

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Finance and Tax Committee

BILL: CS/SB 2482

INTRODUCER: Finance and Tax Committee and Senator Haridopolos

SUBJECT: Tax Administration

DATE: April 19, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

CS/SB 2482 is the Department of Revenue's (DOR) tax administration bill. The provisions of the bill are as follows:

- Authorizes the DOR to waive the service fee for a dishonored tax payment when the DOR is able to substantiate that there was an unintentional error by a financial institution, the taxpayer or the DOR.
- Provides that conservation easements survive property tax deeds.
- The bill changes the requirement that homestead property rendered uninhabitable by a named storm of 2004, is limited to homestead properties in which repairs are completed by January 1, 2008, to repairs commenced by January 1, 2008.
- Provides that property owned by a limited liability company, the sole member of which is an exempt entity, is treated as if the property were owned directly by the exempt entity.
- Requires the property appraiser to set forth the specific requirements an applicant failed to meet in order to qualify for an exemption and to set forth the specific reasons the applicant was determined to have failed to meet such requirements. If the property appraiser's notification fails to comply with the requirements, the denial is invalid.

- Provides that property owned by an exempt entity will be deemed to be used for religious purposes if the institution has taken affirmative steps to prepare the property for use as a house of public worship.
- Clarifies the procedures for the DOR to administer resale certificates issued to dealers under the communications services taxes.
- Requires the DOR to make adjustments to the proceeds of the communications services tax distributed under s. 202.18, F.S., that are necessary to reflect the proper amounts due to individual jurisdictions or trust funds. When substantial amounts of communications services tax revenue are being reallocated from one jurisdiction to another, the DOR is required to notify the affected local governments of the reallocation and provide them with the opportunity to determine how those revenue adjustments will be made.
- The bill amends s. 202.20(2)(a), F.S., removing the authority under which local governments were allowed to adopt certain “emergency rates.” These rates were intended to be temporary.
- The statutes do not provide for the distribution of penalties collected pursuant to s. 202.28(2), F.S., for failure to remit communications services taxes. This issue directs the DOR to use the direct to home satellite distribution methodology to distribute penalties imposed under s. 202.28(2), F.S. The direct to home satellite distribution methodology was designed such that every taxing jurisdiction receives a portion of the direct to home satellite tax collections.
- Allows the DOR to issue temporary motor fuel licenses during a declared state of emergency or a declared disaster.
- Removes the requirement that personal representatives of deceased Floridians file zero estate tax returns during the period that the federal Economic Growth and Tax Relief Reconciliation Act of 2001 is in effect. Personal representatives will again be required to file a tax return for all estates of Florida decedents beginning January 1, 2011.
- Authorizes the DOR to issue an automated credit or refund for an overpayment of insurance premium tax when the DOR determines a credit or refund is due, even when a refund has not been requested by the taxpayer.
- Current law authorizes the DOR to require most taxpayers with annual tax remittances of \$30,000 or more to file and pay electronically. This issue reduces electronic filing thresholds over a 3 year period to \$5,000; requires corporate income taxpayers that are required by the IRS to file their federal returns electronically to also file their Florida return electronically; and for unemployment compensation tax, requires those filing on behalf of 10 or more employees to file electronically. The DOR may grant waivers on a case-by-case basis.
- Includes tax warrants, the most common type of recorded lien, in the list of enumerated subordinate lien holders entitled to participate in the disbursement of a mortgage foreclosure surplus to ensure that all parties notify the DOR of the surplus. This would help ensure the department’s right to participate in surplus proceedings.

- Clarifies that the definition of “service warranty” excludes contracts or agreements to repair, maintain, or replace tangible personal property if the repair of such property qualifies for a sales tax exemption.
- Allows the DOR to adopt additional divisors available for calculating the tax when a county imposes an amusement vending machine or vending machine surtax rate that is not specifically listed in the statute and clarifies the procedure that the DOR will use to determine the additional divisors.
- Repeals obsolete sales tax exemption language requiring certain organizations to obtain a permit prior to receiving a sales tax exemption in the form of a refund.
- Provides a sales tax exemption for separately stated delivery charges that can be avoided at the option of the purchaser, which according to DOR, is considered exempt under DOR rule.
- Authorizes the department’s General Tax Administration program to disclose taxpayer information to the Department’s Child Support Enforcement (CSE) program for purposes of administering the CSE program. The taxpayer information will continue to remain confidential in the CSE program.
- Adopts the current producer price index commodity code for phosphate rock allowing the DOR to calculate and provide a timely tax rate for phosphate rock without the need for rulemaking every year.
- Provides for the DOR in coordination with financial institutions doing business in Florida, to design and implement a pilot program for identifying account holders against whose property the DOR has issued a warrant or filed a judgment lien certificate. The DOR must report its findings and recommendations on the feasibility of permanently establishing the data match program to the Government Efficiency and Accountability Council of the House of Representatives and the Committee on Finance and Tax of the Senate before January 1, 2008
- Adds language to the criminal provisions for tax payments made by electronic funds transfer (EFT) that covers prima facie intent and identity when an electronic transfer to the DOR is used and either not honored or refused because the taxpayer, knowingly at the time of the transaction, does not have sufficient funds on deposit or credit with the financial institution.
- The DOR has nearly completed the implementation of an integrated tax accounting system (SUNTAX). Using a single business identifier, the DOR employees are able to provide taxpayer assistance and collection services in a multiple tax environment. This proposal would integrate and standardize tax enforcement authority into one unified system that would allow for consistent the DOR actions across tax types.
- Allows the DOR to transfer a liability to a related entity, owner or corporate officer when they apply for a new sales tax registration certificate. In addition, the DOR would be allowed to require the entity, owner or corporate officer to post a bond before the DOR issues the new sales tax registration certificate. Clarifying language to ensure that financial institutions will

not be left liable for any tax liability as a result of the sale of a business under certain circumstances.

- Establishes the process for documenting a taxpayers' intentional failure or refusal to register and collect sales tax and create a penalty scale from a misdemeanor to first degree felony charge, depending on the amount of uncollected tax, for a taxpayers' repeated or continued failure or refusal to register and collect tax after written notification from the DOR.
- Authorizes the DOR to bill the Agency for Workforce Innovation for the full reimbursement of their indirect costs associated with the collection of unemployment compensation taxes, instead of the current 10% cap. For FY 2005-06, the department's costs for this program were 19.8%.
- Provides specific authority for the assessment of penalties through the date of issuance of a final assessment notice for delinquent unemployment compensation tax returns.
- The proposal would make unemployment compensation tax subject to the following provisions of Chapter 213: Taxpayer's Bill of Rights; RISE; rulemaking authority; authority to create payment agreements; 30 day grace period on bills, when appropriate; refund offsets; and audits.
- Because of a substantial increase in the number of applications requesting common paymaster status, the DOR has determined a rule is needed to provide additional clarification.
- The DOR does not have the authority to impose a penalty for erroneous, incomplete or insufficient UC tax/wage reports because there are no assessments of tax involved. This proposal allows the DOR to impose a penalty of \$50 or 10% of the tax due for erroneous, incomplete or insufficient tax/wage reports upon receipt of the report. The DOR would have the authority to compromise the penalty under certain circumstances.
- Provides for a partial refund of property taxes upon destruction or damage of a house or other residential building between January 1, 2007, and February 15, 2007, due to a tornado.

