SB 166 — Public Records/Donors' Identification/Public Buildings

by Senator Ring

This bill creates a public records exemption for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned building or facility. At the request of the donor or prospective donor, identifying information is confidential and exempt from the public records provisions of s. 119.07(1)(a), F.S., and s. 24(a), Art. I of the State Constitution. The exemption will stand repealed October 2, 2014, unless reviewed and reenacted by the Legislature as provided in s. 119.15, F.S., the Open Government Sunset Review Act.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 40-0; House 109-0

CS/CS/SB 360 — Growth Management

by Policy and Steering Committee on Ways and Means; Community Affairs Committee; and Senators Bennett, Gaetz, Ring, Pruitt, Haridopolos, Richter, Hill, King, and Lynn

This bill amends a number of provisions of law with the goal of stimulating economic development, promoting development in urban areas, and providing for affordable housing.

Urban Service Areas

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

Dense Urban Land Areas

A definition of a "dense urban land area" is created. The definition includes:

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

Those jurisdictions that qualify as dense urban land areas will be ascertained by the Office of Economic and Demographic Research, and the designation will become effective upon publication on the state land planning agency's website. To support the Office of Economic and Demographic Research, municipalities that change their boundaries will be required to send the boundary changes and information on the population effect to the Office of Economic and Demographic Research.

Capital Improvements Element

The bill changes the deadline to submit the CIE financial feasibility element and the implementation of the associated penalty from December 1, 2008 to December 1, 2011.

School Concurrency

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

Transportation Concurrency Exception Areas

The bill amends s. 163.3180, F.S., to designate the following areas as transportation concurrency exception areas (TCEAs):

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

A municipality that does not qualify as a dense urban land area may designate the following areas in its comprehensive plan as transportation concurrency exception areas:

- Urban infill as defined in s. 163.3164(27), F.S.;
- Community redevelopment as defined in s. 163.340(10), F.S.;
- Downtown revitalization as defined in s. 163.3164(25), F.S.;
- Urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- Urban service areas as defined in s. 163.3164(29), F.S.

A county that does not qualify as a dense urban land area may designate in its comprehensive plan as transportation concurrency exception areas:

- Urban infill as defined in s. 163.3164(27), F.S.;
- Urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- Urban service areas as defined in s. 163.3164(29), F.S., or urban service areas under s. 163.3177(14), F.S.

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

Any local government that has a transportation concurrency exception area under one of these provisions must, within 2 years, adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If the local government fails to adopt such a plan it may be subject to the sanctions set forth in s. 163.3184(11)(a) and (b), F.S.

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

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

The bill clarifies that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. The bill further clarifies that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area except for developments of regional impact that choose to rescind under s. 380.06(29)(e), F.S.

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

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

Comprehensive Plan Amendments

The bill requires local governments to make concurrent zoning and comprehensive plan changes upon the request of an approved application. The bill also exempts urban service areas from the twice-a-year restriction on plan amendments and gives them expedited review.

Any local government may use the alternative state review process to designate urban service areas as defined in s. 163.3164(29), F.S.

Development of Regional Impact Exemptions

Section 380.06(29), F.S., is added to exempt developments from the development-of-regional-impact process in the following areas:

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

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

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

Intergovernmental Coordination

The bill requires the intergovernmental element of a local government's comprehensive plan to have a dispute resolution process and requires unresolved disputes to go through mandatory mediation.

Ordinances Levying Impact Fees

Section 163.31801(3)(d), F.S., is modified to allow a local government to decrease, suspend, or eliminate an impact fee without waiting 90 days.

The Definition of "In Compliance"

Section 163.3184, F.S., is amended to delete the modifying language that should have been deleted with the reference to s. 163.31776, F.S., when the statute was revised in 2006.

Security Cameras

The bill creates a new section of law that prevents local governments from requiring that a business expend funds for security cameras. This does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras.

Mobility Fee Study

The bill requires the Department of Transportation and the Department of Community Affairs to continue their mobility fee studies with the goal of developing a mobility fee that can replace the existing transportation concurrency system. The mobility fee should be designed to:

- Provide for mobility needs,
- Ensure that development provides mitigation for its impacts on the transportation system in approximate proportionality to those impacts,
- Fairly distribute the fee among the governmental entities responsible for maintaining the impacted roadways, and
- Promote compact, mixed-use, and energy-efficient development.

The bill requires the Department of Community Affairs and the Department of Transportation to submit to the Legislature no later than December 1, 2009, a final joint report on the mobility fee methodology study, complete with recommended legislation and a plan to implement the mobility fee as a replacement for the existing local government adopted and implemented transportation concurrency management systems. The final joint report shall also contain an economic analysis of implementation of the mobility fee, activities necessary to implement the fee, and potential costs and benefits at the state and local levels and to the private sector.

