is leased or gratuitously provided, exclusively or partially for an exempt charitable purpose will now be exempt from ad valorem taxation in an amount equivalent to 50 percent of the amount exempted under s.196.192 (1), F.S., for exclusive charitable use, or 50 percent of the ratio that such use bears to the nonexempt use of other portions of the property for partial charitable use.

[16] FLA. CONST. art. VII, s. 18(b).
[17] FLA. CONST. art. VII, s. 18(d).
[18] Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.

C. Government Sector Impact:

This bill may have an impact on local government revenue as a result of the partial ad valorem tax exemption provided herein. The Revenue Estimating Conference has not determined the fiscal impact of this bill.

The Department of Revenue will need to review and likely amend Form DR-504, Ad Valorem Tax Exemption Application and Return, as a result of this bill.[19]

VI. Technical Deficiencies:

In reviewing SB 814, the Department of Revenue indicated that the term "amount exempted" on line 38 of the bill is not applicable since there is currently no amount exempted in instances where the non-exempt entity is the owner under s. 196.192(1), F.S. To address this concern, the Department has recommended the following amendment:

> On line 38, after the term "amount" insert "… that, if owned by the exempt entity, could be …"[20]

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.

[19] The Department of Revenue, *SB 814 Fiscal Analysis*, at 3 (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).
[20] The Department of Revenue, *SB 814 Fiscal Analysis*, at 4 (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete line 38
and insert:
equivalent to 50 percent of the amount that, if owned by the entity, would be exempted under subsection

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1120
INTRODUCER:	Senator Norman
SUBJECT:	Special Districts
DATE:	March 10, 2011
REVISED:	

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

I. Summary:

This bill deletes the current requirement that the merger or dissolution of an independent special district created and operating pursuant to a special act may only be effectuated by the Legislature. This bill requires an involuntary dissolution or merger to be subject to a special act of the Legislature and approved by voter referendum. The bill also provides for the payment of associated referendum expenses and the distribution of assets and indebtedness.

This bill allows a special district that meets the criteria for being declared inactive or that has already been declared inactive to be dissolved or merged without a referendum. The bill also allows the governing body of a special district to unanimously adopt a resolution to declare itself inactive and therefore dissolve without a referendum.

The bill provides that this act shall preempt any special act to the contrary, unless a specific dissolution date of the independent special district is provided in the special act.

This bill substantially amends the following sections of the Florida Statutes: 189.4042 and 189.4044, F.S.

II. Present Situation:

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.[1] Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose.[2] A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.[3] A special district does not include:

- A school district,
- A community college district,
- A special improvement district (Seminole and Miccosukee Tribes under s. 285.17, F.S.),
- A municipal service taxing or benefit unit (MSTU/MSBU), or
- A political subdivision board of a municipality providing electrical service.[4]

Special districts have the same governing powers and restrictions as counties and municipalities.[5] Like other forms of local government, special districts operate through a governing board and can "enter contracts, employ workers . . . issue debt, impose taxes, levy assessments and . . . charge fees for their services."[6] Special districts are held accountable to the public, and are therefore subject to public sunshine laws and financial reporting requirements.[7]

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following characteristics:

- The membership of its governing body is identical to the governing body of a single county or municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.[8]

Section 189.403(3), F.S., defines an independent special district as a district that does not meet the statutory classifications of a dependent special district.[9] Independent special districts may

[1] Ch. 189, F.S., *see* s. 189.401, F.S.
[2] Section 189.403(1), F.S.
[3] *Id.*
[4] *Id.*
[5] Mizany, Kimia and April Manatt, WHAT'S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).
[6] *Id.* (alteration to original) (citation omitted).
[7] Presentation by Jack Gaskins Jr., from the Department of Community Affairs, Special District Information Program, SPECIAL DISTRICT BASICS PRESENTATION (May 2010) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.
[8] Section 189.403(2)(a)-(d), F.S.
[9] Section 189.403(3), F.S.

encompass more than one county.[10] The public policy behind special districts is to provide an alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services."[11]

The Special District Information Program

The Special District Information Program (SDIP), administered by the Department of Community Affairs (DCA or Department), is designed to collect, update, and share detailed information on Florida's special districts with more than 685 state and local agencies.[12] The Department also maintains an official master list of the individual functions and status of all the dependent and independent special districts throughout the state.[13] As of March 2011, there were approximately 1,629 special districts in the state of Florida: 621 dependent districts and 1,008 independent districts.[14] Examples of special districts in Florida include but are not limited to water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.[15]

Current Merger and Dissolution Procedures

Section 189.4042, F.S., specifies the requirements for the merger or dissolution of a special district. Pursuant to this section, the merger or dissolution of a special district "created and operating pursuant to a special act may only be effectuated by the Legislature unless otherwise provided by general law."[16] Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act.

An independent special district that is created by a county or municipality by a referendum or other procedure can be merged or dissolved by the county or municipality that created the special district pursuant to the same procedures in which the special district was created. "However, for any independent special district that has ad valorem taxation powers, the same procedure required to grant such independent special district ad valorem taxation powers shall also be required to dissolve or merge the district."[17]

An independent special district created by a county or municipality through a referendum that has been declared inactive, may be dissolved by the creating county or municipality after publishing notice pursuant to s. 189.4044, F.S.[18]

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[10] *Id.*
[11] Section 189.402(3)-(4), F.S.
[12] Florida Department of Community Affairs, *Special Districts Information Program* (available online at http://www.floridaspecialdistricts.org) (last visited on Sept. 21, 2010).
[13] Sections 189.412(2) and 189.4035, F.S. *See also* Florida Department of Community Affairs, *Official List of Special Districts Online*, (available online at http://www.floridaspecialdistricts.org/OfficialList/index.cfm) (last visited on August 11, 2010). Note: This list is updated on October 1 of each year.
[14] Florida Department of Community Affairs, *Special Districts Information Program* (available online at http://www.floridaspecialdistricts.org/OfficialList/StateTotals.cfm) (last visited on March 10, 2011) (Note: This number is subject to change daily.)
[15] Florida Department of Community Affairs, *Official List of Special Districts Online* (available online at http://www.floridaspecialdistricts.org/OfficialList/index.cfm) (last visited on August 11, 2010).
[16] Section 189.4042(2), F.S.
[17] *Id.*
[18] *Id.*

Inactive Special Districts

Section 189.4044, F.S., outlines special procedures for inactive special districts. Paragraph (1)(a), of this section requires the Department of Community Affairs (DCA) to declare a special district to be inactive if it meets at least one of the following three criteria:

1) The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has taken no action for 2 or more years;
2) Following an inquiry from the department, the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for 2 or more years or the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government fails to respond to the department's inquiry within 21 days; or
3) The department determines, pursuant to s. 189.421, F.S., that the district has failed to file any of the reports listed in s. 189.419, F.S. [19]

After proposing a special district to be inactive, the Department, special district, or local general purpose government must publish a notice of the proposed declaration of inactive status in a newspaper of general circulation in the county or municipality where the territory of the special district is located.[20] The entity must allow 21 days from the date of publication for administrative appeals to be filed.[21] Thereafter, the entity that created the special district declared to be inactive must dissolve the special district by repealing its enabling laws or by other appropriate means.[22]

If the inactive special district was created by a special act of the Legislature, then the Department must send a notice of declaration of inactive status to the Speaker of the House of Representatives and the President of the Senate. This notice shall constitute as sufficient notice under Article III, section 10, of the Florida Constitution, of which the Legislature shall be authorized to repeal any special laws so reported in the notice of declaration of inactive status.[23]

Oversight Review Process

Although Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act, s. 189.428, F.S., does offer an oversight review process that allows counties and municipalities to evaluate the degree of special district services and determine the need for adjustments, transitions or dissolution.[24] The oversight review process is performed in conjunction with the special district's public facilities report and the local governmental evaluation and appraisal report prescribed in ss. 189.415(2) and 163.3191, F.S.[25] Depending upon whether the independent special district is a single- or multi-

[19] Section 189.4044(1)(a), F.S.
[20] Section 189.4044(1)(b), F.S.
[21] Section 189.4044(1)(c), F.S.
[22] Section 189.4044(4), F.S.
[23] Section 189.4044(3), F.S.
[24] *See* s. 189.428, F.S.
[25] Section 189.428(2), F.S.

county district, the oversight review may be conducted by the county or municipality where the special district is located, or by the government that created the special district.[26]

During the oversight review process, the reviewing authority must consider certain criteria, including, but not limited to:

- The degree to which current services are essential or contribute to the well-being of the community;
- The extent of continuing need for current services;
- Current or possible municipal annexation or incorporation and its impact on the delivery of district services;
- Whether there is a less costly alternative method of delivering the services that would adequately provide district services to district residents; and
- Whether the transfer of services would jeopardize the districts' existing contracts.[27]

The reviewing authority's final oversight report must be filed with the government that created the district, and shall serve as a basis for any modification, dissolution or merger of the district.[28] If a legislative dissolution or merger is proposed in the final report, subsection (8) of s. 189.428, F.S., further provides that:

> (8) . . . the reviewing government shall also propose a plan for the merger or dissolution, and the plan shall address the following factors in evaluating the proposed merger or dissolution:
>
> a) Whether, in light of independent fiscal analysis, level-of-service implications, and other public policy considerations, the proposed merger or dissolution is the best alternative for delivering services and facilities to the affected area.
> b) Whether the services and facilities to be provided pursuant to the merger or dissolution will be compatible with the capacity and uses of existing local services and facilities.
> c) Whether the merger or dissolution is consistent with applicable provisions of the state comprehensive plan, the strategic regional policy plan, and the local government comprehensive plans of the affected area.
> d) Whether the proposed merger adequately provides for the assumption of all indebtedness.[29]

The final report must also be considered at a public hearing in the affected jurisdiction and adopted by the governing board. Thereafter, the adopted plan for merger or dissolution can be filed as an attachment to the economic impact statement regarding the proposed special act or general act of local application dissolving a district.[30] This section does not apply to deepwater

[26] Section 189.428(3), F.S. Note: dependent special districts are reviewed by the local government entity that they are dependent upon, *see* s. 189.428(3) (a), F.S.
[27] *See* s. 189.428(5) (a)-(i), F.S., for a full list of the statutory criteria that is evaluated during the oversight review process.
[28] Section 189.428(7), F.S.
[29] Section 189.428(8), F.S.
[30] *Id.*

ports, airport authorities, or healthcare districts operating in compliance with other master plan requirements under Florida Statutes.[31]

Senate Interim Project, *Interim Report 2011-210*

This summer, the Senate Committee on Community Affairs conducted an interim report on the merger of independent special districts.[32] The purpose of this interim report was to explore potential statutory guidelines for voluntary independent special district mergers and consolidations. The report reviewed current Florida law and existing merger and consolidation laws in three other states, and discussed previous merger attempts that have failed in Florida. Based on this information, Senate staff provided criteria for the Legislature to consider, should it choose to adopt statutory guidelines that would allow independent special districts formed under special law to voluntarily merge prior to a Legislative Act.