This bill substantially amends ss. 45.032, 125.0104, 125.0108, 198.13, 202.18, 202.28, 202.30, 206.02, 206.021, 206.41, 206.87, 206.9943, 211.3103, 212.02, 212.0305, 212.05, 212.0515, 212.0506, 212.08, 212.10, 212.12, 212.14, 212.18, 213.053, 213.21, 213.755, 220.21, 220.803, 443.1216, 443.1316, 443.141, 443.163, 624.511, and 832.062; creates ss. 213.0352, 213.32, and 220.802; and repeals s. 212.095, Florida Statutes.

II. Present Situation:

See "EFFECT OF PROPOSED CHANGES:" section of the staff analysis.

III. Effect of Proposed Changes:

DISBURSEMENT OF SURPLUS FUNDS AFTER JUDICIAL SALE

(Section 1)

PRESENT SITUATION:

Section 45.032, F.S., provides for the disbursement of surplus funds after judicial sale. Surplus funds are defined to mean the funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements. Section 45.032(1)(b), F.S., defines a “subordinate lienholder” to mean the holder of a subordinate lien shown on the fact of the pleading as an encumbrance on the property and includes, but is not limited to, subordinate mortgage, judgment, assessment lien, or construction lien. The most common type of recorded lien, tax warrant, is not included in the definition of “subordinate lienholder.”

EFFECTS OF PROPOSED CHANGES:

Amends s. 45.032(1)(b) and (3)(a)3., F.S., to add “tax warrant” as a subordinate lienholder.

**ASSESSMENT OF CERTAIN HOMESTEAD PROPERTY DAMAGED IN 2004 BY NAMED
STORM**
(Section 2)

PRESENT SITUATION:

During the 2005 Legislative Session, the Legislature enacted ch. 2005-268, L.O.F., which created s. 193.1551, to provide that the assessment at just value for changes, additions, or improvements to homestead property rendered uninhabitable in one of the named storms of 2004 shall be limited to the square footage exceeding 110 percent of the property’s pre-storm square footage. In addition, eligible homes having square footage less than 1,350 square feet may rebuild up to 1,500 square feet without incurring additional assessment. Repairs to homestead properties must be completed by January 1, 2008, in order to qualify for these assessment limitation provisions.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 193.1551, F.S., to change the requirement that homestead property rendered uninhabitable by a named storm of 2004, is limited to homestead properties in which repairs are completed by January 1, 2008, to repairs commenced by January 1, 2008.

HOUSES OF WORSHIP AND NONPROFIT TAX REFORM MEASURES
(Sections 3, 4, & 5)

PRESENT SITUATION:

Entities tax exempt from federal income tax under section 501(c)3., of the Internal Revenue Code may also be eligible for property tax exemption in Florida. These entities often form single-member limited liability companies to hold their real estate.

Section 196.193(5), F.S., provides that in the event the property appraiser determines the property being claimed as exempt from property taxes is not entitled to an exemption, he or she must notify the person or organization filing the application on such property of that determination in writing on or before July 1 of the year for which the application was filed. The right to appeal to the value adjustment board must be specified in the notification. The person or organization filing the application may appeal to the value adjustment board.

Vacant land owned by exempt entities is not exempt from ad valorem taxes.

EFFECTS OF PROPOSED CHANGES:

The bill amends s.196.193(3), F.S., to provide that property owned by a limited liability company, the sole member of which is an exempt entity, is treated as if the property were owned directly by the exempt entity.

The bill amends s. 196.193(5), F.S., to require the property appraiser to set forth the specific requirements the applicant fails to meet in order to qualify for the exemption and the specific reasons the applicant was determined to have failed to meet such requirements. If the property appraiser's notification fails to comply with the requirements, denial or attempted denial is invalid.

The bill amends s. 196.196, F.S., to provide that property owned by an exempt entity will be deemed to be used for religious purposes if the institution has taken affirmative steps to prepare the property for use as a house of public worship. The affirmative steps means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities or other similar activities that demonstrate commitment of the property to a religious use as a house of worship. The bill provides that "public worship" means religious worship services and those other activities that are incidental to religious worship services, such as educational activities, parking, recreation, partaking of meals, and fellowship.

EASEMENTS THAT SURVIVE TAX SALES AND DEEDS

(Section 6)

PRESENT SITUATION:

Section 197.572, F.S., provides that when any lands are sold for nonpayment of taxes, or any tax certificate is issued thereon by a governmental unit or agency or pursuant to any tax lien foreclosure proceeding, the title to the land shall continue to be subject to any easement for telephone, telegraph, pipeline, power transmission, or other public service purpose and shall continue to be subject to any easement for the purposes of drainage or of ingress and egress to and from other land.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 197.572, F.S., to provide that conservation easements survive property tax deed sales.

ESTATE TAX – TAX RETURN TO BE MADE IN CERTAIN CASES

(Section 7)

PRESENT SITUATION:

Section 198.13, F.S., requires every estate that is required by federal law to file a federal estate tax return to file a Florida estate tax return. Generally, an estate is subject to Florida estate tax in the amount of the credit for state death taxes provided in the Internal Revenue Code. If no federal estate tax is due, no Florida estate tax is due. The federal Economic Growth and Tax Relief Reconciliation Act of 2001 phased down the credit for state death taxes for decedents who died during calendar years 2001-2004 and eliminates the credit for decedents who die after December 31, 2004, but before January 1, 2011. As a result, Florida estate tax was reduced or eliminated for decedents who died during those years. However, personal representatives are still required to file a Florida estate tax return for decedents who are required to file a federal estate tax return, even when no Florida estate tax is due.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 198.13, F.S., to remove the requirement that personal representatives of deceased Floridians file zero estate tax returns if a state death tax credit or a generation-skipping transfer credit is not allowable on the federal estate tax return during the period that the federal Economic Growth and Tax Relief Reconciliation Act of 2001 is in effect. Personal representatives will again be required to file a tax return for all estates of Florida decedents beginning January 1, 2011.

COMMUNICATIONS SERVICES TAX

(Sections 8 - 14)

PRESENT SITUATION:

Section 202.16, F.S., provides for the payment of communications services taxes.

Section 202.18(3)(c)2., F.S., provides that the proceeds of the local communications services taxes levied under s. 202.19, F.S., less the amount deducted for costs of administration, be distributed monthly to the appropriate jurisdictions. It also provides that the proceeds of any discretionary sales surtax imposed on communications services be distributed in the same manner as discretionary surtaxes are distributed under ss. 212.054 and 212.055, F.S. The DOR is required to make adjustments to the distributions under paragraph (3)(c) to reflect the proper amounts due to individual jurisdictions.

Section 202.20,(2)(a), F.S., authorizes local governments to adjust the communications services tax (CST) rate upward to the extent necessary to generate a shortfall in CST revenues if such revenues are less than the revenues received from the 2000-2001 period.