Extension of Permits

The bill creates an undesignated section of law to provide a retroactive 2-year extension and renewal from the date of expiration for:

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

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

Exceptions to the extension are provided for certain federal permits, and owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension. Permits and other authorizations which are extended and renewed shall be governed by the rules in place at the time the initial permit or authorization was issued. Modifications to such permits and authorizations are also governed by rules in place at the time the permit or authorization was issued, but may not add time to the extension and renewal.

State Allocation Pool – Private Activity Bonds

The bill limits the Florida Housing Finance Corporation's access to the State Allocation Pool for private activity bonds permitted to be issued in the state under the Internal Revenue Code to the amount of the initial allocation authorized under s. 159.804, F.S. After the initial allocation, the corporation may not receive more than 80 percent of the amount remaining in the state allocation pool on November 16th of each year. The corporation may also not receive more than 80 percent of any additional amounts that become available during each year. However, the limitation does not apply to the distribution of the unused allocation of the state volume limitation to the corporation as provided in s. 159.91(2)(b), (c), and (d), F.S.

Community Land Trusts

Section 193.018, F.S., is created to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land owned by a community land trust and used to provide affordable housing. A community land trust must be a nonprofit entity that

qualifies as a charitable entity under s. 501(c)(3) of the Internal Revenue Code and must have as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable housing. The responsibility of the community land trust to convey structural improvements, condominium parcels, or cooperative parcels to persons or families who are income-qualified for affordable housing is codified in statute. The structural improvements or parcels being conveyed must be subject to a ground lease of at least 99 years, and the ground lease must contain a formula that limits the resale amount. The community land trust retains the first right of purchase at the time the structure or parcels are sold.

For purposes of assessing improvements or parcels conveyed subject to a ground lease, the property appraiser must assess based on the resale restrictions and limited uses contained in the lease. A lease, an amendment or supplement to the lease, or a memorandum documenting the restrictions contained in the lease are deemed land use regulations during the term of the lease if such lease or documents are recorded in the official public records of the county in which the affected property is located.

Ad valorem tax exemption for affirmative steps taken to provide affordable housing

The bill amends s. 196.196, F.S., to provide that property owned by an exempt organization qualified as a charitable organization under s. 501(c)(3) of the Internal Revenue Code is used for a charitable purpose and is exempt from ad valorem taxes if the organization has taken affirmative steps to prepare the property for use as affordable housing for income-qualified persons. Affirmative steps include 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 a commitment of the property to providing affordable housing.

If property granted an exemption is transferred for purposes other than the provision of affordable housing, or if the property is not actually used as affordable housing within 5 years after the exemption is granted, the property appraiser must record a tax lien against the property, and the property owner is subject to taxes otherwise due and owing for failure to use the property for the purpose for which the exemption is granted. The organization owning the property is subject to the taxes otherwise due and payable as a result of the failure to use the property for the exempt purpose. Interest on such taxes at 15 percent per annum and the organization is further subject to a penalty of 50 percent of the taxes owed. The 5-year limitation may be extended if the property continues to the affirmative steps to develop the property for affordable housing.

Affordable Housing – Limited Partnership

Section 196.1978, F.S., is amended to extend the affordable housing property ad valorem tax exemption to property that is held for the purpose of providing affordable housing to income-qualified persons if the property is owned by a Florida-based limited partnership, the sole general partner of which is a not-for-profit corporation, or if the property is owned by a nonprofit entity that is a not-for-profit corporation qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, and that is in compliance with the Revenue Procedure Low-Income Housing Guidelines as published by the Internal Revenue Service. Any property owned by a limited

partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.

Land acquired for residential housing projects

The bill amends s. 212.055, F.S., to provide that the expenditure of local government infrastructure surtaxes to acquire land which will be used for a residential housing project is an authorized use of the surtax under specified conditions. At least 30 percent of the housing units in the project must be affordable to specified individuals and families and the land the project is constructed on must be owned by a local government or a special district that has entered into an interlocal agreement with a local government to provide such housing. The local government or the special district may enter into a ground lease with any entity for the construction of the residential housing project on land acquired from the expenditure of local infrastructure surtax proceeds.

Maintaining Density

Section 163.3202, F.S., is amended to provide that local land development regulations that contain specific and detailed provisions necessary to implement a local comprehensive plan must also maintain the density of residential property or recreational vehicle parks if the properties are intended for residential use and are located in unincorporated areas that have sufficient infrastructure as determined by a local governing authority. The properties and parks must not be located within a coastal high-hazard area.

Florida Housing Finance Corporation

The bill revises the State Apartment Incentive Loan Program (SAIL) and the State Housing Initiatives Partnership Program (SHIP) to clarify program purposes and to the allow the use of SAIL dollars for moderate rehabilitation of housing units. Projects that include green building principles, storm-resistant construction, or other elements to reduce long-term maintenance costs are projects eligible to apply for and receive SAIL funding.