Staff recommended that any adopted statutory criteria should:

- Discuss how mergers can be initiated, i.e. by resolution, voters, etc.;
- State the required statutory thresholds to approve or petition a merger;
- Require special districts to adopt a merger plan that evaluates how personnel and governing board changes will be made, how assets and liabilities will be apportioned, and how to standardize varying pay levels and benefits;
- Only apply to voluntary special district mergers; and
- Preclude special districts from exceeding the powers granted to them in their existing special acts until a unified charter is adopted by the Legislature.[33]

III. Effect of Proposed Changes:

Section 1 amends s. 189.4042, F.S., to making the following changes:

- Eliminate the requirement that the merger or dissolution of independent special districts created and operating pursuant to a special act may only be effectuated by the Legislature.
- Dissolution: Provide that if a local general-purpose government seeks to dissolve an active independent special district created and operating pursuant to a special act, whose board objects to the dissolution by resolution or the dissolution is supported by less than a supermajority vote of the board, then the dissolution is not effective until a special act of the Legislature approved by a majority of the resident electors of the district or landowners voting in the same manner the governing board is elected.
- Merger: Provide that if a local general-purpose government seeks to merge an active independent special district created and operating pursuant to a special act, whose board objects to the merger by resolution, then the merger is not effective until a special act of the Legislature is approved by a majority of the resident electors of the district or landowners voting in the same manner the governing board is elected at a separate

[31] Section 189.428(9), F.S. (Discussing deepwater ports operating in compliance with a port master plan under s. 163.3178(2)(k), airport authorities operating in compliance with the Federal Aviation Administration approved master plan, and special districts organized to provide health systems and facilities licensed under chapters 395, 400, and 429, F.S.).
[32] Comm. on Community Affairs, The Florida Senate, *The Merger of Independent Special Districts* (Interim Report 2011-210) (Oct. 2010).
[33] *Id.*

referenda. The bill also requires the special act to include a merger plan that addresses transition issues such as the effective date of the merger, governance, administration, powers, pensions, and assumption of all assets and liabilities.

- Provide that the political subdivisions proposing the involuntary dissolution or merger shall be responsible for payment of referendum expenses.
- Provide that any independent or dependent special districts that meet the criteria for being declared inactive or that have already been declared inactive pursuant to s. 189.4044, F.S., may be dissolved or merged by a special act without a referendum.
- Declare that this subsection shall preempt any special act to the contrary, unless a specific dissolution date of the independent special district is provided in the special act.
- State that the government formed by merger shall assume all indebtedness of, and receive title to all property owned by, the preexisting independent special district or districts.
- State that the financial allocations of the assets and indebtedness of a dissolved independent special district shall be pursuant to s. 189.4045, F.S.

Section 2 amends s. 189.4044(4), F.S., to allow a governing body of a special district that unanimously adopts a resolution declaring the district (itself) to be inactive without receiving administrative appeals under paragraphs (1)(b) and (c), may dissolve a special district without a referendum; notwithstanding the current provisions of subsection (4) and other provisions of law.

This section also states that the special district shall be responsible for payment of any expenses associated with its dissolution.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

As a result of this bill, independent special districts created and operating pursuant to a special act will no longer require a special act by the Legislature to dissolve or merge. Special districts will not be permitted to involuntarily dissolve or merge without a special act of the Legislature and approval by voter referendum.

Special districts that meet the criteria for being declared inactive or that have already been declared inactive, pursuant to s. 189.4044, F.S., may dissolve or merge without a referendum. In addition, the governing body of a special district that unanimously adopts a resolution to declare itself inactive may dissolve without a referendum.

This bill may impact how districts are reported under the Special District Information Program, within the Department of Community Affairs. The Department of Community Affairs has indicated that this bill does not have a fiscal impact on the Department.[34]

VI. Technical Deficiencies:

Section 2 of this bill allows a governing body of a special district that unanimously adopts a resolution declaring the district (itself) to be inactive, to dissolve the district without referendum assuming that no administrative appeals have been timely filed. This section also provides that the special district shall be responsible for paying the expenses associated with its dissolution. This section of the bill creates inconsistencies with subsection (1) of s. 189.4044, F.S.

The Department of Community Affairs, has suggested the following technical amendment to fix this inconsistency: "On page 4, delete lines 97-109 and insert:

Section 2. Section 189.4044, F.S., is amended to read:

189.4044 Special procedures for inactive districts. –

(1) The department shall declare inactive any special district in this state by documenting that:

(a)The special district meets one of the following criteria:
4. The governing body of a special district provides documentation to the Department that it has unanimously adopted a resolution declaring the special district inactive, has published notice pursuant to paragraph (1)(b), and certifies that no administrative appeals were timely filed. The special district shall be responsible for payment of any expenses associated with its dissolution.

(4) The entity that created a special district declared inactive under this section must dissolve the special district by repealing its enabling laws or by other

[34] Florida Department of Community Affairs, *SB 1120 Fiscal Analysis*, at 7 (March 7, 2011) (on file with the Senate Committee on Community Affairs).

appropriate means. Any special district declared inactive pursuant to paragraph (1)(a)4. may be dissolved without a referendum."[35]

The Department also states that newly created paragraphs (2)(b) and (c), of s. 189.4042, F.S., provided in section 1 of the bill fail "to address independent special districts created and operating pursuant to special act that have appointed boards or a combination of appointed and elected boards."[36]

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.

[35] *Id.* at 9.
[36] *Id.*

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 189.4042, Florida Statutes, is amended to read:

189.4042 Merger and dissolution procedures.—

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

(a) "Component independent special district" means an independent special district that proposes to be merged into a merged independent district, or an independent special district as it existed before its merger into the merged independent

district of which it is now a part.

(b) "Elector-initiated merger plan" means the merger plan of two or more independent special districts, a majority of whose qualified electors have elected to merge, which outlines the terms and agreements for the official merger of the districts, and is finalized and approved by the governing bodies of the districts pursuant to this section.

(c) "Governing body" means the governing body of the independent special district in which the general legislative, governmental, or public powers of the district are vested and by authority of which the official business of the district is conducted.

(d) "Initiative" means the filing of a petition containing a proposal for a referendum to be placed on the ballot for election.

(e) "Joint merger plan" means the merger plan that is adopted by resolution of the governing bodies of two or more independent special districts, that outlines the terms and agreements for the official merger of the districts, and that is finalized and approved by the governing bodies pursuant to this section.

(f) "Merged independent district" means a single independent special district that results from a successful merger of two or more independent special districts pursuant to this section.

(g) "Merger" means the combination of two or more contiguous independent special districts that combine to become a newly created merged independent district that assumes jurisdiction over all of the component independent special

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districts.

(h) "Merger plan" means a written document that contains the terms, agreements, and information regarding the merger of two or more independent special districts.

(i) "Proposed elector-initiated merger plan" means a written document that contains the terms and information regarding the merger of two or more independent special districts and that accompanies the petition initiated by the qualified electors of the districts, but that is not yet finalized and approved by the governing bodies of each component independent special district pursuant to this section.

(j) "Proposed joint merger plan" means a written document that contains the terms and information regarding the merger of two or more independent special districts and that has been prepared pursuant to a resolution of the governing bodies of the districts, but that is not yet finalized and approved by the governing bodies of each component independent special district pursuant to this section.

(k) "Qualified elector" means an individual at least 18 years of age who is a citizen of the United States, a permanent resident of this state, and a resident of the district who registers with the supervisor of elections of a county within which the district lands are located when the registration books are open.

(2) MERGER OR DISSOLUTION OF A DEPENDENT SPECIAL DISTRICT.—

(a) The merger or dissolution of a dependent special district ~~districts~~ may be effectuated by an ordinance of the general-purpose local governmental entity wherein the geographical area of the district or districts is located.

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However, a county may not dissolve a special district that is dependent to a municipality or vice versa, or a dependent district created by special act.

(b) The merger or dissolution of a dependent district created and operating pursuant to a special act may be effectuated only by further act of the Legislature unless otherwise provided by general law.

(c) Dependent special districts that meet any criteria for being declared inactive, or that have already been declared inactive, pursuant to s. 189.4044 may be dissolved or merged by special act without a referendum.

(d) ~~(b)~~ A copy of any ordinance and of any changes to a charter affecting the status or boundaries of one or more special districts shall be filed with the Special District Information Program within 30 days after ~~of~~ such activity.

(3) ~~(2)~~ DISSOLUTION OF AN INDEPENDENT SPECIAL DISTRICT.—

(a) Voluntary Dissolution.—The voluntary ~~merger or~~ dissolution of an independent special district ~~or a dependent district~~ created and operating pursuant to a special act may ~~only~~ be effectuated only by the Legislature unless otherwise provided by general law.

(b) Involuntary Dissolution.—If a local general-purpose government seeks to dissolve an active independent special district created and operating pursuant to a special act whose board objects by resolution to the dissolution, the dissolution of the active independent special district is not effective until a special act of the Legislature is approved by a majority of the resident electors of the district or landowners voting in the same manner by which the independent special district's

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governing board is elected. This paragraph also applies if an independent special district's governing board elects to dissolve the district by less than a supermajority vote of the board.

(c) The political subdivisions proposing the involuntary dissolution of an active independent special district shall be responsible for payment of any expenses associated with the referendum required under paragraph (b).