Section 202.28(2)(d), F.S., imposes a penalty of \$5,000 per return if a communications services tax dealer fails to separately report and identify local communications services taxes on the appropriate return schedule. There is no statutory guidance on the distribution of any imposed penalty.

Section 202.30(1), F.S., requires a communications services tax dealer to remit taxes by electronic funds transfer when the amount of tax paid by the dealer in the previous state fiscal year was \$50,000 or more.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 202.16(2), F.S., to clarify the procedures for the DOR to administer resale certificates issued to dealers under the communications services taxes. Effective January 1, 2008, the DOR must establish a toll-free telephone number for the verification of valid dealer registration numbers and resale certificates issued under chapter 202, F.S. Also by January 1, 2008, the DOR must establish a system for receiving information from dealers regarding certificate numbers of purchasers who are seeking to make purchases for resale under chapter 202, F.S. The DOR will provide such dealers, free of charge, with verification of those numbers that are canceled or invalid.

The bill amends s. 202.18 (3)(c)2., F.S., to require the DOR to make adjustments to the proceeds of the communications services tax distributed under s. 202.18, F.S., that are necessary to reflect the proper amounts due to individual jurisdictions or trust funds. When substantial amounts of revenue are being reallocated from one jurisdiction to another, the DOR is required to notify the affected local governments of the reallocation and provide them with the opportunity to determine how those revenue adjustments will be made.

The bill amends s. 202.20(2)(a), F.S., removing the authority under which local governments were allowed to adopt certain “emergency rates.” These rates were intended to be temporary.

The bill amends s. 202.28(2)(d), F.S., to provide that the \$5,000 per return penalty imposed will be allocated in the same manner as provided in s. 202.18(2), F.S., for tax proceeds received for direct-to-home satellite services.

Effective January 1, 2008 the bill amends s. 202.30(1), F.S., requiring communications services tax dealers who paid \$20,000 or more in taxes in the prior state fiscal year to remit taxes by electronic funds transfer. Effective January 1, 2009, this threshold is lowered to \$10,000 and again to \$5,000 effective January 1, 2010.

MOTOR FUEL LICENSES (Sections 15, 16 & 17)

PRESENT SITUATION:

Section 206.02, F.S., authorizes the DOR to issue a temporary license only when all applicants for a license hold a current license in good standing of the same type and kind. The applicants must file a completed application, pay all fees, and post an adequate bond. There are no provisions granting the DOR authority to issue temporary licenses during emergencies.

Section 206.021, F.S., authorizes the DOR to issue a license to a private or common carrier of motor fuel within Florida or to a person to engage in the business of transporting fuel by pipeline or by marine vessel. Applicants must file a completed application and pay all fees. There are no provisions granting the DOR authority to issue temporary licenses during emergencies.

Section 206.9943, F.S., requires that any person who is not otherwise licensed for purposes of fuel tax, who is entitled to a refund of the tax paid on pollutants, must obtain a pollutant tax license from the DOR. There are no provisions granting the DOR authority to issue temporary licenses during emergencies.

EFFECTS OF PROPOSED CHANGES:

The bill creates subsection (8) of s. 206.02, subsection (5) of s. 206.021, and subsection (4) of s. 206.9943, F.S., authorizing the DOR to grant a temporary fuel license if the Governor of Florida has declared a state of emergency or the President of the United States has declared a major disaster in Florida or in any other state or territory. The DOR may issue a temporary license as an importer or exporter of motor fuel to any person who holds a valid Florida wholesaler license or to an unlicensed dealer. In order to qualify for such temporary fuel license, the business must have a physical location in Florida, and hold either a valid Florida sales and use tax certificate of registration or a valid fuel license issued by another state.

The bill provides that a temporary fuel license expires on the last day of the month following the month in which it was issued and may be extended on a month-to-month basis during the period of a declared state of emergency or major disaster. The bill prohibits the renewal of a license if the licensee has not filed the required returns or made payment of the taxes required under chapter 206, F.S.

SEVERANCE TAX
(Section 18)

PRESENT SITUATION:

Section 211.3103(9)(d), F.S., provides that if the producer price index for chemical and fertilizer mineral mining is substantially revised, the DOR will make the appropriate adjustment in the method to compute the base rate adjustment for the tax on phosphate rock which would have been obtained if the producer price index for phosphate rock primary products had not been revised. The bill requires the DOR to adopt by rule, a comparable index if the producer price index for primary phosphate rock primary products is discontinued. The phosphate rock primary

products index has been discontinued, and the DOR has adopted the index code that is more reflective of the phosphate rock industry.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 211.3103(9)(d) and (e), F.S., providing that the DOR will use the producer price index for phosphate rock to compute the base rate adjustment for the tax on phosphate rock.

SALES AND USE TAX – QUALIFIED AIRCRAFT (Section 19)

PRESENT SITUATION:

Effective July 1, 2006, an exemption for qualified aircraft, as defined in s. 212.02(33), F.S., was provided for sales or leases of qualified aircraft¹, for labor charges for the repair and maintenance of the qualified aircraft², and for replacement engines, parts, and equipment used in the repair or maintenance of qualified aircraft that are installed on the aircraft.³ In order to be eligible for any of these exemptions, a purchaser or lessee of a qualified aircraft must offer, in writing, to participate in a flight training and research program pursuant to s. 212.0801, F.S.

Section 212.02(33), F.S., defines the term “qualified aircraft” to include certain aircraft with twin turbofan engines that are used by a business operating as an on-demand air carrier that owns and operates a fleet of at least 25 of such aircraft in Florida.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 212.02(33), F.S., revising the definition of “qualified aircraft” to include such aircraft that are leased by the business for such operations in Florida.

COIN-OPERATED AMUSEMENT MACHINES – DIVISORS FOR COUNTIES WITH DISCRETIONARY SALES SURTAXES (Section 20)

PRESENT SITUATION:

Section 212.05(1)(h)1., F.S., imposes a tax at the rate of 4 percent on the charges for the use of coin-operated amusement machines. The tax must be calculated by dividing the gross receipts from such charges by specified divisors to compute gross taxable sales and the amount of sales tax and discretionary sales surtax due. Divisors for counties that impose no surtax and for counties that impose a .5% and a 1% discretionary sales surtax are provided. For counties that impose surtaxes at rates other than these surtax rates, the DOR provides the divisors by rule.

¹ Section 212.08(7)(ss), F.S.

² Section 212.08(7)(ee), F.S.

³ Section 212.08(rr), F.S.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 212.05(1)(h)1., F.S., to provide the specified divisor for counties that impose a 2% discretionary sales surtax. If a county imposes a discretionary sales surtax at a rate other than those provided in s. 212.05(1)(h)1., F.S., the DOR is required to make the applicable divisor rates in electronic format or otherwise. Additional divisors must bear the same mathematical relationship to the next higher and next lower divisors as the new surtax rate bears to the next higher and the next lower surtax rates for which divisors have been established.

SALES AND USE TAX – TAXATION OF SERVICE WARRANTIES

(Section 21)

PRESENT SITUATION:

Section 212.0506(3), F.S., defines the term “service warranty” and provides that the term does not include contracts or agreements to repair, maintain, or replace tangible personal property if such property when sold at retail in Florida, would not be subject to sales or use tax.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 212.0506(3), F.S., to clarify that the term “service warranty” does not include contracts or agreements to repair, maintain, or replace tangible personal property if the parts and labor to repair the property qualifies for an exemption under chapter 212, F.S.