The Florida Housing Finance Corporation is authorized to create criteria for contractor preference for developers and general contractors domiciled in the state, or for developers and general contractors regardless of domicile who have substantial experience in developing or building affordable housing through the corporation's programs. In determining substantial experience, the corporation must consider whether the developer or general contractor has completed at least five developments using funds provided by or administered by the corporation.

The Florida Housing Finance Corporation, other agencies that receive funds under the SHIP program, local housing finance agencies, and public housing authorities are directed to coordinate with the Department of Children and Families, and the department's agents and community-care providers to develop and implement strategies and procedures that will increase affordable housing opportunities for young adults leaving the child welfare system.

The bill makes clarifying revisions to certain definitions and provides that eligible housing for purposes of the SHIP program includes manufactured housing installed in accordance with the installation standards for mobile and manufactured homes contained in rules of the Department of Highway Safety and Motor Vehicles. Local affordable housing advisory committees are authorized to propose local housing incentive strategies in the triennial evaluation of how local governments are implementing affordable housing. Local governments are authorized to use SHIP dollars to provide a one-time relocation grant of up to $5,000 to tenants of rental properties who are evicted because the property has gone into foreclosure without the tenant's knowledge. Income-restriction exemptions for Monroe County are reinstated and retroactively applied so that housing awards may be made to Monroe County residents whose income exceeds 120 percent of the area median income.

With respect to local housing distributions, the Florida Housing Finance Corporation is authorized to distribute funds on a quarterly or more frequent basis, subject to the availability of funds. The corporation may withhold up to $5 million in funds distributed from the Local Government Housing Trust Fund to provide funding to counties and cities to purchase properties subject to a SHIP lien on which foreclosure proceedings have been instituted, and may withhold an additional $5 million to provide additional funding to counties and cities in a state of emergency. Not more than 20 percent of SHIP funds provided to counties and eligible cities may be used for manufactured housing.

Finally, school districts in areas of critical state concern are authorized to use certain property that provides affordable housing for teachers to also provide housing for essential services personnel.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 30-7; House 78-37

CS/SJR 532 — Property Tax Limit/Additional Homestead Exemption

by Finance and Tax Committee and Senators Lynn and Altman

This joint resolution proposes an amendment to s. 4, Art. VII of the State Constitution, to provide that except for school district levies, the annual maximum assessment change on nonhomestead residential real property is reduced from 10 percent to 5 percent of the assessment for the previous year.

The joint resolution further proposes an amendment to create subsection (f) in section 6, Art. VII of the State Constitution, to provide that the Legislature, by general law, must provide an additional homestead exemption to a person or persons who establish the right to receive a regular homestead exemption within one year after purchasing the homestead property, and who have not owned a principal residence during the 8-year period prior to the purchase of the property. For married persons, neither spouse may have owned a principal residence during the preceding eight years. The additional exemption is equal to 25 percent of the just value of the property on January 1 of the year in which the regular homestead exemption may first apply to assessment of the property but may not exceed $100,000. The additional exemption is reduced

each subsequent year by an amount equal to 20 percent of the initial additional exemption, or by an amount that is equal to the difference between just value and assessed value, whichever is greater. The additional exemption may not apply after the fifth year in which it is granted, and only one additional exemption may apply to a single homestead property. The additional exemption applies to all levies, including school district levies.

The joint resolution proposes to amend the schedule of implementation in Art. XII of the State Constitution to provide that if approved by voters, the revision to s. 4, Art. VII of the State Constitution will take effect January 1, 2011; and the revision to s. 6, Art. VII of the State Constitution will take effect January 1, 2011 and first apply to homestead property purchased by first-time homebuyers on or after January 1, 2010.

If approved by 60 percent of persons voting in the November 2010 General Election, these provisions take effect January 1, 2011.
Vote: Senate 26-11; House 104-13

CS/SB 538 — Publicly Funded Retirement Programs

by General Government Appropriations Committee and Senators Baker and Deutch

This bill requires the State Board of Administration to identify and offer at least one terror-free investment product to the Public Employee Optional Retirement Program by March 1, 2010, if the investment product is deemed by the board to be consistent with prudent investor standards. No person may bring a civil, criminal, or administrative action against a provider, the board, or any employee, officer, director, or trustee of a provider based on the divestiture.

The bill revises provisions relating to firefighter and municipal police pensions for purposes of determining prior service credit and terms of office for members of both pension plan boards. Both boards are authorized to increase from 10 percent to 25 percent plan asset investments in foreign securities on a market-value basis, and the investment cap on foreign securities may not be revised, amended, increased, or repealed except as provided by general law. Both pension boards are directed to identify and report any direct or indirect holdings in any scrutinized company as provided in s. 215.473, F.S., and proceed to sell, redeem, divest, or withdraw all publicly traded securities in such company beginning January 1, 2010, and ending September 30, 2010.