(d) Independent special districts that meet any criteria for being declared inactive, or that have already been declared inactive, pursuant to s. 189.4044 may be dissolved by special act without a referendum.

(e) Financial allocations of the assets and indebtedness of a dissolved independent special district shall be pursuant to s. 189.4045.

(f) If an inactive independent special district was created by a county or municipality through a referendum, the county or municipality that created the district may dissolve the district after publishing notice as described in s. 189.4044. If an independent special district was created by a county or municipality by referendum or any other procedure, the county or municipality that created the district may merge or dissolve the district pursuant to a referendum or any other ~~the same~~ procedure by which the independent district was created. However, if the ~~for any~~ independent special district ~~that~~ has ad valorem taxation powers, the same procedure required to grant the ~~such~~ independent district ad valorem taxation powers is ~~shall also be~~ required to dissolve ~~or merge~~ the district.

(4) LEGISLATIVE MERGER OF INDEPENDENT SPECIAL DISTRICTS.—

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The Legislature may merge independent special districts created and operating pursuant to special act.

(5) VOLUNTARY MERGER OF INDEPENDENT SPECIAL DISTRICTS.—Two or more contiguous independent special districts created by special act which have similar functions and elected governing bodies may elect to merge into a single independent district through the act of merging the component independent special districts

(a) Initiation.—Merger proceedings may commence by:

1. A joint resolution of the governing bodies of each independent special district which endorses a proposed joint merger plan; or

2. A qualified elector initiative.

(b) Joint merger plan by resolution.—The governing bodies of two or more contiguous independent special districts may, by joint resolution, endorse a proposed joint merger plan to commence proceedings to merge the districts pursuant to this subsection.

1. The proposed joint merger plan must specify:

a. The name of each component independent special district to be merged;

b. The name of the proposed merged independent district;

c. The rights, duties, and obligations of the proposed merged independent district;

d. The territorial boundaries of the proposed merged independent district;

e. The governmental organization of the proposed merged independent district insofar as it concerns elected and appointed officials and public employees, along with a

transitional plan and schedule for elections and appointments of officials;

f. A fiscal estimate of the potential cost or savings as a result of the merger;

g. Each component independent special district's assets, including, but not limited to, real and personal property, and the current value thereof;

h. Each component independent special district's liabilities and indebtedness, bonded and otherwise, and the current value thereof;

i. Terms for the assumption and disposition of existing assets, liabilities, and indebtedness of each component independent special district jointly, separately, or in defined proportions;

j. Terms for the common administration and uniform enforcement of existing laws within the proposed merged independent district;

k. The times and places for public hearings on the proposed joint merger plan;

l. The times and places for a referendum in each component independent special district on the proposed joint merger plan, along with the referendum language to be presented for approval; and

m. The effective date of the proposed merger.

2. The resolution endorsing the proposed joint merger plan must be approved by a majority vote of the governing bodies of each component independent special district and adopted at least 60 business days before any general or special election on the proposed joint merger plan.

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3. Within 5 business days after the governing bodies approve the resolution endorsing the proposed joint merger plan, the governing bodies must:

a. Cause a copy of the proposed joint merger plan, along with a descriptive summary of the plan, to be displayed and be readily accessible to the public for inspection in at least three public places within the territorial limits of each component independent special district, unless a component district has fewer than three public places, in which case the plan must be accessible for inspection in all public places within the component independent special district;

b. If applicable, cause the proposed joint merger plan, along with a descriptive summary of the plan and a reference to the public places within each component independent special district where a copy of the merger plan may be examined, to be displayed on a website maintained by each district or on a website maintained by the county or municipality in which the districts are located; and

c. Arrange for a descriptive summary of the proposed joint merger plan and a reference to the public places within the district where a copy may be examined, to be published in a newspaper of general circulation within the component independent special districts at least once each week for 4 successive weeks.

4. The governing body of each component independent special district shall set a time and place for one or more public hearings on the proposed joint merger plan. The public hearing shall be held on a weekday at least 7 business days after the day the first advertisement is published on the proposed joint

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merger plan. The hearings may be held jointly or separately by the governing bodies of each component district. Any interested person residing in the respective district shall be given a reasonable opportunity to be heard on any aspect of the proposed merger at the public hearing.

a. Notice of the public hearing addressing the resolution for the proposed joint merger plan must be published pursuant to the notice requirements under s. 189.417 and must provide a descriptive summary of the proposed joint merger plan and a reference to the public places within the component independent special districts where a copy of the plan may be examined.

b. After the final public hearing, the governing bodies of each component independent special district may amend the proposed joint merger plan if the amended version complies with the notice and public hearing requirements provided in this subsection. Thereafter, the governing bodies may approve a final version of the joint merger plan or decline to proceed further with the merger. Approval by the governing bodies of the final version of the joint merger plan must occur within 60 business days after the final hearing.

5. After the final public hearing, the governing bodies shall notify the supervisors of elections of the applicable counties in which district lands are located of the adoption of the resolution by each governing body. The supervisors of elections shall schedule separate referendums for each component independent special district. The referendums may be held in each district on the same day, or on different days, but no more than 20 days apart.

a. Notice of a referendum on the merger of independent

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special districts must be provided pursuant to the notice requirements in s. 100.342. At a minimum, the notice must include:

(I) A brief summary of the resolution and joint merger plan;

(II) A statement as to where a copy of the resolution and joint merger plan may be examined;

(III) The names of the component independent special districts and a description of their territory;

(IV) The times and places at which the referendum will be held; and

(V) Such other matters as may be necessary to call, provide for, and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns.

b. The referendums must be held in accordance with the Florida Election Code and may be held pursuant to ss. 101.6101-101.6107. All costs associated with the referendums shall be borne by the respective component independent special district.

c. The ballot question in such referendum placed before the qualified electors of each component independent special district to be merged must be in substantially the following form:

"Shall (...name of component independent special district...) and (...name of component independent special district or districts...) be merged into (...name of new merged independent district...)?

YES

NO"

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d. If the component independent special districts have disparate millage rates, the ballot question in the referendum placed before the qualified electors of each component district must be in substantially the following form:

"Shall (...name of component independent special district...) and (...name of component independent special district or districts...) be merged into (...name of new merged independent district...), if the voter-approved maximum millage rate within each independent special district will not increase absent a subsequent referendum?

YES

NO"

e. In any referendum held pursuant to this subsection, the ballots shall be counted, returns made and canvassed, and results certified in the same manner as other elections or referendums for the component independent special districts.

f. The merger may not take effect unless a majority of the votes cast in each component independent special district are in favor of the merger. If one of the component districts does not obtain a majority vote, the referendum fails, and merger does not take effect.

g. If merger is approved by a majority of the votes cast in each component independent special district, the merged independent district is created. Upon approval, the merged district shall notify the Special District Information Program pursuant to s. 189.418(2) and the local general-purpose

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governments in which any part of the component districts is situated pursuant to s. 189.418(7).

h. If the referendum fails, the merger process under this paragraph may not be initiated for the same purpose within 2 years after the date of the referendum.

6. Component independent special districts merged pursuant to a joint merger plan by resolution shall continue to be governed as before the merger until the effective date specified in the adopted joint merger plan.

(c) Qualified elector-initiated merger plan.—The qualified electors of two or more contiguous independent special districts may commence a merger proceeding by each filing a petition with the governing bodies of each independent special district proposing to be merged. The petition must contain the signatures of at least 20 percent of the qualified electors of each component independent special district.

1. The petition must comply with, and be circulated in, the following form:

PETITION FOR INDEPENDENT SPECIAL DISTRICT MERGER

We, the undersigned electors and legal voters of (...name of independent special district...), qualified to vote at the next general or special election, respectfully petition that there be submitted to the electors and legal voters of (...name of independent special district or districts proposed to be merged...), for their approval or rejection at a referendum held for that purpose, a proposal to merge (...name of component independent special district...) and (...name of component

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independent special district or districts...)

In witness thereof, we have signed our names on the date indicated next to our signatures.

Date Name (print under signature) Home Address

2. The petition must be validated by a signed statement by a witness who is a duly qualified elector of one of the component independent special districts, a notary public, or another person authorized to take acknowledgements.

a. A statement that is signed by a witness who is a duly qualified elector of the respective district shall be accepted for all purposes as the equivalent of an affidavit. Such statement must be in substantially the following form:

"I, (...name of witness...), state that I am a duly qualified voter of (...name of independent special district...). Each of the (...insert number...) persons who have signed this petition sheet has signed his or her name in my presence on the dates indicated above and identified himself or herself to be the same person who signed the sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit, and if it contains a materially false statement, shall subject me to the penalties of perjury."

Date Signature of Witness

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b. A statement that is signed be a notary public or another person authorized to take acknowledgements must be in substantially the following form:

"On the date indicated above before me personally came each of the (...insert number...) electors and legal voters whose signatures appear on this petition sheet, who signed the petition in my presence and who, being by me duly sworn, each for himself or herself, identified himself or herself as the same person who signed the petition, and I declare that the foregoing information they provided was true."

Date Signature of Witness

c. An alteration or correction of information appearing on a petition's signature line, other than an uninitialed signature and date, does not invalidate such signature. In matters of form, this paragraph shall be liberally construed, not inconsistent with substantial compliance thereto and the prevention of fraud.

d. The appropriately signed petition must be filed with the governing board of each component independent special district. The petition must be submitted to the supervisors of elections of the counties in which the district lands are located. The supervisors shall, within 30 business days after receipt of the petitions, certify to the governing boards the number of signatures of qualified electors contained on the petitions.

3. Upon verification by the supervisors of election of the

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counties within which component independent special district lands are located that 20 percent of the qualified electors have petitioned for merger, the governing bodies of each component district shall meet within 30 business days to prepare and approve by resolution a proposed elector-initiated merger plan. The proposed plan must include:

a. The name of each component independent special district to be merged;

b. The name of the proposed merged independent district;

c. The rights, duties, and obligations of the merged independent district;

d. The territorial boundaries of the proposed merged independent district;

e. The governmental organization of the proposed merged independent district insofar as it concerns elected and appointed officials and public employees, along with a transitional plan and schedule for elections and appointments of officials;

f. A fiscal estimate of the potential cost or savings as a result of the merger;

g. Each component independent special district's assets, including, but not limited to, real and personal property, and the current value thereof;

h. Each component independent special district's liabilities and indebtedness, bonded and otherwise, and the current value thereof;

i. Terms for the assumption and disposition of existing assets, liabilities, and indebtedness of each component independent special district, jointly, separately, or in defined

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proportions;

j. Terms for the common administration and uniform enforcement of existing laws within the proposed merged independent district;

k. The times and places for public hearings on the proposed joint merger plan; and

l. The effective date of the proposed merger.

