

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 Just Valuation of Property
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: IDEN./SIM. BILLS: SB 626

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Committee on State Affairs, Levin, Williamson. Row 2: Government Efficiency & Accountability Council. Row 3: Policy & Budget Council. Row 4: Empty. Row 5: Empty.

SUMMARY ANALYSIS

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at just value (fair market value) for ad valorem tax purposes. Section 193.011, F.S., implements the just valuation requirement. It requires property appraisers to take into consideration eight specific factors in arriving at just valuation.

The bill modifies the factors used to determine the highest and best use of the property, the condition of the property, and the net proceeds of sale of the property. It also limits the factors property appraisers can consider in appraising income-producing residential rental property and certain commercial property.

The bill creates a new section of statute that provides limitations on the assessment of deed-restricted residential rental property, multi-unit commercial rental property, marinas, waterfront property used exclusively for commercial fishing purposes, and property rented for use by mobile homes.

The bill amends chapter 194, F.S., Administrative and Judicial Review of Property Taxes, to revise current review procedures to enhance the ability of taxpayers to challenge the assessed value of their property. It also revises the burden of proof in administrative challenges to an assessment and requires the property appraiser to prove the correctness of the assessment by clear and convincing evidence. The burden of proof in judicial challenges is placed on the party initiating the action.

The bill is expected to have a negative fiscal impact on the General Revenue Fund. The recurring impact to the state funds in Fiscal Year 2008-09 is \$1,997,304, and the non-recurring impact for Fiscal Year 2008-09 is \$149,192.

The fiscal impact on local governments is unknown. In April 2007, the Revenue Estimating Conference estimated that the provisions of a similar bill, HB 261 (2007) would result in lower assessments of property subject to ad valorem taxes. At then current millage rates, the impact of these reductions was estimated to exceed \$500 million. HB 129 (2008) has not been to an impact conference.

By reducing the assessed value of property subject to ad valorem taxation, the bill reduces the authority that cities and counties have to raise revenue. Depending upon the amount of the revenue reduction the Estimating Conference adopts in 2008, pursuant to the provisions of Article VII, s. 18 of the Florida Constitution, the bill may be a mandate requiring a two-thirds vote of the membership of each house for passage.

The bill has an effective date of upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – By modifying the factors used in determining just valuation and requiring the consideration of certain deed restriction agreements when determining just valuation, the provisions of the bill would have the effect of decreasing the assessment of property for ad valorem taxes.

Safeguard individual liberty – The enhancement of taxpayer rights in chapter 194, F.S., should assist individuals in contesting property appraiser assessments of an individual's real property.

### B. EFFECT OF PROPOSED CHANGES:

#### PRESENT SITUATION

##### JUST VALUATION

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, it has been well settled that "just valuation" is synonymous with "fair market value" and is defined as what a willing buyer and willing seller would agree upon as a transaction price for the property.<sup>1</sup>

The Florida Constitution includes certain exceptions to the just value standard. Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes are exceptions that may be assessed solely based on their character or use.<sup>2</sup> Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted.<sup>3</sup> In addition, the Save-Our-Homes amendment to the Florida Constitution provides a limitation to the amount that assessments for homesteads may be increased annually. Increases in assessment may not exceed the lower of three percent of the assessment for the prior year or the percent change in the Consumer Price Index.<sup>4</sup> Counties and municipalities also may authorize the assessment of historic properties solely based on character or use.<sup>5</sup> Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.<sup>6</sup>

Section 193.011, F.S., implements the just valuation requirement of the Florida Constitution. It requires property appraisers to take into consideration the following factors in arriving at just valuation:

- Present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;<sup>7</sup>
- Highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any executive order, ordinance, regulation, resolution, or proclamation or judicial limitation when it prohibits or restricts the development or improvement of property;<sup>8</sup>

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<sup>1</sup> *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

<sup>2</sup> Article VII, §4 (a), Florida Constitution.

<sup>3</sup> Article VII, §4 (b), Florida Constitution.

<sup>4</sup> Article VII, §4 (c), Florida Constitution.

<sup>5</sup> Article VII, §4 (d), Florida Constitution.

<sup>6</sup> Article VII, §4 (e), Florida Constitution.

<sup>7</sup> Fla. Stat. §193.011(1).

<sup>8</sup> Fla. Stat. §193.011(2).