The bill revises the boundaries of special fire control districts which have been annexed to provide that for purposes of assessments and the imposition of excise taxes on insurance premiums, the district may continue to receive ad valorem taxes, non-ad valorem assessments and insurance premium taxes if it continues to provide services to the annexing municipality until the completion of the 4-year service period, or other agreed to extension, or under an executed interlocal agreement.

The bill makes revisions to audit and compliance requirements, and plan beneficiaries may change the designated joint annuitant or beneficiary up to two times without the approval of the pension plan board. The bill repeals apportionment provisions relating to assets distributed upon

termination of a firefighter or police officer pension termination, and codifies in statute the ruling of the District Court of Appeals, 4th District, in *Board of Trustees of the Town of Lake Park Firefighters Pension Plan v Town of Lake Park.*[1] The pension board must determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after accounting for expenses. The board must inform the special fire district or the city if additional assets are required, and if so, the city or district must continue to financially support the plan until all nonforfeitable benefits have been funded. Accrued benefits are nonforfeitable. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest, if the plan provides for interest, less the value of any plan benefits previously paid to the employee.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 38-0; House 118-0

CS/SB 624 — Law Enforcement Officers and Correctional Officers

by Community Affairs Committee and Senator Fasano

This bill expands the provisions of s. 112.532, F.S., the "Officers' Bill of Rights," to clarify that the rights of law enforcement officers or correctional officers under investigation for reasons which could lead to disciplinary action, demotion, or dismissal, also apply in instances where investigation could lead to suspension. Prior to the interrogation of any law enforcement or correction officer under investigation, the officer who is the subject of the complaint must receive not just the complaint and all witness statements, but also all other existing subject officer statements, and all other existing evidence, including but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation.

The bill expands the waiver of the public records exemption in s. 112.533(2), F.S., which provides that although certain records and information relating to an investigation of an officer are confidential and exempt, the officer under investigation may review the complaint and all witness statements made prior to the beginning of the investigation. The bill provides that the officer or the officer's representative must, upon request, be given a copy of the investigative file, including the final investigative report and all evidence prior to the imposition of any disciplinary action that could result in suspension with loss of pay, demotion, or dismissal.

With respect to the limitation period for disciplinary action, the bill clarifies that an action to suspend a law enforcement or correctional officer may not be undertaken if the investigation of the allegation of misconduct is not completed within 180 days after the date the agency receives notice of the allegation against the officer. If the agency determines that disciplinary action is appropriate, the agency must provide the officer in writing, of its intent to proceed with disciplinary action, including a proposal of the specific action, including the length of suspension. However, the limitation period is tolled during the time that a compliance hearing

[1] 966 So.2d 448

proceeding is ongoing, beginning with the filing of the notice of violation of a right by an officer under investigation and a request for hearing, and ending with the written determination of the compliance review panel or a remediation of the violation by the agency conducting the investigation.

The bill amends s. 112.534, F.S., to create a compliance review hearing process when an officer under investigation believes that the investigator, an investigating supervisory, or the agency supervising the investigation intentionally violates the officer's rights. The officer under investigation must advise the investigator of the intentional violation which is alleged to have occurred, and this advisement is notice to the investigator of the requirements of the rights which have been violated and the factual basis of each violation.

If the investigator fails to cure the violation or continues committing a violation, the officer under investigation must request that the agency head or a designee be made aware of the violation. Once this request is made, the interview of the officer under investigation must cease and the officer's refusal to answer additional questions does not constitute insubordination or any similar type of policy violation.

Within 3 working days, the officer under investigation must then file a written notice of violation of rights and a request for a compliance review hearing which must contain enough information to identify the rights which have been violated and the factual basis for each violation. All evidence of the investigation must be preserved for review and presentation at the compliance review hearing. For purposes of confidentiality, the compliance review panel hearing must be considered part of the original investigation.

If no corrective action is taken by the investigative agency, a compliance review hearing must be conducted within 10 working days after the request for hearing is filed unless an alternate date is approved with the mutual consent of all parties. The compliance review panel must review the circumstances and facts surrounding the alleged violation and determine if the violation was intentional. The compliance review panel consists of one member selected by the investigative agency head, one member selected by the officer under investigation, and one member selected by the other two members. All members must be active law enforcement officers or correction officers who are active in the same law enforcement discipline as the officer requesting the hearing.