4. The resolution endorsing the proposed elector-initiated merger plan must be approved by a majority vote of the governing bodies of each component independent special district and must be adopted at least 60 business days before any general or special election on the proposed elector-initiated plan.

5. Within 5 business days after the governing bodies of each component independent special district approve the proposed elector-initiated merger plan, the governing bodies shall:

a. Cause a copy of the proposed elector-initiated merger plan, along with a descriptive summary of the plan, to be displayed and be readily accessible to the public for inspection in at least three public places within the territorial limits of each component independent special district, unless a component district has fewer than three public places, in which case the plan must be accessible for inspection in all public places within the component independent special district;

b. If applicable, cause the proposed elector-initiated merger plan, along with a descriptive summary of the plan and a reference to the public places within each component independent special district where a copy of the merger plan may be examined, to be displayed on a website maintained by each district or otherwise on a website maintained by the county or

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municipality in which the districts are located; and

c. Arrange a descriptive summary of the proposed elector-initiated merger plan and a reference to the public places within the district where a copy may be examined, to be published in a newspaper of general circulation within the component independent special districts at least once each week for 4 successive weeks.

6. The governing body of each component independent special district shall set the time and place for one or more public hearings on the proposed elector-initiated merger plan. The public hearing shall be held on a weekday at least 7 business days after the day the first advertisement is published on the proposed elector-initiated merger plan. The hearing or hearings may be held jointly or separately by the governing bodies of each component independent special district. Any interested person residing in the respective district shall be given a reasonable opportunity to be heard on any aspect of the proposed merger at the public hearing.

a. Notice of the public hearing on the proposed elector-initiated merger plan must be published pursuant to the notice requirements provided in s. 189.417 and must provide a descriptive summary of the elector-initiated merger plan and a reference to the places within the component independent special districts where a copy of the plan may be examined.

b. After the final public hearing, the governing bodies of each component independent special district may amend the proposed elector-initiated merger plan if the amended version complies with the notice and public hearing requirements provided in this subsection. The governing bodies must approve a

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final version of the merger plan within 60 business days after the final hearing.

7. After the final public hearing, the governing bodies shall notify the supervisors of elections of the applicable counties in which district lands are located of the adoption of the resolution by each component independent special district. The supervisors of elections shall schedule a date for the separate referendums for each district. The referendums may be held in each district on the same day, or on different days, but no more than 20 days apart.

a. Notice of a referendum on the merger of the component independent special districts must be provided pursuant to the notice requirements in s. 100.342. At a minimum, the notice must include:

(I) A brief summary of the resolution and elector-initiated merger plan;

(II) A statement as to where a copy of the resolution and petition for merger may be examined;

(III) The names of the component independent special districts to be merged and a description of their territory;

(IV) The times and places at which the referendum will be held; and

(V) Such other matters as may be necessary to call, provide for, and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns.

b. The referendums must be held in accordance to the Florida Election Code and may be held pursuant to ss. 101.6101-101.6107. All costs associated with the referendums shall be borne by the respective component independent special district.

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c. The ballot question in such referendum placed before the qualified electors of each component independent special district must be in substantially the following form:

"Shall (...name of component independent special district...) and (...name of component independent special district or districts...) be merged into (...name of new merged independent district...)?

YES

NO"

d. If the component independent special districts proposing to merge have disparate millage rates, the ballot question in such referendum placed before the qualified electors of each component special district must be in substantially the following form:

"Shall (...name of component independent special district...) and (...name of component independent special district or districts...) be merged into (...name of new merged independent district...), if the voter-approved maximum millage rate within each independent special district will not increase absent a subsequent referendum?

YES

NO"

e. In any referendum held pursuant to this subsection, the ballots shall be counted, returns made and canvassed, and

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results certified in the same manner as other elections or referendums for the component independent special districts.

f. The merger may not take effect unless a majority of the votes cast in each component independent special district are in favor of the merger. If one of the component independent special districts does not obtain a majority vote, the referendum fails, and merger does not take effect.

g. If merger is approved by a majority of the votes cast in each component independent special district, the merged district shall notify the Special District Information Program pursuant to s. 189.418(2) and the local general-purpose governments in which any part of the component independent special districts is situated pursuant to s. 189.418(7).

h. If the referendum fails, the merger process specified by this paragraph may not be initiated for the same purpose within 2 years after the date of the referendum.

8. Component independent special districts merged pursuant to an elector-initiated merger plan shall continue to be governed as before the merger until the effective date specified in the adopted elector-initiated merger plan.

(d) Effective date.—The effective date of the merger shall be as provided in the joint merger plan or elector-initiated merger plan, as appropriate, and is not contingent upon the future act of the Legislature.

1. However, as soon as practicable, the merged independent district shall, at its own expense, submit a unified charter for the merged district to the Legislature for approval. The unified charter must make the powers of the district consistent within the merged independent district and repeal the special acts of

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the districts which existed before the merger.

2. Within 30 business days after the effective date of the merger, the merged independent district's governing board, as indicated in this subsection, shall hold an organizational meeting to implement the provisions of the joint merger plan or elector-initiated merger plan, as appropriate.

(e) Restrictions during transition period.—Until the Legislature formally approves the unified charter pursuant to a special act, each component independent special district is considered a subunit of the merged independent district subject to the following restrictions:

1. During the transition period, the merged independent district is limited in its powers and financing capabilities within each subunit to those powers that existed within the boundaries of each subunit which were previously granted to the component independent special district in its existing charter before the merger. The merged independent district may not, solely by reason of the merger, increase its powers or financing capability.

2. During the transition period, the merged independent district shall exercise only the legislative authority to levy and collect revenues within the boundaries of each subunit which was previously granted to the component independent special district by its existing charter before the merger, including the authority to levy ad valorem taxes, non-ad valorem assessments, impact fees, and charges.

a. The merged independent district may not, solely by reason of the merger, increase ad valorem taxes on property within the original limits of a subunit beyond the maximum ad

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valorem rate approved by the electors of the component independent special district. For purposes of s. 2, Art. VII of the State Constitution, each subunit may be considered a separate taxing unit. The merged independent district may levy an ad valorem millage rate within a subunit, if applicable, only up to the millage rate that was previously approved by the electors of the component independent special district unless an increase in the millage rate is approved pursuant to state law.

b. The merged independent district may not, solely by reason of the merger, charge non-ad valorem assessments, impact fees, or other new fees within a subunit which were not otherwise previously authorized to be charged.

3. During the transition period, each component independent special district of the merged independent district must continue to file all information and reports required under this chapter as subunits until the Legislature formally approves the unified charter pursuant to a special act.

4. The intent of this section is to preserve and transfer all authority to the merged independent district which exists within each subunit and was previously granted by the Legislature and, if applicable, by referendum.

(f) Effect of merger, generally.—On and after the effective date of the merger, the merged independent district shall be treated and considered for all purposes as one entity under the name and on the terms and conditions set for in the joint merger plan or elector-initiated merger plan, as appropriate.

1. All rights, privileges, and franchises of each component independent special district and all assets, real and personal property, books, records, papers, seals and equipment, as well

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as other things in action, belonging to each component independent special district before merger, shall be deemed as transferred to and vested in the merged independent district without further act or deed.

2. All property, rights-of-way, and other interests are as effectually the property of the merged independent district as they were of the component independent special district before the merger. The title to real estate, by deed or otherwise, under the laws of this state vested in any component independent special district before the merger, may not be deemed to revert or be in any way impaired by reason of the merger.

3. The merged independent district is in all respects subject to all obligations and liabilities imposed and possess all the rights, powers, and privileges vested by law in other similar entities.

4. Upon the effective date of the merger, the joint merger plan or elector-initiated merger plan, as appropriate, is subordinate in all respects to the contract rights of all holders of any securities or obligations of the component independent special districts outstanding at the effective date of the merger.

5. The new registration of electors is not necessary as a result of the merger, but all elector registrations of the component independent special districts shall be transferred to the proper registration books of the merged independent district, and new registrations shall be made as provided by law as if no merger had taken place.

(g) Governing board of merged independent district.—

1. From the effective date of the merger until the next

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general election, the governing board of the merged independent district shall be comprised of the governing board members of each component independent special district, with such members serving until the governing board members elected at the next general election take office.

2. Beginning with the next general election following the effective date of merger, the governing board of the merged independent district shall be comprised of five members. The office of each governing board member shall be designated by seat, which shall be distinguished from other board member seats by an assigned numeral: 1, 2, 3, 4, or 5. The governing board members that are elected in this initial election following the merger shall serve unequal terms of 2 and 4 years in order to create staggered membership of the governing board, with:

a. Board member seats 1, 3, and 5 being designated for 4-year terms; and

b. Board member seats 2 and 4 being designated for 2-year terms.

3. In general elections thereafter, all governing board members shall serve 4-year terms.

(h) Effect on employees.—Except as otherwise provided by law and except for those officials and employees protected by tenure of office, civil service provisions, or a collective bargaining agreement, upon the effective date of merger, all appointive offices and positions existing in all component independent special districts involved in the merger are subject to the terms of the joint merger plan or elector-initiated merger plan, as appropriate. Such plan may provide for instances in which there are duplications of positions, and for other

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matters such as varying lengths of employee contracts, varying pay levels or benefits, different civil service regulations in the constituent entities, and differing ranks and position classifications for similar positions. For those employees who are members of a bargaining unit certified by the Public Employees Relations Commission, the requirements of chapter 447 apply.