- Location of the property;<sup>9</sup>
- Quantity or size of the property;<sup>10</sup>
- Cost of the property and the present replacement value of any improvements thereon;<sup>11</sup>
- Condition of the property;<sup>12</sup>
- Income from the property;<sup>13</sup> and
- Net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of sale.<sup>14</sup>

The Florida Supreme Court has held that “the appraisal of real estate is an art, not a science,”<sup>15</sup> and “the tax assessor is, of necessity, provided with great discretion due to the difficulty in fixing property values with certainty.”<sup>16</sup> In *Lanier v. Walt Disney World Company*, the court held that property appraisers are not obliged, under the law, to give each factor equal weight, provided each factor is first carefully considered and such weight is given to a factor as the facts justify.<sup>17</sup>

### FAIR MARKET VALUE

The constitutional standard of fair market value includes a consideration of (1) the highest and best use of property and (2) the three approaches to value.

A common definition of highest and best use is “[t]he reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value.”<sup>18</sup> A highest and best use analysis requires the appraiser to determine the use that the property “can be *expected* to be put in the *immediate* future [emphasis added].”<sup>19</sup> The Legislature has:

... prohibited tax assessors from considering potential uses to which the property is reasonably susceptible and to which it might be put in some future tax year, or even, during the current tax year. To be considered, the use must be *expected*, not merely potential or a ‘reasonably susceptible’ type of use; it must be *expected immediately*, not at some vague uncertain time in the future.<sup>20</sup>

The explanation for this legislative policy was stated by Judge White in his dissenting opinion in *Lanier v. Tyson*<sup>21</sup> and quoted in the affirming decision of the Florida Supreme Court in *Lanier v. Overstreet*:

Assessed valuations of land based on estimates of its highest and best potential, as distinguished from present bona fide use, are bound to be largely conjectural; and when an assessor, contrary to legislative intent and direction, determines that land despite its present value has a truly higher present value because of its potential for some other ‘higher’ purpose, he indulges in unwarranted speculation and does violence to the constitutional and statutory objective of just valuation. The assessor, like the courts, should operate within the record and not *de hors* [*French for “outside”; translation added*] it.<sup>22</sup>

<sup>9</sup> Fla. Stat. §193.011(3).

<sup>10</sup> Fla. Stat. §193.011(4).

<sup>11</sup> Fla. Stat. §193.011(5).

<sup>12</sup> Fla. Stat. §193.011(6).

<sup>13</sup> Fla. Stat. §193.011(7).

<sup>14</sup> Fla. Stat. §193.011(8).

<sup>15</sup> *Powell v. Kelley*, 223 So.2d 305, 309 (Fla. 1969).

<sup>16</sup> *District School Board of Lee County v. Askew*, 278 So.2d 272, 276 (Fla. 1973).

<sup>17</sup> *Lanier v. Walt Disney World Company*, 316 So.2d 59, 62 ( Fla. 4 DCA 1975); *certiorari denied* 330 So.2d 19 (Fla. Feb 03, 1976) (TABLE, NO. 47876)

<sup>18</sup> Appraisal Standards Board, *The Uniform Standards of Professional Appraisal Practice*, 2002 Edition (Washington D.C.: The Appraisal Foundation), at 218.

<sup>19</sup> *Lanier v. Overstreet*, 175 So.2d 521 at 524 (Fla. 1965).

<sup>20</sup> *Id.*

<sup>21</sup> *Lanier v. Tyson*, 147 So.2d 365 (Fla. 2DCA 1962)

<sup>22</sup> *Lanier v. Overstreet* at 524.

Unless a change in the highest and best use is reasonably probable within the immediate future, the present use<sup>23</sup> frequently represents the highest and best use of the property.<sup>24</sup>

Once the highest and best use of the property is determined, the appraiser then applies one or more of the three approaches to value the property to arrive at an estimate of the fair market value.

There are three well-accepted approaches to valuing real estate: (1) the sales comparison approach; (2) the cost approach; and (3) the income approach. For any given property type, one of the three approaches to value might give a more accurate estimate of the fair market value of the property than the other two. It is not unusual for appraisers to use a combination of the approaches in order to arrive at the fair market value of the property.

The sales comparison approach estimates the value of real estate by looking at what similar pieces of real estate have sold for during the same timeframe. Sales of properties that are similar in location, size, condition, and highest and best use are used to determine the value of the property in question. Various adjustments are made to take into account the differences between the comparison properties and the subject property.

The cost approach to valuation simply adds together the value of the land (determined by the sales comparison approach) with the cost of the improvements to arrive at the fair market value of the property. For older properties, the appraiser makes adjustments to consider the age and condition of the property or any other appropriate factors. Land values are market-derived and what a buyer is willing to pay for new construction is always influenced by the amount the buyer might otherwise spend to buy an already existing similar property.