The officer filing the notice of violation bears the burden of establishing by preponderance of the evidence that the violation of rights was intentional. The compliance review panel must make a written determination at the conclusion of the hearing and must file such written determination with the agency head and the officer who filed the notice of violation. Where the violation is found to be intentional, the investigating officer must be immediately removed and be placed under investigation. If that investigation is sustained, the allegations against the investigator shall be forwarded to the Criminal Justice Standard and Training Commission for review as an act of official misconduct or misuse of position.

Finally, the bill provides that the provisions of the Administrative Procedures Act do not apply to ch. 112, part VI, F.S., relating to the "Officers' Bill of Rights."

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 24-14; House 116-0

CS/CS/SB 712 — Special Districts/Commodities/Contractual Services

by Policy and Steering Committee on Ways and Means; Community Affairs Committee; and Senators Pruitt and Lynn

This bill creates s. 189.4221, F.S., to authorize special districts to purchase commodities and contractual services from the purchasing agreements of other special districts, counties, and municipalities if such purchasing agreements meet the procurement requirements of the purchasing special district. The purchasing agreements under which commodities and contractual services are being purchased must have been procured pursuant to competitive bid, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and be in compliance with general law.

The bill amends s. 189.418, F.S., to provide that for purposes of notifying the Department of Community Affairs of a district boundary change, the boundaries of a special district are not changed and will include an annexed area when the special district continues to provide services to the annexing municipality for the 4-year service period as required under s. 171.093(4), F.S., or other mutually agreed upon extension. The bill also provides that special district boundaries are not changed and will include an annexed area when the district is providing services under an interlocal agreement entered into with the annexing municipality under s. 171.093(3), F.S. For purposes of special fire control districts, these revisions mean that a special fire control district providing services to an annexed area may continue to receive state excise tax revenues on insurance premiums collected within the annexed area.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 37-0; House 119-0

CS/CS/SB 1000 — Discretionary Sales Surtaxes/Fire Rescue Services

by Judiciary Committee; Military Affairs and Domestic Security Committee; and Senators Fasano, Aronberg, Deutch, and Ring

This bill provides that the governing authority of a county may levy, by ordinance, a discretionary sales surtax of up to 1 percent for emergency fire rescue services. Any county already imposing two separate discretionary surtaxes without an expiration date may not levy the additional surtax. Once the local ordinance has been adopted, the levy of the surtax must be placed on the ballot and will take effect if approved by a majority of the electors of the county voting in a referendum held for such purpose at a regularly scheduled election.

The Department of Revenue is directed to distribute the taxes collected, less an administrative fee, to the county enacting the ordinance. The county must distribute the proceeds to the jurisdictions participating in the delivery of emergency fire and rescue services under an

interlocal agreement, and may also charge an administrative fee of not more than 2 percent of the taxes collected.

The county governing authority must develop and execute an interlocal agreement with the participating jurisdictions which shall be the governing bodies of cities, dependent special districts, independent special districts, or municipal service taxing units that provide emergency fire and rescue services within the county. The interlocal agreement, which must be executed prior to the referendum, must include a majority of the emergency fire and rescue service providers in the county.

The interlocal agreement must specify that the amount of surtax proceeds to be distributed to each participating jurisdiction is based on the amounts collected within that jurisdiction based on the distribution formula provided in s. 218.62, F.S., and used by the Department of Revenue to distribute the local government half-cent sales tax. If a county has special fire control districts within its boundaries, the surtax proceeds must be distributed between the county, the participating cities, and the special fire control districts based on the proportion of ad valorem and non-ad valorem assessments for fire control and emergency rescue services spent by each entity in each of the immediately preceding 5 fiscal years compared to the total expenditures for all participating entities.

The interlocal agreement must further specify that if a participating jurisdiction is requested to provide personnel or equipment to any other service provider on a long-term basis, the jurisdiction providing the personnel or equipment is entitled to payment from the other service provider's share of the surtax proceeds for all costs of the equipment or personnel. However, if the interlocal agreement prohibits one or more participating jurisdictions from providing the same level of service for prehospital emergency medical treatment within the jurisdiction's boundaries, or if the county has issued a certificate of public convenience and necessity or its equivalent to a county department or a dependent special district, the surtax allocation formula does not apply, and the jurisdiction does not have to agree to pay the provider of prehospital emergency medical treatment from its surtax proceeds.

When a surtax is approved by voters and collection of the tax is initiated, the enacting county and each participating jurisdiction must reduce the ad valorem tax levy or any non-ad valorem assessment for fire control and emergency rescue services in the next and subsequent budgets by the amount of surtax proceeds estimated to be collected. Use of the surtax proceeds does not relieve a local government from complying with the provisions of ch. 200, F.S., or any related provision of law that establishes millage caps or limits undesignated budget reserves and procedures for establishing rollback rates for ad valorem taxes and budget adoption. Any surplus taxes collected in any fiscal year must be used to further reduce ad valorem taxes in the next fiscal year.