(i) Debts, liabilities, and obligations.—

1. All valid and lawful debts and liabilities existing against a merged independent district, or which may arise or accrue against the merged independent district, which but for merger would be valid and lawful debts or liabilities against one or more of the component independent special districts, are debts against or liabilities of the merged independent district and accordingly shall be defrayed and answered to by the merged independent district to the same extent, and no further than, the component independent special districts would have been bound if a merger had not taken place.

2. The rights of creditors and all liens upon the property of any of the component independent special districts shall be preserved unimpaired. The respective component districts shall be deemed to continue in existence to preserve such rights and liens, and all debts, liabilities, and duties of any of the component districts attach to the merged independent district.

3. All bonds, contracts, and obligations of the component independent special districts which exist as legal obligations are obligations of the merged independent district, and all such obligations shall be issued or entered into by and in the name of the merged independent district.

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(j) Effect on actions and proceedings.—In any action or proceeding pending on the effective date of merger to which a component independent special district is a party, the merged independent district may be substituted in its place, and the action or proceeding may be prosecuted to judgment as if merger had not taken place. Suits may be brought and maintained against a merged independent district in any state court in the same manner as against any other independent special district.

(k) Annexation.—Chapter 171 continues to apply to all annexations by a city within the component independent special districts' boundaries after merger occurs. Any moneys owed to a component district pursuant to s. 171.093, or any interlocal service boundary agreement as a result of annexation predating the merger, shall be paid to the merged independent district after merger.

(l) Determination of rights.—If any right, title, interest, or claim arises out of a merger or by reason thereof which is not determinable by reference to the provisions in this subsection, the joint merger plan or elector-initiated merger plan, as appropriate, or otherwise under the laws of this state, the governing body of the merged independent district may provide therefor in a manner conforming to law.

(m) Exemption.—This subsection does not apply to independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district.

(n) Preemption.—This subsection preempts any special act to the contrary.

(6) INVOLUNTARY MERGER OF INDEPENDENT SPECIAL DISTRICTS.—If

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a local general-purpose government seeks to merge an active independent special district or districts created and operating pursuant to a special act whose board or boards object by resolution to the merger, the merger of the active independent special district or districts is not effective until the special act of the Legislature is approved at separate referenda of the impacted local governments by a majority of the resident electors or landowners voting in the same manner by which each independent special district's governing board is elected. The special act shall include a plan of merger that addresses transition issues such as the effective date of the merger, governance, administration, powers, pensions, and assumption of all assets and liabilities.

(a) The political subdivisions proposing the involuntary merger of an active independent special district shall be responsible for payment of any expenses associated with the referendum required under this subsection.

(b) Independent special districts that meet any criteria for being declared inactive, or that have already been declared inactive, pursuant to s. 189.4044 may by merged by special act without a referendum.

(7)~~(3)~~ EXEMPTIONS.~~—The provisions of~~ This section does ~~shall~~ not apply to community development districts implemented pursuant to chapter 190 or to water management districts created and operated pursuant to chapter 373.

Section 2. Section 191.014, Florida Statutes, is amended to read:

191.014 District creation and~~,~~ expansion~~, and merger~~.—

(1) New districts may be created only by the Legislature

under s. 189.404.

(2) The boundaries of a district may be modified, extended, or enlarged upon approval or ratification by the Legislature.

~~(3) The merger of a district with all or portions of other independent special districts or dependent fire control districts is effective only upon ratification by the Legislature. A district may not, solely by reason of a merger with another governmental entity, increase ad valorem taxes on property within the original limits of the district beyond the maximum established by the district's enabling legislation, unless approved by the electors of the district by referendum.~~

Section 3. Paragraph (a) of subsection (1) and subsection (4) of section 189.4044, Florida Statutes, is amended to read:

189.4044 Special procedures for inactive districts.—

(1) The department shall declare inactive any special district in this state by documenting that:

(a) The special district meets one of the following criteria:

1. The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has taken no action for 2 or more years;

2. Following an inquiry from the department, the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for 2

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or more years or the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government fails to respond to the department's inquiry within 21 days; or

3. The department determines, pursuant to s. 189.421, that the district has failed to file any of the reports listed in s. 189.419.

4. The governing body of a special district provides documentation to the Department that it has unanimously adopted a resolution declaring the special district inactive. The special district shall be responsible for payment of any expenses associated with its dissolution.

(4) The entity that created a special district declared inactive under this section must dissolve the special district by repealing its enabling laws or by other appropriate means. Any special district declared inactive pursuant to paragraph (1)(a)4., may be dissolved without a referendum.

Section 4. This act shal take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to special districts; amending s. 189.4042, F.S.; providing for the merger of contiguous special districts; providing definitions; providing that the merger or dissolution of dependent districts created by special act may be effectuated only by the


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Legislature; providing certain exemptions for inactive dependent and independent special districts; requiring involuntary dissolution procedures for independent special districts to include referenda; providing that the Legislature may merge independent special districts created by special act; providing for the voluntary merger of contiguous independent special districts pursuant to a joint resolution of the governing bodies of the districts or upon initiative of the district electors; providing the procedures that must be adhered to, including notice and public hearings; requiring the development and adoption of a merger plan; requiring a referendum; providing for the effective date of the merger; providing that legislative approval of the merger is not required but that the charter of the new district must be submitted for approval; providing restrictions on the merged district until the charter is approved; providing that the ad valorem millage rate in each component independent special district is levied only up to the millage rate previously approved by the electors of the district; providing for the effect of the merger on the property, employees, legal liabilities, and annexations of the component districts; providing for the election of the governing board of the merged district; providing an exemption for independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district; requiring involuntary merger procedures

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for independent special districts to include referenda; amending s. 191.014, F.S.; deleting a provision relating to the merger of independent special districts or dependent fire control districts; amending s. 189.4044, F.S.; revising dissolution procedures for special districts declared inactive by a governing body; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1210
INTRODUCER:	Senator Norman
SUBJECT:	Counties and Municipalities
DATE:	March 10, 2011
REVISED:	

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

I. Summary:

The bill explicitly authorizes cities and counties to engage in certain debt collections practices. The bill allows these local governments to hire attorneys or collection agencies to collect fees, service charges, fines, or costs to which it is entitled and which remain unpaid for 90 days or more. Fees of up to 40 percent of the amount owed may be charged in addition to the original debt.

This bill creates the following sections of the Florida Statutes: 125.01052 and 166.0498.

II. Present Situation:

Local Government Powers

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3] Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law. Those powers include the provision

[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.

of fire protection, ambulance services, parks and recreation, libraries, museums, and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Section 166.021, F.S., gives municipalities home rule powers with the following exceptions: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitution or law.

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.[4] Special assessments,[5] impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[6] In addition, local governments may issue fines for violation of local ordinances.[7]

Whether local governments can use their home rule powers to employ the services of private attorneys or collection agents for recovering debts owed to the local government is uncertain. One attorney general opinion concluded that a "municipality may enter into an agreement with a collection agency to compromise code enforcement liens and pursue collection through litigation" by using its home rule authority.[8] However, there are numerous statutes that deal with the collection of taxes,[9] assessments,[10] fines, fees, and costs.[11] When a statute specifies the procedures and costs a local government can collect, it is less likely that the local government will be found to have the authority to deviate from or expand upon the statutory framework.[12] One attorney general opinion determined that the process delineated in ch. 197, F.S., provides the sole method for enforcing liens for non-ad valorem assessments within a specified jurisdiction based on the premise that "[i]t is a rule that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way."[13]

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[4] The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution, general law, or special law regarding the power at issue. Counties and municipalities cannot levy a tax without express statutory authorization because the constitution prevents them from doing so. *See* FLA. CONST. art. VIII, s. 1. However, local governments may levy special assessments and a variety of fees absent any general law prohibition provided such home rule source meets the relevant legal sufficiency tests.

[5] *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (stating that local governments do have home rule authority to levy special assessments).

[6] For a catalogue of such revenue sources, see the most recent editions of the Legislative Committee on Governmental Relations *Local Government Financial Information Handbook* and the *Florida Tax Handbook* published jointly by the Florida Senate Finance and Taxation Committee, the House of Representatives Committee on Fiscal Policy and Resources, the Office of Economic and Demographic Research, and the Florida Department of Revenue.

[7] *See* County or Municipal Code Enforcement, ch. 162, F.S.

[8] Op. Att'y Gen. Fla. 99-03 (1999).

[9] *See* Tax Collections, Sales, and Liens, ch. 197, F.S.

[10] *See* Supplemental and Alternative Method of Making Local Municipal Improvements, ch. 170, F.S.

[11] *See* County or Municipal Code Enforcement, ch. 162, F.S.

[12] *See* Op. Att'y Gen. Fla. 99-31 (1999) (determining that ch. 197, F.S., provides the sole method for enforcing liens within a specified jurisdiction based on the premise that "[i]t is a rule that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way."); *see also* Op. Att'y Gen. Fla. 2002-41 (2002) (stating that adoption of the uniform method of levy, collection, and enforcement precludes use of alternative methods of enforcement).

[13] Op. Att'y Gen. Fla. 99-31 (1999); Op. Att'y Gen. Fla. 92-11 (1992) (citing Op. Att'y Gen. Fla. 86-32 and 85-90); *City of Miami v. Brinker*, 342 So. 2d 115 (Fla. 3d DCA 1977) (municipality has no inherent power to levy assessments); Ops. Att'y Gen. Fla. 82-9 and 80-87; *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982); *Grapeland Heights Civic Association v. City of Miami*, 267 So. 2d 321 (Fla. 1972); *Advisory Opinion to Governor*, 22 So. 2d 398 (Fla. 1945)); *but see City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (stating that local governments do have home rule authority to levy special assessments).