The income approach applies to properties where an income typically is derived from the real estate. The just valuation of the property is determined by studying how much revenue the property would generate if it were rented. The appraiser must consider operating expenses, taxes, insurance, maintenance costs, and the return or profit most people would expect for that type of property.<sup>25</sup> Purchasers of income-producing property typically base their offer to buy the property on the potential future income of the property, thus the income is the basis of the purchase price agreed upon between the willing buyer and willing seller.

#### LANDS SUBJECT TO CONSERVATION EASEMENTS

Section 704.06, F.S., creates "conservation easements." Conservation easements are a right or interest in real property in which it is appropriate to:

- Retain the land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition because these properties are suitable habitat for fish, plants, or wildlife;
- Retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or
- Maintain existing land uses.

Conservation easements are perpetual, undivided interests in property that may be acquired only by governmental bodies or agencies or by a charitable corporation or trust whose purposes include: protecting natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources, maintaining, or enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance. Conservation easements result in a reduction of the just valuation of the real property.

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<sup>23</sup> Present use means "the existing use of real property as of the date of appraisal." The Florida Real Property Appraisal Guidelines, prepared by the Florida Department of Revenue Property Tax Administration Program (adopted November 16, 2002).

<sup>24</sup> *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965).

<sup>25</sup> The Florida Real Property Appraisal Guidelines, prepared by the Florida Department of Revenue Property Tax Administration Program (adopted November 16, 2002).

## CONSTITUTIONAL BASIS FOR REDUCTION IN JUST VALUE FOR CONSERVATION EASEMENTS

The reduction in assessed value experienced by the owner of a property who has conveyed a conservation easement may be derived from two separate constitutional provisions.

The state and its political subdivisions and counties, are immune from taxation, since there is no power to tax them.<sup>26</sup> A municipality can be taxed, but its property may be exempt if it meets the statutory criteria for exemption. The Florida Supreme Court held in *Maxcy, Inc. v. Federal Land Bank of Columbia*:

The principle has been more than once affirmed in this state that the Constitution must be construed as a limitation upon the power of the Legislature to provide for the exemption from taxation of any classes of property except those particularly mentioned classes specified in the organic law itself.<sup>27</sup>

Thus, if a conservation easement is conveyed to an immune government, there can be no ad valorem taxation of the value of the easement so conveyed. The value of the property in the hands of its owner is reduced by the value of the easement conveyed. If a conservation easement is conveyed to a municipality and used by it for public purposes, it is exempt from taxation pursuant to Article VII, s. 3(a) of the Florida Constitution. The value of the property in the hands of the owner is reduced by the value of the easement conveyed.

If the conservation easement is conveyed to a charitable corporation or trust, it is exempt from taxation as property used predominantly for educational, literary, scientific, religious, or charitable purposes pursuant to Article VII, s. 3(a) of the Florida Constitution. The value of the property in the hands of the owner is reduced by the value of the easement conveyed.

Pursuant to Article VII, s. 4(a) of the Florida Constitution, agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be assessed solely based on character or use. Some conservation easements permit the assessment of the underlying property based on character or use, and the assessment of these lands are reduced once the easement assuring use for only these purposes is conveyed.

## RIGHTS OF TAXPAYERS IN ADMINISTRATIVE AND JUDICIAL REVIEW OF PROPERTY TAXES

Section 194.011(3), F.S., generally requires taxpayers to file with the value adjustment board their petition contesting valuation within 25 days following the mailing of the notice by the property appraiser. The taxpayer must provide to the property appraiser all documentation related to the valuation no later than 15 days before a hearing.<sup>28</sup> The taxpayer must receive a list of evidence from the property appraiser no later than seven days before the hearing, if the taxpayer has provided all the information to the property appraiser and the taxpayer has requested in writing similar information.<sup>29</sup>

Section 194.013, F.S., requires a filing fee of \$15.00. Waiver of the fee is permitted for persons eligible for temporary assistance pursuant to Chapter 414, F.S.

The value adjustment boards are composed of three members of the county governing board and two members of the school board.<sup>30</sup>

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<sup>26</sup> Each of these Florida cases arose under a predecessor Florida Constitution. Nonetheless, they are controlling here since the principle of immunity is not constitutionally dependent. *Orlando Utilities Commission v. Milligan*, 229 So.2d 262 (Fla. 4DCA 1969); *Park-N-Shop, Inc. v. Sparkman*, 99 So.2d 571 (Fla.1957).