SALES AND USE TAX – SALES FROM VENDING MACHINES

(Section 22)

PRESENT SITUATION:

Section 212.0515(2), F.S., provides that the amount of tax to be paid on food, beverages, or other items of tangible personal property sold in vending machines is to be calculated by dividing the gross receipts from such sales by specified divisors to compute gross taxable sales and the amount of sales tax and discretionary sales surtax due. The statute provides the specified divisors for counties that impose no surtax and for counties that impose a .5%, a .75%, a 1%, and a 1.5% discretionary sales surtax. For counties that impose surtaxes at rates other than these surtax rates, the DOR provides the divisors by rule.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 212.0515(2), F.S., to provide the specified divisor for counties that impose a 2% discretionary sales surtax. The bill requires the DOR to make the applicable divisor rates in electronic format or otherwise if a county imposes a discretionary sales surtax at a rate other than those provided in s. 212.0515(2), F.S. In addition, the bill requires additional divisors to bear the same mathematical relationship to the next higher and next lower divisors as the new surtax rate bears to the next higher and the next lower surtax rates for which divisors have been established.

SALES AND USE TAX – REFUNDS; EXEMPTIONS

(Sections 23 and 24)

PRESENT SITUATION:

Section 212.095, F.S., requires that an exemption granted on a refund basis may only be granted to the holder of an unrevoked refund permit issued by the DOR. These requirements were imposed on organizations providing special education, cultural, and social benefits to minors and scientific organizations when an exemption was provided by refund for such organizations, and the requirements are now obsolete, because such organizations may make tax-exempt purchases, as provided in s. 212.08(7), F.S.

EFFECTS OF PROPOSED CHANGES:

The bill amends ss. 212.08(5)(g)5., (h)5., (n)3., and (o)3., F.S., to remove obsolete refund language and repeals s. 212.095, F.S.

Paragraph (eee) of subsection (7) of s. 212.08, F.S., provides a sales tax exemption for separately stated delivery charges that can be avoided at the option of the purchaser. According to the DOR, such delivery charges are exempt from sales and use tax pursuant to DOR rules.

SALES AND USE TAX – SALE OF BUSINESS

(Section 25)

PRESENT SITUATION:

Section 212.10(1) and (2), F.S., requires any dealer liable for sales or use tax, interest, or penalty who sells his business or stock of goods to make a final return and payment within 15 days of selling the business. The dealer's successors or assigns must withhold a sufficient portion of the purchase money to safely cover the amount of taxes, interest, or penalties due and unpaid until the former owner produces receipt from the DOR indicating that no taxes, penalty, or interest remain due. If the purchaser fails to withhold this amount of the purchase money, the purchaser is personally liable for the payment of taxes, interest, and penalties due.

An audit of the selling dealer's books and records is required to be performed by the DOR to guarantee that there is no tax deficiency owed from the operation of the seller's business. The purchaser may request an audit of the seller's books and records to secure protection from transferee liability. The DOR may contract with private auditors to perform the audit and to charge the person requesting the audit for the cost of the audit.

Any person who quits a business for which there is no successor or assign is required to make a final return and payment within 15 days. Any person who fails to file such return and make payment will be denied the right to engage in any business in Florida until the final return and moneys due are filed and paid. At the request of the DOR, the Department of Legal Affairs is authorized to proceed by injunction to prevent further business activity until such tax is paid. This request may be granted without notice by any judge or chancellor.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 212.10(1), F.S., requiring any dealer who sells his business or stock of goods, transfers substantially all of the dealer's assets or liabilities to another entity or person, or otherwise quits or ceases to conduct business to make a final return and payment within 15 days after the date of selling or otherwise transferring the business. The dealer's purchaser, transferee, successor, or assignee is required to withhold a sufficient portion of the consideration to safely cover the amount of taxes, interest, or penalties due and unpaid until the former owner produces a receipt from the DOR showing that no taxes, penalty, or interest remain due.

The bill provides that if the purchase or transfer is for less than fair market value, or if a purchaser, transferee, successor, or assignee fails to withhold a sufficient amount of consideration, he or she is personally liable for payment of the unpaid taxes, interest, and penalties on account of the operation of the business by any former owner, owners, or assigns as follows:

- If the purchaser fails or refuses to provide competent substantial evidence of the consideration paid, the purchaser is liable for the full amount of any liability for tax, interest, and penalties accruing and unpaid.
- If the purchaser, transferee, successor, or assignee expressly assumed the debt of the selling dealer or other preexisting liabilities, the purchaser is liable for the full amount of any liability for tax, interest, and penalties accruing and unpaid.
- If the assets transferred for consideration are determined to be less than fair market value, the transferee is liable for the full amount of any liability for tax, interest, and penalties accruing and unpaid up to the fair market value of the assets transferred.
- If a successor entity is created that acts to continue the dealer's business without a material change to the persons managing or controlling the original business or entity, the full amount of any unpaid liability for tax, interest, and penalties shall be assessed against the successor entity.
- If, at the time of the transfer, the liability was recorded as a warrant, the persons managing or controlling the successor entity are liable, in addition to other penalties provided by law, for a specific penalty of 100 percent of the tax, penalties, and interest due as established by the warrant.

The bill provides that protection from transferee liability may be secured only by an audit of the sellers or former owners or operators books and records. The seller or purchaser, transferee, successor, or assignee may request an audit of the seller's books and records. The DOR may contract with private auditors pursuant to s. 213.28 to perform the audit. The DOR may contract with private auditors to perform the audit and to charge the person requesting the audit for the cost of the audit.

In the case of a business requiring registration with the DOR and in addition to any other enforcement action it may take, the bill authorizes the DOR to require payment of the liability or a written agreement to pay the liability, and to require posting of a bond equal to or greater than three times the estimated average monthly liability of the transferee for all taxes, fees, and surcharges administered by the DOR.

The bill provides that the imposition of personal liability on a transferee does not extinguish the liability of the seller, former owner, or former operator. The Department of Legal Affairs, at the request of the DOR, may proceed by injunction to prevent further business activity until such tax is paid. Any judge or chancellor authorized by law to grant injunctions must grant a temporary injunction without notice regarding: (i) any dealer who fails to make a final return and payment in the time required; and (ii) any taxpayer subject to personal liability under the section.

The bill provides that an unrelated purchaser, transferee, successor, or assignee of a business, stock of goods, or other assets or liabilities of a dealer has no responsibility or personal liability if the unrelated purchaser, transferee, successor, or assignee acquires the business, stock of goods, or other assets or liabilities of a dealer and the acquisition: (i) is the result of an enforcement of a lien or security interest on real or personal property; (ii) is in exchange for a reduction or other change in the terms of indebtedness owed to the acquiring person; or (iii) is the result of a bankruptcy, reorganization for the benefit of creditors, assignment of the benefit of creditors, or a similar proceeding for the benefit of creditors.