Attorney's Fees

The general rule in Florida is that attorney's fees are awarded only when permitted by statute or contract.[14] Even when a statute awards a local government the right to "recover all costs incurred," when prosecuting a case to recover fines owed for the violation of a local ordinance, the term "costs" has been interpreted to exclude attorney's fees.[15]

Tax Collectors

The county tax collector is the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.[16] Tax collectors may appoint deputies to act on their behalf to carry out the duties prescribed by law.[17]

Pursuant to ch. 197, F.S., tax collectors have the authority to collect all taxes shown on the tax rolls by the date of delinquency. Taxes are due and payable on November 1 of each year or as soon as the certified tax rolls are received by the tax collector.[18] Taxes become delinquent on April 1 of the following year in which they are assessed, or 60 days from the mailing of the original notice, whichever is later.[19] If the delinquency date for ad valorem taxes is later than April 1 of the year following the assessment on which taxes are due, all dates or time periods regarding the collection of, or administrative procedures regarding the collection of, delinquent taxes shall be extended a like number of days. [20] If taxes become delinquent, the tax collector may collect delinquent taxes, interests, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. Costs include the publication of notices and reasonable attorney's fees and court costs in proceedings to recover delinquent taxes.[21]

Section 197.413, F.S., provides that before May 1 of each year following the assessment, the tax collector prepares a roll of all unpaid personal property taxes. Prior to April 30 of the next year, the tax collector is required to prepare warrants against the delinquent taxpayers. The warrants allow for the levy upon, and seizure of, tangible personal property. Within 30 days after preparing the warrants, the tax collector files a petition in the circuit court for the county in which he or she serves. The petition describes the levies and nonpayment of taxes, the issuance of warrants, proof of publication of notices, and the names and addresses of all taxpayers who failed to pay taxes. There is one petition naming multiple delinquent taxpayers. The petition pays for an order ratifying and confirming the warrants, and directing the tax collector to levy upon and seize the personal property of all delinquent taxpayers to satisfy payment of unpaid taxes.[22]

Upon filing a petition with the court, the tax collector must request the earliest time for a hearing, and the clerk of court shall notify each delinquent taxpayer listed in the petition that a petition is

[14] *See, e.g., Dade County v. Pena*, 664 So. 2d. 959 (Fla. 1995).
[15] Op. Att'y Gen. Fla. 2009-07 (2009).
[16] Section 192.001(4), F.S.; FLA. CONST. art. VIII, s. 1(d).
[17] Section 192.103, F.S.
[18] Section 197.333, F.S.
[19] *Id.*
[20] *Id.*
[21] Section 197.332, F.S.
[22] Section 197.413(2), F.S.

filed and, if ratified, warrants will be issued and their property will be seized and sold to pay unpaid taxes, plus costs, interest, attorney's fees, and other charges.[23] The tax collector is entitled to a fee of $2 from each delinquent taxpayer at the time delinquent taxes are collected, and an additional $8 for each warrant issued.[24]

The tax collector is authorized to employ counsel to conduct such suits.[25] They may agree upon counsel's compensation, which may come out of the general office expense fund and be included in their budget.[26] These fees are allowed to be collected from delinquent taxpayers by adding them to the unpaid taxes.

Collection Practices under Chapter 559 of the Florida Statutes

Parts V and VI of chapter 559, F.S., regulate commercial and consumer collection practices. To the extent that they conflict with the federal bankruptcy code, the bankruptcy code prevails.[27] Collection agencies must register with the Office of Financial Regulation with the following exceptions:

- Any financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate;
- Any licensed real estate broker;
- Any consumer finance company and any wholly owned subsidiary and affiliate;
- Any person licensed pursuant to chapter 520, F.S. (relating to retail installment sales);
- Any out-of-state consumer debt collector who does not solicit consumer debt accounts for collection from credit grantors who have a business presence in this state;
- Any FDIC-insured institution or subsidiary or affiliate thereof;
- Any original creditors (for consumer collections only);
- Any insurance company (restricted to title insurance companies for commercial collections); or
- Any member of the Florida Bar (except those members primarily engaged in the collection of commercial claims).

Chapter 559, F.S., requires registration, bonding for commercial collections, and criminal penalties for violations of certain provisions. Section 559.72, F.S., prohibits consumer protection agencies from engaging in a range of intimidating or harassing tactics.

Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (Act) regulates the practices of "debt collectors."[28] The purpose of the Act is to eliminate abusive debt-collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt-collection practices are not

[23] Sections 197.413(4), (5), F.S.
[24] Section 197.413(10), F.S.
[25] Section 197.413(3), F.S.; Op. Att'y Gen. Fla. 76-173 (1976) ("The tax collector fee officer may employ counsel if it becomes necessary to engage an attorney to bring or defend actions or proceedings in carrying out his statutory duties or functions and to compensate such attorney as a necessary expense of operating his office.").
[26] Section 197.413(3), F.S.
[27] *Williams v. Asset Acceptance, LLC*, 392 B.R. 882 (M.D. Fla. 2008).
[28] 173 A.L.R. Fed. 223 (2001); *see also*15 U.S.C.A. s. 1692a et seq.

competitively disadvantaged, and to promote consistent state action to protect consumers against debt-collection abuses.[29] The Act expressly excludes any officer or employee of the United States or any state to the extent that collection is in the performance of official duties.[30] However, collection agents or attorneys hired for the purpose of collecting debts owed to the government are subject to the provisions of the Act.[31]

III. Effect of Proposed Changes:

Section 1 creates s. 125.01052, F.S., to explicitly authorize the board of county commissioners to engage in certain debt collections practices. The board of county commissioners may pursue the collection of any fees, service charges, fines, or costs to which it is entitled and which remain unpaid for 90 days or more. The counties may refer the account to a private attorney who is a member in good standing of The Florida Bar or a collection agent who is registered and in good standing pursuant to chapter 559, F.S. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent may be added to the balance owed at the time the account is referred to the attorney or agent for collection and may not exceed 40 percent of the amount owed at the time the account is referred for collection.

Section 2 creates s. 166.0498, F.S., the same authorization as section 1 but for municipalities.

Section 3 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:

None.

[29] 15 U.S.C.A. s. 1692(e).
[30] 15 U.S.C.A s. 1692a (6)(C).
[31] *See Richardson v. Baker*, 663 F. Supp. 651 (S.D.N.Y. 1987) (holding that a private firm under contract with the Department of Education to collect funds was not an exempt "debt collector" under the Fair Debt Collection Practices Act); *Jones v. Intuition, Inc.*, 12 F. Supp. 2d 775 (W.D. Tenn. 1998) (holding that a private, nonprofit firm that serviced a federal student loan program was not exempt under the Fair Debt Collection Practices Act as a state actor).

B. Private Sector Impact:

Individuals who are delinquent may be assessed additional fines for collection. Private attorneys and collection agents will receive additional revenues by fees they receive from collecting moneys owed to local governments.

C. Government Sector Impact:

Local governments may hire attorneys or collection agents to assist in collecting on delinquent accounts. Local governments may pay the attorneys or collection agents themselves or add the fees to the amount owed on the delinquent account.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SPB 7072
INTRODUCER:	For consideration by the Community Affairs Committee
SUBJECT:	Special Districts
DATE:	March 15, 2011 REVISED:

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

I. Summary:

This Proposed Committee Bill (PCB) allows two or more independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to a special act. The PCB allows merger proceedings to be initiated either by joint resolution of the governing bodies of each district or by 20 percent or more of the qualified electors in each district. The PCB requires independent special districts to adopt a merger plan that outlines the specific components for the proposed merger, which shall be subject to a public hearing and a voter referendum.

The PCB states that this act shall preempt any special act to the contrary and does not apply to independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district.

The PCB also repeals current statutory provisions addressing the merger of independent special fire control districts.

This proposed committee bill substantially amends sections 189.4042 and 191.014 of the Florida Statutes.

II. Present Situation:

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.[1] Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose.[2] A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.[3] A special district does not include:

- A school district,
- A community college district,
- A special improvement district (Seminole and Miccosukee Tribes under s. 285.17, F.S.),
- A municipal service taxing or benefit unit (MSTU/MSBU), or
- A political subdivision board of a municipality providing electrical service.[4]

Special districts have the same governing powers and restrictions as counties and municipalities.[5] Like other forms of local government, special districts operate through a governing board and can "enter contracts, employ workers . . . issue debt, impose taxes, levy assessments and . . . charge fees for their services."[6] Special districts are held accountable to the public, and are therefore subject to public sunshine laws and financial reporting requirements.[7]

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following characteristics:

- The membership of its governing body is identical to the governing body of a single county or municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.[8]

Section 189.403(3), F.S., defines an independent special district as a district that does not meet the statutory classifications of a dependent special district.[9] Independent special districts may

[1] Ch. 189, F.S., *see* s. 189.401, F.S.
[2] Section 189.403(1), F.S.
[3] *Id.*
[4] *Id.*
[5] Mizany, Kimia and April Manatt, WHAT'S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).
[6] *Id.* (alteration to original) (citation omitted).
[7] Presentation by Jack Gaskins Jr., from the Department of Community Affairs, Special District Information Program, SPECIAL DISTRICT BASICS PRESENTATION (May 2010) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.
[8] Section 189.403(2)(a)-(d), F.S.
[9] Section 189.403(3), F.S.

encompass more than one county.[10] The public policy behind special districts is to provide an alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services."[11]

The Special District Information Program

The Special District Information Program (SDIP), administered by the Department of Community Affairs (DCA or Department), is designed to collect, update, and share detailed information on Florida's special districts with more than 685 state and local agencies.[12] The Department also maintains an official master list of the individual functions and status of all the dependent and independent special districts throughout the state.[13] As of March 2011, there were approximately 1,629 special districts in the state of Florida: 621 dependent districts and 1,008 independent districts.[14] Examples of special districts in Florida include but are not limited to water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.[15]

Current Merger and Dissolution Procedures

Section 189.4042, F.S., specifies the requirements for the merger or dissolution of a special district. Pursuant to this section, the merger or dissolution of a special district "created and operating pursuant to a special act may only be effectuated by the Legislature unless otherwise provided by general law."[16] Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act.