Any city, special fire control district, and any contract service provider that does not enter into an interlocal agreement with a county levying the surtax is not entitled to receive any portion of the surtaxes collected and is not required to reduce ad valorem taxes or non-ad valorem assessments. Surtax proceeds must be collected beginning on January 1 of the year following a successful

referendum, and any county containing a portion of the Reedy Creek Improvement District may not levy the discretionary surtax within the boundaries of the district.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 39-0; House 110-8

CS/SB 1580 — Ad Valorem Taxation

by Finance and Tax Committee and Senators Ring and Bennett

This bill creates an unnumbered section of Florida Statutes to authorize a tax collector to accept one or more partial payment of any amount per parcel for payment of current property taxes and assessments. The partial payment must be made before the date of delinquency and the remaining amount must be paid in full by the delinquency date. A $10 processing fee is deducted from each partial payment and paid to the tax collector, who must send at least one notice of the balance due to the taxpayer. Any remaining balance that is not timely paid becomes delinquent and is handled like any other delinquent tax payment, but the tax collector has the discretion to deem an underpayment of less than $10 a payment in full. A partial payment is distributed in equal proportions among all applicable taxing districts and levying authorities. The bill amends s. 197.343, F.S., to clarify that the additional tax notice shall be mailed by April 30 to each taxpayer whose payment has not been received. The notice will state that if the taxes on the property are not paid in full, a tax certificate will be sold for the delinquent taxes. The bill also provides that the amendment to s. 196.192, F.S., made by s. 2 of ch. 2008-193, L.O.F., shall operate retroactively to January 1, 2005.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 40-0; House 113-1

CS/HB 135 — Public Records/Insured Dependents/Agency Group Plan

by Insurance, Business, and Financial Affairs Policy Committee and Rep. McKeel and others (CS/SB 270 by Community Affairs Committee and Senators Dockery, Storms, Justice, Gaetz, and Lynn)

The bill creates a public records exemption for personal information that identifies a dependent child of a current or former officer or employee of an agency if the minor dependent is insured under an agency group insurance plan. Personal identifying information of such a child is exempt from the public records requirements of s. 119.07(1)(a), F.S., and s. 24(a), Art. I of the State Constitution. The exemption is remedial in nature and applies to personal identifying information held by an agency before, on or after July 1, 2009. The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act established in s. 119.15, F.S., and will stand repealed on October 1, 2014, unless reviewed and reenacted by the Legislature.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 39-0; House 118-0

CS/CS/HB 179 — Property Appraisers/Assessments/Homestead Exemption

by Finance and Tax Council; Military and Local Affairs Policy Committee; and Rep. Nelson and others (CS/SB 800 by Finance and Tax Committee and Senator Baker)

The bill authorizes a property appraiser, at the appraiser's discretion, to use image technology in lieu of physical inspection when assessing the value of real property to ensure that the tax roll meets all of the requirements of law. The Department of Revenue must establish minimum standards for the use of image technology consistent with standards developed by professionally recognized sources for mass appraisal of real property.

The bill provides that when an applicant for a homestead exemption misses the March 1 filing deadline, he or she must file an application with the property appraiser not later than 25 days following the property appraiser's mailing of the "Truth in Millage" notice required under s. 194.011(1), F.S. The property appraiser may grant the exemption if he or she determines that sufficient evidence exists to demonstrate that the applicant was unable to meet the filing deadline. In cases where the property appraiser denies the application, the applicant may file a petition with the value adjustment board not later than 25 days following the property appraiser's mailing of the "Truth in Millage Notice."

The bill establishes the following new relevant factors to be considered by a property appraiser when establishing permanent residency for purposes of a homestead exemption:

- An applicant's formal declaration of domicile must be recorded in the public records of the county in which the exemption is being sought.
- Evidence of the location where the applicant's dependent children are registered for school.
- Proof of voter registration in this state with the voter information card address of the applicant, or other official correspondence from the supervisor of elections providing proof of voter registration, matching the address of the physical location where the homestead exemption is being sought.
- A valid Florida driver's license issued under s. 322.18, F.S., or a valid Florida identification card issued under s. 322.051, F.S., and evidence of relinquishment of a driver's license from any other state.
- The location where the applicant's bank statement and checking accounts are registered.
- Proof of payment for utilities at the property for which permanent residency is being claimed.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 38-0; House 118-0

CS/CS/HB 227 — Impact Fees/Challenges

by Economic Development and Community Affairs Policy Council; Military and Local Affairs Policy Committee; and Rep. Aubuchon and others (CS/SB 580 by Judiciary Committee and Senators Haridopolos, Gaetz, Altman, Lynn, and Baker)