<sup>27</sup> *Maxcy, Inc. v. Federal Land Bank of Columbia*, 111 Fla. 116, 150 So. 248, and 151 So. 276 (1933).

<sup>28</sup> Fla. Stat. §194.011(4)(a).

<sup>29</sup> Fla. Stat. §194.011(4)(b).

<sup>30</sup> Fla. Stat. §194.015.

Taxpayers are limited to a single rescheduling of the hearing. A taxpayer is required to wait four hours from the scheduled time, and if the taxpayer is not heard at that time, the taxpayer is deemed to have exhausted available administrative remedies.<sup>31</sup>

Section 194.034, F.S., has no provision concerning the reimbursement of the filing fee if the taxpayer prevails; however, s. 194.192, F.S., requires courts to assess all costs and requires taxpayers to pay 12 percent interest on any deficiency determined.

Section 194.301, F.S., provides a presumption of correctness to the assessed value determined by the property appraiser. The presumption of correctness is lost either if the taxpayer can show by a preponderance of the evidence that the appraiser failed to properly consider the criteria provided in s. 193.011, F.S., or if the appraiser's assessment is arbitrary.

## **EFFECT OF PROPOSED CHANGES**

### HIGHEST AND BEST USE

Section 193.011(2), F.S., requires the property appraiser to consider the highest and best use to which the property can be expected to be put in the immediate future. The bill requires the property appraiser to consider, in addition to other factors, any zoning changes and permits necessary to achieve highest and best use.

### CONDITION OF THE PROPERTY

The bill requires property appraisers to consider physical deterioration, functional obsolescence, and external obsolescence when determining the condition of the property.

### PROCEEDS OF SALE OF THE PROPERTY

The bill requires the property appraiser to deduct the costs of removing tangible personal property when considering the net proceeds of the sale of the property.

### REQUIREMENT THAT ALL FACTORS BE CONSIDERED IN DETERMINING JUST VALUATION

The bill requires property appraisers to disregard seven of the factors outlined in s. 193.011, F.S., in determining just valuation of income-producing property that is either residential rental property or commercial property leased to more than one legal entity, each of which conducts a separate business activity. In these instances, the property appraiser would be permitted to consider only the "market rent" from these income-producing properties. "Market rent" is defined as the most likely rent that an income-producing property would command if offered for lease in the open market.

### EFFECT OF DETERMINATION BY VALUE ADJUSTMENT BOARD

Section 193.016, F.S., currently provides that the property appraiser must consider the reduced value determined by the value adjustment board in the prior year for tangible personal property. The property appraiser is required to assert additional basic and underlying facts not properly considered by the value adjustment board in order to increase the assessment. The bill expands the provisions of this section to apply to all property.

### ASSESSMENT OF DEED-RESTRICTED PROPERTY

The bill creates s. 193.018, F.S., which provides that the owner of residential rental property, multiunit commercial rental property, property used as a marina, waterfront property used exclusively for commercial fishing purposes, or property rented for use by mobile homes may enter into a deed-

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<sup>31</sup> Fla. Stat. §194.032(2).

restriction agreement with the county to maintain the property at its current use for a period of at least five years. Should the deed restriction agreement be terminated prior to its expiration, the property owner is required to pay the county the additional taxes that would have been paid in prior years, plus 12 percent interest. The bill mandates that the property appraiser consider the deed-restriction agreement in determining the value of the property.

#### CHAPTER 194, F.S.

Section 194.013(2), F.S., is amended to require waiver of the filing fee for the petition of a taxpayer who is eligible to receive one or more of the homestead exemptions under s. 6(c), (f), or (g), Article VII of the Florida Constitution.

Section 194.015(2)(a), F.S., is amended to change the makeup of the value adjustment board. Of the three members appointed by the county commission, one member must own a homestead property within the county and one must own a business that occupies commercial space located within the county. Of the two members appointed by the school board, one must own a business that occupies commercial space located within the school district and one member must be eligible to receive one or more of the homestead exemptions under s. 6(c), (f), or (g), Article VII of the Florida Constitution. No appointee may be either a member or an employee of any taxing authority.