SALES AND USE TAX – PENALTIES FOR FRAUDULENT RETURNS

(Sections 26 and 23)

PRESENT SITUATION:

Section 212.12(2)(d), F.S., imposes, in addition to any other penalties provided by law, a specific penalty of 100% of the tax or fee upon any person who makes a false or fraudulent return with a willful intent to evade payment of any tax bill or fee imposed under chapter 212, F.S. In addition, upon conviction, such person is liable for fine and punishment as provided in ss. 775.082, 775.083, or 775.084, F.S.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 212.12(2)(d), F.S., to provide that:

- Any person who, after the DOR delivers a written notice to the person's last known address specifically alerting the person of the requirement to register the person's business as a dealer, intentionally fails to register the business; and
- Any person who, after the DOR delivers of a written notice to the person's last known address specifically alerting the person of the requirement to collect the tax on specific transactions, intentionally fails to collect the tax,

is, in addition to any other penalties provided by law, liable for a specific penalty of 100% of the tax or fee, unless the person has brought a legal challenge in response to the DOR's notice. In addition, upon conviction, such person is liable for fine and punishment as provided in ss. 775.082, 775.083, or 775.084, F.S. Delivery of written notice may be made by certified mail or by the use of such other method as documented as being necessary and reasonable under the circumstances. The penalties provided shall not apply if the person timely files a written challenge to such notice in accordance with procedures established by the DOR by rule.

SALES AND USE TAX – DEPARTMENTAL POWERS

(Section 27)

PRESENT SITUATION:

Section 212.14(4), F.S., provides for when the DOR shall require a cash deposit, bond or other security as a condition of a person to obtain or retain a dealer's certificate of registration as a sales tax dealer.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 212.12(4), F.S., authorizing the DOR to require a cash deposit, bond or other security as a condition of a person to obtain or retain a dealer's certificate of registration as a sales tax dealer, as provided in s. 213.32(5), F.S., which is created by Section 29 of the bill.

SALES AND USE TAX – ADMINISTRATION OF LAW

(Section 28)

PRESENT SITUATION:

Section 212.18(3)(d), F.S., provides for when the DOR may revoke a certification of registration for failure to comply with the provisions of Chapter 212, F.S.

EFFECTS OF PROPOSED CHANGES:

The bill repeals 212.12(3)(d), F.S., regarding revocation of certifications of registration, permits, or licenses, now provided in s. 213.32(3), F.S., which is created by Section 29 of the bill.

DATA MATCH PILOT PROGRAM

(Section 29)

PRESENT SITUATION:

Currently, there is no law of general applicability that authorizes the DOR to use a Financial Information Data Match for general tax administration, which is currently authorized for purposes of child support enforcement.

EFFECTS OF PROPOSED CHANGES:

The bill provides for the DOR in coordination with financial institutions doing business in Florida, to design and implement a pilot program for identifying account holders against whose property the DOR has issued a warrant or filed a judgment lien certificate. The DOR must report its findings and recommendations on the feasibility of permanently establishing the data match program to the Government Efficiency and Accountability Council of the House of Representatives and the Committee on Finance and Tax of the Senate before January 1, 2008.

TAX ADMINISTRATION – CONFIDENTIALITY AND INFORMATION SHARING

(Section 30)

PRESENT SITUATION:

Section 213.053(8), F.S., currently does not authorize the DOR to provide the names and taxpayer identification numbers relative to information agreements with financial institutions.

Section 213.053(16)(a), F.A., authorizes the DOR to disclose confidential taxpayer information contained in returns, reports, accounts, or declarations filed with the DOR by persons subject to any state or local tax to the child support enforcement program to assist in the location of parents who owe or potentially owe a duty of support.

EFFECTS OF PROPOSED CHANGES:

The bill adds paragraph (z) to s. 213.053(8), F.S., authorizing the DOR to provide the names and taxpayer identification numbers relative to information agreements with financial institutions pursuant to s. 213.0352, F.S.

The bill also amends s. 213.053(16)(a), F.S., to provide that confidential taxpayer information may be shared with the child enforcement program, which may use the information for purposes of program administration.

TAX ADMINISTRATION – SETTLE OR COMPROMISE TAXPAYER LIABILITY

(Section 31)

PRESENT SITUATION:

Section 213.21(3)(d), F.S., authorizes the DOR to settle or compromise a taxpayer's liability for the service fee required under s. 215.34(2), F.S., for dishonored checks, drafts, or orders due to an error committed by the issuing financial institution when the error is substantiated by the DOR.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 213.21(3)(d), F.S., authorizing the DOR to settle or compromise a taxpayer's liability for the service fee required under s. 215.34(2), F.S., for dishonored checks, drafts, or orders due to an unintentional error committed by the issuing financial institution, the taxpayer, or the DOR when the unintentional error is substantiated by the DOR.

TAX ADMINISTRATION – INTEGRATED ENFORCEMENT AUTHORITY

(Section 32)

PRESENT SITUATION:

Chapter 213, F.S., provides general provisions for the administration of state revenue laws. Currently, there is no integrated law for the enforcement of each tax, fee, or surcharge administered by the DOR.

EFFECTS OF PROPOSED CHANGES:

The bill creates s. 213.32, F.S., which states the legislative intention to integrate the department's collection and enforcement authority for the taxes, fees, or surcharges it administers to the greatest extent possible.

Section 213.32(2), F.S., Integrated Warrants and Judgment Lien Certificates, authorizes the DOR to issue a single warrant and file a single judgment lien certificate regarding a taxpayer's total liability for all taxes, fees, or surcharges administered by the DOR. Each integrated warrant and judgment lien certificate must separately identify and itemize the total amount due with regard to each tax, fee, or surcharge, including any related penalty and interest. The DOR must have the current authority to file a warrant or judgment lien certificate with the taxpayer's liability for the tax, fee, or surcharge in order to include the liability in an integrated warrant or judgment lien certificate.

Section 213.32(3), F.S., Revocation of Certificates of Registration, Permits, or Licenses, authorizes the DOR to revoke a taxpayer's certificate of registration, permit, or license issued by the DOR when the taxpayer is delinquent in the payment of any tax, fee, or surcharge administered by the DOR. For this purpose, a taxpayer is considered delinquent only when the DOR has issued a warrant or filed a judgment lien certificate against the taxpayer's property.

The bill requires the DOR to schedule an informal conference prior to revocation, at which the taxpayer may present evidence regarding the intended revocation or enter into a compliance agreement with the DOR. The DOR must provide written notice to the taxpayer at the taxpayer's last known address of its intended action and the time, place, and date of the scheduled conference. The taxpayer must attend the informal conference and present evidence refuting the department's intended revocation or enter into a compliance agreement that resolves the noncompliance. The DOR must issue an administrative complaint under chapter 120, F.S., if the taxpayer fails to attend the informal conference, fails to enter into a compliance agreement, or fails to comply with the executed compliance agreement.