An independent special district that is created by a county or municipality by a referendum or other procedure can be merged or dissolved by the county or municipality that created the special district pursuant to the same procedures in which the special district was created. "However, for any independent special district that has ad valorem taxation powers, the same procedure required to grant such independent special district ad valorem taxation powers shall also be required to dissolve or merge the district."[17]

An independent special district created by a county or municipality through a referendum that has been declared inactive, may be dissolved by the creating county or municipality after publishing notice pursuant to s. 189.4044, F.S.[18]

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[10] *Id.*
[11] Section 189.402(3)-(4), F.S.
[12] Florida Department of Community Affairs, *Special Districts Information Program* (available online at http://www.floridaspecialdistricts.org) (last visited on Sept. 21, 2010).
[13] Sections 189.412(2) and 189.4035, F.S. *See also* Florida Department of Community Affairs, *Official List of Special Districts Online*, (available online at http://www.floridaspecialdistricts.org/OfficialList/index.cfm) (last visited on August 11, 2010). Note: This list is updated on October 1 of each year.
[14] Florida Department of Community Affairs, *Special Districts Information Program* (available online at http://www.floridaspecialdistricts.org/OfficialList/StateTotals.cfm) (last visited on March 10, 2011) (Note: This number is subject to change daily.)
[15] Florida Department of Community Affairs, *Official List of Special Districts Online* (available online at http://www.floridaspecialdistricts.org/OfficialList/index.cfm) (last visited on August 11, 2010).
[16] Section 189.4042(2), F.S.
[17] *Id.*
[18] *Id.*

Inactive Special Districts

Section 189.4044, F.S., outlines special procedures for inactive special districts. Paragraph (1)(a), of this section requires the Department of Community Affairs (DCA) to declare a special district to be inactive if it meets at least one of the following three criteria:

1) The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has taken no action for 2 or more years;
2) Following an inquiry from the department, the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for 2 or more years or the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government fails to respond to the department's inquiry within 21 days; or
3) The department determines, pursuant to s. 189.421, F.S., that the district has failed to file any of the reports listed in s. 189.419, F.S. [19]

After proposing a special district to be inactive, the Department, special district, or local general purpose government must publish a notice of the proposed declaration of inactive status in a newspaper of general circulation in the county or municipality where the territory of the special district is located.[20] The entity must allow 21 days from the date of publication for administrative appeals to be filed.[21] Thereafter, the entity that created the special district declared to be inactive must dissolve the special district by repealing its enabling laws or by other appropriate means.[22]

If the inactive special district was created by a special act of the Legislature, then the Department must send a notice of declaration of inactive status to the Speaker of the House of Representatives and the President of the Senate. This notice shall constitute as sufficient notice under Article III, section 10, of the Florida Constitution, of which the Legislature shall be authorized to repeal any special laws so reported in the notice of declaration of inactive status.[23]

Oversight Review Process

Although Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act, s. 189.428, F.S., does offer an oversight review process that allows counties and municipalities to evaluate the degree of special district services and determine the need for adjustments, transitions or dissolution.[24] The oversight review process is performed in conjunction with the special district's public facilities report and the local governmental evaluation and appraisal report prescribed in ss. 189.415(2) and 163.3191, F.S.[25] Depending upon whether the independent special district is a single- or multi-

[19] Section 189.4044(1)(a), F.S.
[20] Section 189.4044(1)(b), F.S.
[21] Section 189.4044(1)(c), F.S.
[22] Section 189.4044(4), F.S.
[23] Section 189.4044(3), F.S.
[24] *See* s. 189.428, F.S.
[25] Section 189.428(2), F.S.

county district, the oversight review may be conducted by the county or municipality where the special district is located, or by the government that created the special district.[26]

During the oversight review process, the reviewing authority must consider certain criteria, including, but not limited to:

- The degree to which current services are essential or contribute to the well-being of the community;
- The extent of continuing need for current services;
- Current or possible municipal annexation or incorporation and its impact on the delivery of district services;
- Whether there is a less costly alternative method of delivering the services that would adequately provide district services to district residents; and
- Whether the transfer of services would jeopardize the districts' existing contracts.[27]

The reviewing authority's final oversight report must be filed with the government that created the district, and shall serve as a basis for any modification, dissolution or merger of the district.[28] If a legislative dissolution or merger is proposed in the final report, subsection (8) of s. 189.428, F.S., further provides that:

> (8) . . . the reviewing government shall also propose a plan for the merger or dissolution, and the plan shall address the following factors in evaluating the proposed merger or dissolution:
>
> a) Whether, in light of independent fiscal analysis, level-of-service implications, and other public policy considerations, the proposed merger or dissolution is the best alternative for delivering services and facilities to the affected area.
> b) Whether the services and facilities to be provided pursuant to the merger or dissolution will be compatible with the capacity and uses of existing local services and facilities.
> c) Whether the merger or dissolution is consistent with applicable provisions of the state comprehensive plan, the strategic regional policy plan, and the local government comprehensive plans of the affected area.
> d) Whether the proposed merger adequately provides for the assumption of all indebtedness.[29]

The final report must also be considered at a public hearing in the affected jurisdiction and adopted by the governing board. Thereafter, the adopted plan for merger or dissolution can be filed as an attachment to the economic impact statement regarding the proposed special act or general act of local application dissolving a district.[30] This section does not apply to deepwater

[26] Section 189.428(3), F.S. Note: dependent special districts are reviewed by the local government entity that they are dependent upon, *see* s. 189.428(3) (a), F.S.
[27] *See* s. 189.428(5) (a)-(i), F.S., for a full list of the statutory criteria that is evaluated during the oversight review process.
[28] Section 189.428(7), F.S.
[29] Section 189.428(8), F.S.
[30] *Id.*

ports, airport authorities, or healthcare districts operating in compliance with other master plan requirements under Florida Statutes.[31]

Senate Interim Project, *Interim Report 2011-210*

This summer, the Senate Committee on Community Affairs conducted an interim report on the merger of independent special districts.[32] The purpose of this interim report was to explore potential statutory guidelines for voluntary independent special district mergers and consolidations. The report reviewed current Florida law and existing merger and consolidation laws in three other states, and discussed previous merger attempts that have failed in Florida. Based on this information, Senate staff provided criteria for the Legislature to consider, should it choose to adopt statutory guidelines that would allow independent special districts formed under special law to voluntarily merge prior to a Legislative Act.

Staff recommended that any adopted statutory criteria should:

- Discuss how mergers can be initiated, i.e. by resolution, voters, etc.;
- State the required statutory thresholds to approve or petition a merger;
- Require special districts to adopt a merger plan that evaluates how personnel and governing board changes will be made, how assets and liabilities will be apportioned, and how to standardize varying pay levels and benefits;
- Only apply to voluntary special district mergers; and
- Preclude special districts from exceeding the powers granted to them in their existing special acts until a unified charter is adopted by the Legislature.[33]

III. Effect of Proposed Changes:

Section 1 amends s. 189.4042, F.S., to create a new subsection (5) for voluntary independent special district mergers in order to:

- Allow two or more independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to a special act.
- Allow merger proceedings to be initiated either by joint resolution of the governing bodies of each district or by qualified elector initiative.
- Provide definitions.
- Require independent special districts to adopt a merger plan that outlines the specific components for the proposed merger.
- Require the proposed merger plan to be subject to a public hearing and voter referendum, consistent with certain notice requirements under Florida Statutes.
- Provide election procedures and require a proposed merger to be approved by the majority of votes cast in each independent special district in order for merger to take effect.

[31] Section 189.428(9), F.S. (Discussing deepwater ports operating in compliance with a port master plan under s. 163.3178(2)(k), airport authorities operating in compliance with the Federal Aviation Administration approved master plan, and special districts organized to provide health systems and facilities licensed under chapters 395, 400, and 429, F.S.).
[32] Comm. on Community Affairs, The Florida Senate, *The Merger of Independent Special Districts* (Interim Report 2011-210) (Oct. 2010).
[33] *Id.*

- Treat each component independent special district of the merger as a subunit of the merged independent special district until such time as the Legislature formally approves the unified charter of the new merged district pursuant to special act.
    - During such time the individual subunits shall be limited to the powers and financing capabilities of each subunit as previously existed prior to merger.
- Provide for the transfer of assets, debts and liabilities of each component independent special district to the merged independent special district.
- Provide that in any action or proceeding pending on the effective date of merger to which a component independent special district is a party, the merged independent special district shall be substituted in its place.
- Provide that ch. 171, F.S., shall continue to apply to all annexations by a city within the component independent special districts' boundaries after merger occurs.
- Outline the effect of merger on current employees and governing bodies of each component independent special district participating in the merger proposal.

The PCB states that this act shall preempt any special act to the contrary.

The provisions in subsection (5) addressing voluntary independent special district mergers does not apply to independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district.

This section also makes clarifying amendments to current law.

Section 2 amends s. 191.014, F.S., to delete current subsection (3), which provides specific merger procedures for independent special fire control districts.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As a result of this PCB, qualified electors residing in an independent special district that is created by a special act of the legislature will be permitted to initiate voluntary merger proceedings with one or more independent special(s) district by filing a petition with the governing bodies of each independent special district proposing to be merged.

C. Government Sector Impact:

As a result of this PCB, the governing bodies of an independent special district that is created by a special act of the legislature will be authorized to initiate voluntary merger proceedings with one or more independent special district(s) through a joint resolution that is approved by a majority of the governing board members of each independent special district proposing to be merged.

This PCB may impact how districts are reported under the Special District Information Program, within the Department of Community Affairs.

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.

361390

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete line 93
and insert:
resident of this state, and

224114

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete line 734
and insert:
by district landowners voting the acreage owned within the district.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 30
and insert:
by district landowners voting the acreage owned within

224114

the district; amending s. 191.014,

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 426
INTRODUCER:	Judiary Committee and Senator Latvalla
SUBJECT:	Service of Process
DATE:	March 14, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Pre-meeting**
3.			RC	
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:

The bill authorizes certified process servers to serve writs of possession in actions for possession of residential property. More specifically, upon the entry of a judgment in favor of a landlord in a possession action and issuance of the writ by the clerk of court, the landlord may elect to use a certified process server to serve the writ rather than the sheriff.

After the posting of a writ by the certified process server, he or she must, within 12 hours, provide written notice to the sheriff including the date and time the writ was posted on the premises.

This bill substantially amends the following sections of the Florida Statutes: 48.021, 48.27, and 83.62.