This bill amends s. 163.31801, F.S., dealing with impact fees. This bill creates a "preponderance of the evidence" standard of review for challenges to impact fees. The language places the burden on the government to prove by a preponderance of the evidence that the imposition or amount of the impact fee meets the requirements of state legal precedent or the statute governing impact fees. In addition, the bill precludes the court from using a deferential standard.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 26-11; House 107-10

CS/CS/HB 339 — Secondhand Dealers and Secondary Metals Recyclers

by Economic Development and Community Affairs Policy Council; Agriculture and Natural Resources Policy Committee; and Rep. Patterson and others (CS/CS/CS/SB 478 by Criminal Justice Committee; Commerce Committee; Community Affairs Committee; and Senators Baker and Lynn)

This bill excludes cardio and strength training or conditioning equipment designed for indoor use from the definition of "secondhand goods," preempts local government ordinances related to hold notices, and creates part III of ch. 538 , F.S., to define, require registration, and provide regulation of "mail-in secondhand precious metals dealers."

The bill amends s. 538.21, F.S., which currently requires secondary metals recyclers to hold the regulated metals for 15 days after receiving notice from law enforcement. The bill provides a statement that the hold notice provisions of s. 538.21, F.S., preempt local government ordinances.

This bill proposes regulatory requirements of mail-in secondhand precious metals dealers that are similar to those regulatory requirements of precious metals secondhand dealers currently provided for in ch. 538, part I, F.S., except the proposed part III does not require the physical verification of the identity of the seller and the submission of a thumbprint by the seller at the time of the transaction.

However, the bill does require the seller to provide his or her name, address, telephone number, e-mail address, if available, and driver's license number and issuing state or other government-issued identification number. If the seller fails to provide this information the buyer must verify the identity and information through a national provider of personal identification services, or request the information from the seller. A seller who has not provided sufficient information to the mail-in secondhand precious metals dealer may request that the property be returned. If the seller does not provide the required information or request that the property be returned, the seller's property is deemed to be abandoned and is relinquished to the Bureau of Unclaimed Property.

The bill provides a process by which, if there is probable cause that the goods are stolen, a law enforcement agency can take possession of the goods for the purpose of a legal proceeding to determine ownership, whether a crime has been committed, or to safeguard the property.

The bill also provides for certain penalties for violations of the requirements provided for in the bill.

If approved by the Governor, these provisions take effect October 1, 2009.
Vote: Senate 39-0; House 111-2

CS/CS/HB 479 — Retirement

by Economic Development and Community Affairs Policy Council; Governmental Affairs Policy Committee; and Rep. Schenck and others (CS/CS/CS/SB 1182 by Governmental Oversight and Accountability Committee; Ethics and Elections Committee; Community Affairs Committee; and Senators Fasano, Gaetz, and Dockery)

This bill revises the definition of "termination" for purposes of the Florida Retirement System (FRS) to provide that for retirements effective prior to July 1, 2010, termination does not occur if a member is reemployed by an employer within the system within the next calendar month after ceasing employment. For retirements effective on or after July 1, 2010, termination does not occur if a member is reemployed within the next 6 calendar months after ceasing employment. Similar revisions are made to conform termination of employment after completion of the Deferred Retirement Option Program (DROP).

With respect to the Elected Officers' Class in the FRS, on or after July 1, 2010, an elected officer of a city or special district shall be a member of the Elected Officers' Class only if the city or special district governing body, at the time it joins the FRS, elects by a majority vote to include all its elected positions in the Elected Officers' Class. The bill provides that cities and special districts not currently in the state system may make an irrevocable decision to join between July 1, 2009 and December 31, 2009. On or after January 1, 2010, no city or special district may opt to join the FRS.

On or after July 1, 2010, a retiree of a state-administered system who is elected or appointed for the first time to an elective office in a regularly established position with a covered employer may not reenroll in the FRS. Further, an elected officer who is elected or appointed to an elective office and who is participating in the DROP is subject to the revised termination provisions upon completion of the DROP.

A retiree who is initially reemployed as an elected officer on or after July 1, 2010, as an elected official eligible for membership in the Elected Officers' Class, may not renew membership in the Senior Management Services Class or in the Senior Management Optional Annuity Program, and may not withdraw from the FRS as a renewed member in lieu of membership in the Senior Management Service Class as provided in current law. With respect to the Senior Management

Service Optional Annuity Program, a retiree who is initially reemployed on or after July 1, 2010, may not renew membership in the Senior Management Service Optional Annuity Program.

With respect to current reemployment limitations on persons whose retirement is effective prior to July 1, 2010, and which require a 1-month termination and a restriction on receiving salary and retirements benefits for 12 months from the date of retirement, the limitation on the number of hours a retiree reemployed by the Florida School for the Deaf and Blind may work as a substitute teacher, a substitute residential instructor, or a substitute nurse is repealed. Developmental research schools and charter schools are provided with the authority to reemploy such a retiree as a substitute or hourly teacher on a noncontractual basis after the retiree has been retired for 1 month. Such employees are restricted from receiving salary and benefits for 12 months from the date of retirement. The authority for an employing agency to reemploy a retired firefighter or paramedic after such member has been retired for 1 month is repealed effective July 1, 2009.