The bill provides that if one or more of a taxpayer's certificates of registration, permits, or licenses have been revoked, the DOR may not issue a new one unless: (1) the taxpayer's outstanding liabilities have been satisfied; (2) the taxpayer has entered into a written agreement with the DOR for payment and is current in all payments; or (3) the DOR, at its sole discretion, enters into a written agreement with the taxpayer regarding the liability and, as part of that agreement, agrees to issue a new certificate of registration, permit, or license to the taxpayer. When the DOR has issued a warrant or filed a judgment lien certificate in connection with a jeopardy assessment, the procedures specified in s. 213.732, F.S., must be complied with prior to or in conjunction with these revocation procedures.

Section 213.32(4), F.S., Cash Deposit, Surety Bond, or Irrevocable Letters of Credit, provides that in addition to other authority granted by law, the DOR is authorized to require a taxpayer to provide security as a condition to obtaining, renewing, or retaining any dealer's certificate of registration, permit, or license. The bill defines "security" to mean any cash deposit, surety bond, or irrevocable letters of credit and "taxpayer" to mean any person, as defined by s. 212.02, F.S., and, solely for the purposes of determining whether security is required and the amount of security required, the term is defined to include any related person. Surety bonds must be issued by a surety company authorized to transact business in this state as a surety. Irrevocable letters of credit must be issued by a bank authorized to do business in this state as a bank.

The bill requires the DOR to consider in determining whether security will be required and the amount of the security:

- The taxpayer's compliance with state and federal laws;
- The taxpayer's compliance with state and federal revenue laws;
- The taxpayer's financial status and ability to pay; and
- Any other facts and circumstances affecting compliance with the revenue laws of this state.

The bill provides that the required security may not exceed a taxpayer's estimated liability for all taxes, fees, and surcharges, including penalties and interest, administered by the DOR for 12 consecutive months, plus any unpaid delinquencies.

The DOR is required to provide written notice of any determination that security is required to the taxpayer at the taxpayer's last known address as it appears in the department's records. The taxpayer must post the required security or send a written objection to the DOR within 30 days after the date on the notice, failing which the DOR shall refuse the issuance or renewal of any dealer's certificate of registration, permit, or license with the DOR, or initiate revocation proceedings to revoke any existing registrations, permits, or licenses.

The bill provides that if the DOR determines that the amount of an existing security is insufficient to ensure payment of the tax liability for which the taxpayer is or may at any time become liable, or if the amount of the security is reduced or released, whether by judgment rendered or by use of the security to pay the delinquent taxes, penalty, or interest, the DOR will provide written notification to the taxpayer of the revised amount of security required. The taxpayer is required to file additional security in the amount required or provide written objection within 30 days, failing which the DOR is required to refuse the issuance or renewal of any certificate of registration, permit, or license with the DOR, or initiate revocation proceedings to revoke any existing registrations, permits, or licenses. If a new security is furnished, the DOR is required to cancel, surrender, or discharge the previous security.

When a taxpayer that has provided security is delinquent more than 30 days in the payment of any tax, fee, or surcharge administered by the DOR, the DOR is authorized, upon 10 days' written notice to the last known address of the taxpayer as it appears in the department's records, to apply the security in whole or part to the amount that the taxpayer should have collected and remitted or paid.

The bill provides that the duration of any required security may not be less than 12 months. If a taxpayer files all returns and pays all tax to the state within the time required by law for a period of 12 consecutive months, the DOR is required to release or refund the security, upon written request by the taxpayer. If the taxpayer ceases operations during the time the security is held, the taxpayer must submit a written request within 90 days after ceasing operations for the return of the deposit or release of the surety bond or letter of credit. The DOR is required to offset any reimbursement of security against any outstanding liability of the taxpayer.

The bill authorizes the Department of Legal Affairs, at the request of the DOR, to proceed by injunction to prevent any activity in the performance of further business activity subject to registration, permitting, or licensing by the DOR until security is posted.

The DOR is authorized to sell the security to recover any taxes, fees, or surcharges due, including penalties and interest. The DOR must notify the taxpayer who deposited the security of the sale, by personal service or mail. If by mail, notice to the taxpayer's last known address as it appears on the records of the DOR is sufficient. Any surplus from the sale must be returned to the taxpayer who deposited the security.

Section 213.32(5), F.S., provides that garnishment for all taxes administered by the DOR shall be conducted under s. 213.67, F.S. Section 213.32(6), F.S., provides that the liability for any tax, fee, or surcharge, including penalties and interest, may be transferred to responsible corporate officers as provided in s. 213.29, F.S. Section 213.32(7), F.S., provides that if there is jeopardy to the revenue and jeopardy is asserted in or with an assessment, the DOR will proceed in the manner specified for jeopardy assessments in s. 213.732, F.S. Section 213.32(8), F.S., authorizes the DOR to adopt rules to administer the section.

TAX ADMINISTRATION – FILING OF RETURNS AND PAYMENT OF TAXES BY
ELECTRONIC MEANS
(Section 33)

PRESENT SITUATION:

Section 213.755(1), F.S., authorizes the Executive Director of the Department of Revenue to require a taxpayer to file returns and remit payments by electronic means when the amount of tax paid by the taxpayer in the previous state fiscal year was \$30,000 or more.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 213.755(1), F.S., effective January 1, 2008, to require taxpayers who paid \$20,000 or more in taxes in the prior state fiscal year to remit taxes by electronic funds transfer. Effective January 1, 2009, this threshold is lowered to \$10,000, and effective January 1, 2010, the threshold is lowered to \$5,000.

CORPORATE INCOME TAX – RETURNS AND RECORDS

(Sections 34 and 35)

PRESENT SITUATION:

Section 220.21(2), F.S., provides that the DOR will prescribe by rule the format and instructions necessary to ensure a full collection of taxes due, the acceptable method of transfer, the method and form of content of the electronic data interchange, and the acknowledgement that may be provided to the taxpayer.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 220.21(2), F.S., and adds subsection (3) to s. 220.21, F.S., to require that for returns due on or after January 1, 2008, a taxpayer who is required to file its federal income tax return by electronic mean is required to file Florida corporate income tax returns required by ch. 220, F.S., by electronic means. The bill authorizes the DOR to waive the requirement to file by electronic means for taxpayers that are unable to comply despite good faith efforts or due to circumstances beyond the taxpayer's reasonable control and provides that these provisions apply in addition to the requirements of s. 213.755, F.S. The bill imposes a penalty, in addition to other applicable penalties, of the greater of 10% of the tax due with the return or \$250 for failure to comply with the electronic-filing requirements. The DOR is authorized to settle or compromise the penalty pursuant to s. 213.21, F.S., and to adopt rules regarding an electronic return filing system, including any electronic systems developed by the Internal Revenue Service.

CORPORATE INCOME TAX – PENALTIES; FAILURE TO PAY TAX

(Section 36)

PRESENT SITUATION:

Section 220.803(1), F.S., imposes a penalty equal to 10% of a deficiency if any part of a deficiency is due to negligence or intentional disregard of rules and regulations prescribed under ch. 220, F.S., but without intent to defraud. Section 220.802(2), F.S., imposes a penalty in the amount of 100% of the deficiency, in lieu of the penalty provided in subsection (1), if any part of the deficiency is due to fraud.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 220.803, F.S., effective January 1, 2008, and applicable to tax years ending after December 31, 2007, to repeal the penalty imposed under s. 220.803(1), F.S. The bill provides that when the fraud penalty under s. 220.803(2), F.S., is imposed, it will be imposed in lieu of the accuracy-related penalty imposed under s. 220.802, F.S., as created by Section 33 of the bill.