II. Present Situation:

Florida Residential Landlord and Tenant Act

Part II of chapter 83, F.S., titled the "Florida Residential Landlord and Tenant Act" (act), governs the relationship between landlords and tenants under a residential lease agreement.[1] A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant's occupation of a dwelling unit.[2] The provisions of this act specifically address the payment of rent,[3] duration of leases,[4] security deposits,[5] landlord maintenance obligations,[6] termination of rental agreements,[7] and landlord remedies.[8]

Landlord Remedies for Breach of Lease

Current law provides the landlord with choices of remedies for breaches of the rental agreement by the tenant.[9] The remedies provided in statute apply to the following situations:

- The tenant has breached the lease for the dwelling unit and the landlord has obtained a writ of possession;
- The tenant has surrendered possession of the dwelling unit to the landlord; or
- The tenant has abandoned the dwelling unit.

The statute permits the landlord to:

- Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; or
- Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rent stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from a reletting; or
- Stand by and do nothing, holding the lessee liable for the rent as it comes due.[10]

Right of Action for Possession

A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated.[11] However, under current law, a landlord is not authorized to recover possession except under the following circumstances:

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[1] Part II of ch. 83, F.S.
[2] Section 83.43(7), F.S. (A rental agreement "means any written agreement, … or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.")
[3] Section 83.46, F.S.
[4] *Id.*
[5] Section 83.49, F.S.
[6] Section 83.51, F.S.
[7] *See* ss. 83.56 and 83.575, F.S.
[8] *See* ss. 83.58 and 83.595, F.S.
[9] Section 83.595, F.S.
[10] *Id.*
[11] Section 83.59(1), F. S.

- In an action for possession, in which the landlord, the landlord's attorney, or agent files a specified complaint alleging certain facts authorizing recovery in the proper county court where the dwelling unit is located;[12]
- In other civil actions in which right of possession is to be determined;
- Possession of the dwelling unit has been surrendered by the tenant to the landlord;
- The dwelling unit has been abandoned by the tenant; or
- The only remaining tenant in the dwelling unit has been deceased for at least 60 days with his or her personal property still remaining on the premises and rent remains unpaid, and the landlord has not received notice of a probate estate or personal representative thereof.[13]

Writs of Possession

After judgment is awarded in favor of the landlord in an action for possession of the property, the clerk must issue a writ of possession to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises.[14] After the 24-hour period elapses from the posting of the writ, the landlord or the landlord's agent may remove any personal property found on the premises.[15] The landlord may request that the sheriff stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises.[16] Neither the sheriff nor the landlord is liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.[17]

Overview of Service of Process

Service of process is the formal delivery of a writ, summons, or other legal process or notice.[18] As a general rule, "statutes governing service of process are to be strictly construed to insure that a defendant receives notice of the proceedings."[19] Currently, under Florida law process may be served by a sheriff, a person appointed by the sheriff in the sheriff's county ("special process server"), or a certified process server appointed by the chief judge of the circuit court.[20] All process must be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses, which may be served by a special or certified process server.[21] Any person

[12] Section 83.59(2), F.S.
[13] Section 83.59(3), F.S.
[14] Section 83.62(1), F.S.
[15] Section 83.62(2), F.S.
[16] *Id*.
[17] *Id*.
[18] "The term 'process' is not limited to 'summons.' In its broadest sense [,] it is equivalent to, or synonymous with, 'procedure,' or 'proceeding.'" BLACK'S LAW DICTIONARY (9th ed. 2009). Thus, service of process may trigger the constitutional issue of procedural due process, which requires notice and the opportunity to be heard. *See, e.g., Minda v. Ponce*, 918 So. 2d 417, 422 (Fla. 2d DCA 2006) (citing *Schnicke v. Schnicke*, 533 So. 2d 337, 337-38 (Fla. 5th DCA 1988)).
[19] *Abbate v. Provident Nat'l Bank*, 631 So. 2d 312, 313 (Fla. 5th DCA 1994) (citing *Henzel v. Noel*, 598 So. 2d 220, 221 (Fla. 5th DCA 1992)).
[20] *Id*.
[21] Section 48.021(1), F.S. Service of process may be categorized as enforceable or nonenforceable. *See* Florida Senate, Committee on Justice Appropriations, *Sheriff Costs – Service of Process*, Interim Project Report 2006-144, at 1 (Aug. 2005).

authorized by the Florida Rules of Procedure may also serve civil witness subpoenas.[22] However, at present, there is no statutory authority or rule of procedure that allows anyone other than a sheriff or a sheriff's deputy to serve writs of possession in actions for possession of real property.

Certified Process Servers

A certified process server must be appointed by the chief judge of the judicial circuit in which he or she shall be allowed to serve process.[23] The chief judge of each circuit has discretion as to whether or not to appoint certified process servers. According to s. 48.29(3), F.S., a person applying with the chief judge to become a certified process server must:

- Be at least 18 years of age;
- Have no mental or legal disability;
- Be a permanent resident of the state;
- Submit to a background investigation;
- Certify that he or she has no pending criminal case, no record of any felony conviction, nor a record of conviction of a misdemeanor involving moral turpitude of dishonesty within the past 5 years;
- If prescribed by the chief judge of the circuit, submit to an examination testing his or her knowledge of the laws and rules regarding the service of process;
- Execute a bond in the amount of $5,000, which shall be renewable annually, for the benefit of any person injured by any malfeasance, misfeasance, neglect of duty, or incompetence of the applicant, in connection with his or her duties as a process server; and
- Take an oath that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.[24]

Once the process server is certified, he or she may serve nonenforceable civil process, as well as criminal witness subpoenas and criminal summonses, on a person found within the circuit where the server is certified.[25] Florida law does not provide a fee schedule establishing the fees allowed to be charged by certified process servers. Rather, current law generally provides that a "certified process server may charge a fee for his or her services."[26]

Fees and Costs Associated with Writs of Possession

Under Florida law, county sheriffs of the state must charge fixed, nonrefundable fees for the service of process in civil actions as established by a statutory schedule.[27] All fees collected under the statutory provisions for sheriffs' fees for service of process are to be paid monthly into

"Enforceable service of process involves a court order requiring the sheriff to take action (i.e., eviction, seizure of property)." *Id*. On the other hand, "[n]onenforceable service of process is designed to place another party on notice that he or she must take action (i.e., summons to appear, witness subpoena)." *Id*.

[22] Section 48.021(1), F.S. Rule 1.070, Florida Rules of Civil Procedure, provides that service of process may be made by a person appointed by court order, known as an elisor.

[23] Section 48.27, F.S.

[24] Section 48.29(3), F.S.

[25] Section 48.27(2), F.S.

[26] Section 48.29(8), F.S.

[27] Section 30.231(1), F.S.

the county's fine and forfeiture fund.[28] Current law provides that the sheriff's office may charge $40 for docketing and indexing each writ of execution, regardless of the number of persons involved, and $50 for each levy.[29] In addition to these fees, the sheriff is authorized to charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace in an action for possession of property is responsible for paying the hourly rate.[30]

III. Effect of Proposed Changes:

The bill authorizes certified process servers to serve writs of possession in actions for possession of real property. Currently, there is no statute or rule that allows anyone other than a sheriff or deputy to serve writs of possession in possession actions. The bill specifies that, upon the entry of a judgment in favor of a landlord in an eviction action and issuance of the writ by the clerk of court, the landlord may elect to use a certified process server to serve the writ.

The bill also makes conforming changes in the Florida Residential Landlord and Tenant Act (specifically s. 83.62, F.S.) and the general service of process statute (s. 48.021, F.S.) to authorize service of the writ of possession by a certified process server. The bill retains a sheriff's authority to serve a writ of possession in an eviction action.

Under current statute and practice, the clerk issues the writ of possession to the sheriff, and the sheriff serves the writ by conspicuously posting the writ on the premises. After 24 hours have passed from the posting of the writ, the landlord may take possession of the property with the sheriff standing by to keep the peace.[31] Under the bill, if the landlord elects to use a certified process server to serve the writ, the sheriff will remain under the obligation to stand by to keep the peace after the 24-hour period has passed. To aid in this process, the bill provides that upon the posting of the writ by the certified process server, he or she, within 12 hours, must provide written notice to the sheriff including the date and time the writ was posted on the premises.

Other Potential Implications:

It is the long-standing practice of Florida that enforceable civil process is served by the sheriff. Allowing a certified process server to serve the writ of possession is a significant departure from this practice.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists

[28] Section 30.231(5), F.S.
[29] Section 30.231(1)(d), F.S. A levy is considered made when any property or any portion of the property listed or unlisted in the instructions for levy is seized, or upon demand of the sheriff the writ is satisfied by the defendant in lieu of seizure.
[30] Section 83.62(2), F.S.
[31] Section 83.62, F.S.

on February 1, 1989. Because sheriffs retain the authority to serve writs of possession under the bill, it does not appear that the authority of the local government to raise revenues has been affected by the provisions of the bill.

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:

In counties experiencing high volumes of cases involving possession of real property, landlords who elect to use a certified process server to deliver the writ of possession may experience a reduction in the amount of time that elapses between court approval of the writ and the actual service of the writ. Dependent upon the actual fee charged by certified process servers for serving the writ of possession, landlords could experience higher costs associated with the execution of the writ if they elect to use a certified process server.

C. Government Sector Impact:

The bill will allow landlords in successful eviction actions to elect to use certified process servers rather than the sheriff's office to serve writs of possession. All fees collected under the statutory provisions for sheriffs' fees for service of process are paid monthly into the county's fine and forfeiture fund. County revenues could be decreased contingent upon the number of landlords who elect to use certified process servers rather than the sheriff to serve the writs. However, sheriffs will continue to receive fees for assisting with repossession of the property 24 hours after the posting of the writ.

Clerks of court may experience some expense associated with revisions to the writ of possession form if changes are necessary as a result of allowing certified process servers to serve the writ.

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 Judiciary on February 8, 2011:
The committee substitute:

- Specifies that a writ of possession may be served by a certified process server in s. 48.021, F.S. (the general service of process statute), for consistency with the bill's grant of authority to certified process servers in s. 48.27, F.S.;
- Substitutes the term "landlord" for the term "person" to make clear that the landlord selects the certified process server; and
- Requires a certified process server, within 12 hours of the posting of the writ, to provide written notice to the sheriff including the date and time the writ was posted on the premises.

B. Amendments:

None.