Section 194.032(2), F.S., is amended to permit the taxpayer to reschedule the hearing if the property appraiser fails to comply with the requirements of s. 194.011(4)(b), F.S. The hearing cannot be rescheduled for sooner than 15 days after the property appraiser complies with the requirements of s. 194.011(4)(b), F.S. Additional rescheduling of the hearing may be granted to the taxpayer for medical reasons. The waiting time for a taxpayer to be heard is reduced from four hours to two, and the new remedy for failure to hear the taxpayer within that time is for the hearing to be rescheduled for a time reserved exclusively for the petitioner.

Section 194.034(2), F.S., is amended to require a refund of the taxpayer's filing fee if the determination of the property appraiser is overturned.

Section 194.192(3), F.S., is amended to require payment of interest to the taxpayer if the final assessment established by a court is lower than the amount paid by the taxpayer. If the assessed value determined by the property appraiser exceeds the value determined by the court by more than 10 percent, reasonable attorney fees must be awarded to the taxpayer.

Section 194.301, F.S., is amended to revise the burden of proof in administrative proceedings. The property appraiser is required to prove by clear and convincing evidence that the assessment is correct. For judicial actions, the bill places the burden of proof upon the party initiating the action.

#### C. SECTION DIRECTORY:

Section 1 amends s. 193.011, F.S., to modify factors for consideration in deriving just valuation.

Section 2 amends s. 193.016, F.S., to provide for consideration of decisions made by value adjustment boards.

Section 3 creates s. 193.018, F.S., to require consideration of deed-restricted agreements in determining just value.

Section 4 amends s. 194.011, F.S., to revise provisions relating to provision of evidence by petitioners and property appraisers.

Section 5 amends s. 194.013, F.S., to provide for the waiver of petition filing fees under certain circumstances.

Section 6 amends s. 194.015, F.S., to revise membership criteria for value adjustment boards.

Section 7 amends s. 194.032, F.S., to provide criteria for rescheduling hearings.

Section 8 amends s. 194.034, F.S., to require the refund of filing fees under certain circumstances.

Section 9 amends s. 194.192, F.S., to provide for judgments against property appraisers and for assessment and award of attorney fees, under certain circumstances.

Section 10 amends s. 194.301, F.S., to revise criteria for a presumption of correctness.

Section 11 amends s. 420.507, F.S., to correct a cross-reference.

Section 12 provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

Since the bill would require the performance of more appraisals and assessments, there would be a negative fiscal impact on the General Revenue Fund. The Department recommends hiring 34 FTE (appraiser positions) in the Property Tax Oversight Program in the Department in order to meet the performance demands required by the bill. The impact is estimated as follows for the next three years:<sup>32</sup>

	FY 2008-09	FY 2009-10	FY 2010-11
Recurring	\$1,997,304	\$1,997,304	\$1,997,304
Non-recurring	<u>149,192</u>	<u>0</u>	<u>0</u>
Totals	\$2,146,496	\$1,997,304	\$1,997,304

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

In 2007, the Revenue Estimating Conference estimated that the provisions of a similar bill (HB 261) would result in lower assessments of property subject to ad valorem taxes. The impact of these reductions was estimated to exceed \$500 million.

#### 2. Expenditures:

Counties likely will experience higher expenditures from the changes made by the bill to the value adjustment board process.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A significant number of properties will experience a decrease in assessed value, thus leading to reduced property tax payments by their owners.

### D. FISCAL COMMENTS:

Public school funding is statutorily tied to property taxes through the required local effort (RLE). The Legislature sets the RLE that must be raised by school districts from property taxes. The provisions of this bill that lead to lower assessed values may limit the amount of RLE the Legislature may set in the future.

<sup>32</sup> Department of Revenue Fiscal Impact Analysis of HB 129 (revised February 13, 2008), September 28, 2007, at 1.



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities.

The bill, however, does provide for reduced assessments for deed-restricted properties and mandates the use of market rent to assess certain classes of income-producing property; thus, reducing the authority that cities and counties have to raise revenues. As such, the bill may be a mandate requiring a two-thirds vote of the membership of each house.

##### 2. Other:

Article VII, s. 4 of the Florida Constitution requires that all property, except those explicitly mentioned in the constitution, be assessed at just value (fair market value). If the provisions of this bill mandating that the market rent of income-producing property be the sole method of determining the assessed value of certain properties results in assessed values that are less than fair market value, those provisions may be invalidated by the constitutional provision requiring just value assessments.

Similarly, the provisions of this bill mandating that market rent of income-producing properties is the sole method for determining value and the provisions dealing with certain deed-restricted properties may be considered an unauthorized classification of properties for purposes of taxation.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.