UNEMPLOYMENT COMPENSATION TAX – EMPLOYMENT
(Sections 37 and 38)

PRESENT SITUATION:

Section 443.1216(1)(d), F.S., provides that if two or more related corporations concurrently employ the same individual and compensate the individual through a common payment, each related corporation is considered to have paid wages to the individual only in the amounts actually disbursed by that corporation. The corporation is not considered to have paid the wages actually disbursed to the individual by another of the related corporations.

Section 443.1316(2)(b), F.S., provides the statutory sections that apply to the collection of unemployment contributions and reimbursements by the DOR.

In 2003, s. 443.1316(2)(c), F.S., was created allowing the DOR to charge no more than 10% of the total cost of the interagency agreement for the overhead or indirect costs, or for any other costs not required for the payment of direct costs, of providing unemployment tax collection services. The department's actual indirect costs for fiscal year 2005-06 were 19.8%. Federal funds are available to the Agency for Workforce Innovation (AWI) for reimbursement of such costs. However, the 10% cap effectively shifts the economic burden of the additional 9.8% in indirect costs incurred from the federal government to the state.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 443.1216(1)(d), F.S., authorizing the AWI and the DOR to adopt rules necessary to administer the provisions of the paragraph. The bill clarifies that employment does not apply to any major non-tenured policymaking or advisory position in the Senior Management Service.

The bill also amends s. 443.1316(2)(b), F.S., to add ss. 213.015(1)-(3), (5)-(7), (9)-(19), (21), 213.0535, 213.21(4), 213.24, 213.25, 213.32, 213.34(1), (3), and (4), F.S., to the statutory sections that apply to the collection of unemployment contributions and reimbursements by the DOR.

The bill also repeals s. 443.1316(2)(c), F.S., the 10% cap on total indirect costs, which would allow the DOR to bill the AWI for the full reimbursement of indirect costs. These monies could be recovered from federal funds that are available instead of using general revenue funds to supplement payment of the indirect costs for a federally funded program.

UNEMPLOYMENT COMPENSATION TAX – COLLECTION OF CONTRIBUTIONS AND
REIMBURSEMENTS
(Section 39)

PRESENT SITUATION:

Section 443.141(1)(b), F.S., imposes a \$25 penalty for each 30 days or fraction thereof when an employing unit fails to file any report that is required to be filed with the DOR, unless the Agency for Workforce Innovation (AWI) or the DOR finds that the employing unit has or had good reason for failure to file the report. Currently, no penalties are assessed when an erroneous, incomplete, or insufficient report is made.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 443.141(1)(b), F.S., authorizes the AWI or the DOR to assess penalties only through the date of the issuance of the final assessment notice; however, additional penalties accrue if the delinquent report is subsequently filed. The provision of s. 213.24(1) apply to any penalty or interest that is imposed under this section.

The bill adds paragraph (c) to s. 443.141(1), F.S., to impose a penalty in the amount of \$50 or 10% of the tax finally determined to be due, whichever is greater, when an erroneous, incomplete, or insufficient report is made. The bill provides that the penalties collected are to be paid into the Special Employment Security Administration Trust Fund. The bill defines the phrase "erroneous, incomplete, or insufficient tax or wage report."

**UNEMPLOYMENT COMPENSATION TAX – ELECTRONIC REPORTING AND
REMITTING OF TAX**
(Section 40)

PRESENT SITUATION:

Section 443.163(1), F.S., provides that a person who prepared and reported for 100 or more employers in any quarter during the preceding state fiscal year must file the Employers Quarterly Reports (UCT-6) in the current calendar year by electronic means that is approved by the DOR.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 443.163(1), F.S., to provide that a person who prepares and reports for 10 or more employers in any quarter during the preceding state fiscal year must file the Employers Quarterly Reports in the current calendar year with the DOR electronically.

INSURANCE PREMIUM TAX – REFUND OF OVERPAYMENTS
(Section 41)

PRESENT SITUATION:

Section 624.511, F.S., currently does not authorize the DOR to refund an overpayment (credit or refund) of insurance premium tax if the taxpayer made a math error or failed to report the overpayment on the insurance premium tax return.

EFFECTS OF PROPOSED CHANGES:

The bill adds subsection (3) to s. 624.511, F.S., to authorize the DOR to refund the amount of an overpayment to the taxpayer, without regard to whether the taxpayer has filed a written claim for a refund, when it appears upon an examination of an insurance premium tax return that an amount of insurance premium tax has been paid in excess of the amount due. The bill authorizes the DOR to request a statement from the taxpayer affirming that the taxpayer made the overpayment. The bill prohibits the issuance of a refund of the tax after the statute of limitation period provided in s. 215.26, F.S., has elapsed. If a refund issued by the DOR exceeds the amount that is legally due, the taxpayer will not be subject to penalties and interest if the DOR is reimbursed for any overpayment within 60 days after the taxpayer is notified that the overpayment was made.

ADMINISTRATION – PROSECUTION OF WORTHLESS CHECKS

(Section 42)

PRESENT SITUATION:

Section 832.062, F.S., governs criminal prosecution for worthless checks, drafts, debit card orders, or electronic funds transfers made to pay any tax or associated amount administered by the DOR. It is unlawful for any person, firm, or corporation to deliver payment to the DOR by the specified means, knowing at the time that there are not sufficient funds with which to pay upon presentation. The section does not apply to a postdated check or to any check or electronic funds transfer when the DOR knows or has been notified prior to the drawing or uttering the check or sending or initiating the electronic funds transfer, or has reason to believe, that the drawer, sender, or receiver did not have on deposit or to the drawer's, sender's, or receiver's credit with the drawee or receiving bank or depository sufficient funds to ensure payment.

If the payment in question is less than \$150, a violation constitutes a misdemeanor of the second degree, punishable as provided in ss. 775.082 or s. 775.083, F.S. If the payment in question is in the amount of \$150 or more, a violation constitutes a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S. For purposes of prosecution, a violation under the section occurs in the county in which the check is issued or the electronic funds transfer is sent and in the county in which it is received. Checks are deemed to be issued at the residence address of an individual taxpayer and at the business address of a business taxpayer.

EFFECTS OF PROPOSED CHANGES:

The bill creates new subsections (4) and (5) of s. 832.062, F.S. New subsection (4) of s. 832.062, F.S., provides that in any prosecution or action under the section, the making, drawing, uttering, or delivery of a check, draft, order; the making, sending, instructing, ordering, or initiating of any electronic funds transfer; or causing the making, sending, instructing, ordering, or initiating of any electronic transfer payment, any of which are refused by the drawee because of lack of funds or credit, is prima facie evidence of intent to defraud or knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company, or other depository. This requirement does not apply if, within 15 days after written notice of non-payment is sent:

- the holder is paid the amount due, together with a service charge (not to exceed the service fees authorized under s. 832.08(5), F.S.) or an amount of up to 5 percent of the face amount of the check or the amount of the electronic funds transfer, whichever is greater; and
- has paid the bank fees incurred by the holder.

The bill provides that in the event of legal action for recovery, the maker, drawer, sender, instructor, orderer, or initiator may also be liable for court costs and reasonable attorney's fees. Notice mailed by certified or registered mail that is evidenced by return receipt, or by first-class mail that is evidenced by an affidavit of service of mail, to the address printed on the check or given or on file at the time of issuance is deemed sufficient and equivalent to notice having been received by the maker, drawer, sender, instructor, orderer, or initiator, even if returned undelivered. The bill provides a form of the notice.

The bill provides that subsequent persons receiving a check, draft, order, or electronic funds transfer from the original payee or a successor endorsee have the same rights that the original payee has against the maker of the instrument if they give notice in a substantially similar form to that provided in the section. Subsequent persons providing such notice are immune from civil liability for giving the notice and for proceeding under the forms of the notice so long as the maker of the instrument has the same defenses against these subsequent persons as against the original payee. The bill provides that the remedies available under the section may be exercised only by one party in interest.

The bill provides that when a check, draft, order, or electronic funds transfer is drawn on a bank in which the maker, drawer, sender, instructor, orderer, or initiator has no account or a closed account, it will be presumed that the check, draft, or order was issued, or the electronic funds transfer was initiated, with intent to defraud, and the notice requirement is waived.

The bill provides that in any prosecution or action under the section, it will constitute prima facie evidence of the identity of the person issuing the check, draft, order, or electronic funds transfer and that such person is authorized to draw upon the named account a check, draft, order, or electronic funds transfer if the following is established:

- If a check or electronic funds transfer is received by the DOR through the mail or by delivery to a representative of the DOR or by electronic means, the prima facie evidence may be established by presenting the original tax return, certificate, license, application for certificate or license, enrollment and authorization for the e-services program, or other document relating to amounts owed by that person or taxpayer which the check or electronic funds transfer purports to pay for, bearing the signature of the person who signed the check or electronic signature of the person who initiated the electronic funds transfer, or by presenting a copy of the information required (the presenter's or initiator's full name, residence address, home telephone number, business telephone number, place of employment, gender, date of birth, and height) which is on file with the acceptor of the check or electronic funds transfer together with the signature or electronic signature of the person presenting the check or initiating the electronic funds transfer. The use of taxpayer information for purposes of establishing the identity of a person is deemed a use of the information for official purposes.

- The person accepting the check or electronic funds transfer must obtain the following information regarding the identity of the person presenting the check: the presenter's or initiator's full name, residence address, home telephone number, business telephone number, place of employment, gender, date of birth, and height.

REFUND OF PROPERTY TAXES UPON DESTRUCTION OR DAMAGE RELATED TO
TORNADOES
(Section 43)

CURRENT SITUATION:

On December 25, 2006, tornados damaged property in several of Florida's counties. As a result, the Federal Emergency Management Agency (FEMA) declared a disaster in Volusia County, enabling affected resident to qualify for individual assistance from FEMA. On February 2, 2007, six counties were impacted by devastating tornados, resulting in extensive damage to property in those counties.⁴ As a result, FEMA declared a disaster in Sumter, Seminole, Lake, and Volusia counties, enabling the affected county residence to qualify for both individual and public assistance.

EFFECTS OF PROPOSED CHANGES:

The bill provides for a partial refund of property taxes upon destruction or damage of a house or other residential building between January 1, 2007, and February 15, 2007, due to a tornado. The bill provides an application process that the home owner must adhere to in order to qualify for the property tax refund, which application must be filed with the property appraiser before June 1, 2008. The bill requires the property appraiser upon receipt of the application, to investigate the claim for refund. Upon receipt of the written statement from the property appraiser that the home owner is entitled to a refund, the tax collector must issue a refund. By September 1, 2008, the tax collector shall notify the board of county commissioners and the Department of Revenue of the total reduction in taxes for all property that received a partial refund of taxes under the provisions of this bill for the preceding tax year. These provisions of section 2 expire October 1, 2008.

Section 44. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming law, this act shall take effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴ The affected counties are Lake, Volusia, Sumter, Seminole, Orange and Marion.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The following provisions in the bill have a fiscal impact:

FISCAL YEAR 2007-2008

Issues	General Revenue		State Trust		Local		Total	
	Cash	Recurr.	Cash	Recurr.	Cash	Recurr.	Cash	Recurr.
Property Tax Refund for Tornado Damage	0.0	0.0	0.0	0.0	(1.0)	0.0	(1.0)	0.0
Service Warranties (section 17)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
Transfer of Business (section 21)	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
EFT Provisions (ss. 7, 30, 31, 32, 41)	0.3	1.2	0.0	0.0	0.0	0.0	0.3	1.2
Penalty Provisions (ss. 22, 33, 34, & 38)	**	**	**	**	**	**	**	**
Nonprofit Exemption Denials	0.0	0.0	0.0	0.0	(**)	(**)	(**)	(**)
Houses of Worship New Construction	0.0	0.0	0.0	0.0	(1.5)	(1.5)	(1.5)	(1.5)
Nonprofit Limited Liability Ownership	0.0	0.0	0.0	0.0	(**)	(**)	(**)	(**)
Total	0.3	1.2	(**)	(**)	(2.5)	(1.5)	(2.2)	(0.3)

B. Private Sector Impact:

The removal of the requirement that personal representatives of deceased Floridians file zero estate tax returns during the period that the federal Economic Growth and Tax Relief Reconciliation Act of 2001 is in effect, will eliminate an estimated 6,000 estate tax returns annually.

The DOR may issue an automatic credit or refund for an overpayment of insurance premium tax when the DOR determines a credit or refund is due, even when a refund has not been requested by the taxpayer.

Currently, most taxpayers with annual tax remittances of \$30,000 or more file and pay electronically. With the incremental reduction in electronic filing thresholds, by January 1, 2010, taxpayers with annual tax remittances of \$5,000 or more will have to file and pay their tax liability electronically.

Homeowners whose property was damaged by a tornado between January 1, 2007, and February 15, 2007, will be entitled to a partial refund of 2007 property taxes.

Homeowners whose homestead property was rendered uninhabitable by a named storm of 2004 will have additional time to qualify for the provisions of s.193.1551, F.S.

C. Government Sector Impact:

The reduction of electronic filing thresholds over a three year period from \$30,000 to \$5,000 will reduce paper filing tax returns and increase accuracy and efficiency in filing.

Sales tax liabilities transferred when a business is sold will be protected by the provisions in the bill allowing the DOR to transfer a liability to a related entity, owner or corporate officer when they apply for a new sales tax registration certificate and by allowing the DOR to require the entity, owner or corporate officer to post a bond before the DOR issues a new sales tax registration certificate.

The bill authorizes the DOR to bill the Agency for Workforce Innovation for the full reimbursement of their indirect costs associated with the collection of unemployment compensation taxes, instead of the current 10 percent cap. For fiscal year 2005-06, the department's costs for the UC tax program was 19.8 percent. This change results in shifting of the department's costs above the 10 percent from the state's General Revenue Fund to the federal government.

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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