The bill provides that any person whose retirement is effective on or after July 1, 2010, or whose participation in the DROP program terminates on or after July 1, 2010, may be reemployed by an FRS employer. The retiree must meet the definition of termination prior to reemployment and for 6 months after meeting that definition, the person may not receive both a salary and retirement benefits. A reemployed retiree may not renew membership in the FRS and the employer of such a person must pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the FRS in addition to other contributions for social security and the retiree health insurance subsidy. Persons who are initially reemployed in violation of the restriction, and the employer that employs such a person are jointly and severally liable for reimbursement of any retirement benefits paid.

The bill provides that certain instructional personnel employed by a developmental research school and authorized by the school's director, or if the school has no director, the school's principal to participate in an extended DROP may participate for up to 36 calendar months beyond the 60-month DROP period. For all DROP participants, an election to participate is final and may not be canceled after the first payment is credited during the DROP participation period.

The Division of Retirement in the Department of Management Services is authorized to issue retirement benefits payable for division of marital assets under a qualified domestic relations order directly to the alternate payee to meet Internal Revenue Code requirements, regardless of any court order to the contrary.

Conforming revisions are made to provisions governing the State Community College System Optional Retirement Program, the Public Employees Optional Retirement Program, the Senior Management Optional Annuity Program, the Optional Retirement Program for the State University System, and renewed membership in the FRS. For purposes of a de minimis distribution under the Senior Management Optional Annuity Program and the Optional Retirement Program for the State University System, a participant who receives a mandatory distribution of a de minimis account (earnings of not more than $5,000) authorized by the Department of Management Services is not considered a retiree and may be reemployed and

renew membership in the FRS. Any retiree of a state-administered system who is initially reemployed on or after July 1, 2010, may not renew membership in the FRS.

Finally, the bill provides that the revisions to s. 121.091, F.S., relating to benefits payable under the FRS, fulfill an important state interest. However, the bill does not provide for a special actuarial study to determine the impact of the proposed revisions on the FRS.

If approved by the Governor, unless otherwise specified, these provisions take effect July 1, 2009.
Vote: Senate 27-11; House 93-23

CS/HB 515 — Oil and Gas Production Taxes

by General Government Policy Council and Rep. Evers and others (CS/SB 978 by Finance and Tax Committee and Senator Pruitt)

The bill replaces the 5 percent excise tax on tertiary oil with a tiered rate tax structure. The tax is imposed at the rate of 1 percent of the gross value of oil on the first $60 of value; 7 percent of the gross value of oil above $60 and below $80, and 9 percent of the gross value of oil valued at $80 and above. The bill revises the definition of "tertiary oil" to mean the excess barrels of oil produced, or estimated to be produced, as a result of the actual use of a tertiary recovery method in a qualified enhanced oil recovery project, and corrects a reference to federal law so that such projects may qualify for the federal enhanced oil recovery tax credit.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 39-1; House 116-1

CS/CS/HB 521 — Ad Valorem Tax Assessment Challenges

by Economic Development and Community Affairs Policy Council; Military and Local Affairs Policy Committee; and Rep. Lopez-Cantera and others (CS/SB 1006 by Finance and Tax Committee and Senators Fasano, Lynn, Altman, and Gaetz)

This bill revises current law relating to the presumption of correctness in administrative or judicial actions when a taxpayer challenges an ad valorem tax assessment of value by providing that the property appraiser's assessment is presumed correct if the appraiser can prove by a preponderance of the evidence that the assessment was arrived at by complying with the just valuation requirements of s. 193.011, F.S., with any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. However, a taxpayer who challenges an assessment is entitled to a determination by the value adjustment board or a court as to the appropriateness of the appraisal methodology used by the property appraiser in arriving at the assessment. The value of the property must be determined by an appraisal methodology that complies with the criteria of s. 193.011, F.S., and professionally accepted appraisal practices. These provisions preempt any prior inconsistent case law.

In an administrative or judicial action in which an ad valorem tax assessment is challenged, the burden of proof is on the party initiating the challenge. If the challenge is to assessed value, the initiating party must prove by a preponderance of the evidence that the assessed value:

- Does not represent the just value of the property after taking into account applicable limits on annual increases in property value;
- Does not represent the classified use value or fractional value of the property if the property is required to be assessed based on character or use; or
- Is arbitrarily based on appraisal practices that are different from appraisal practices generally applied by the property appraiser to comparable property within the same county.

If the burden of proof is met, the property appraiser's presumption of correctness is overcome and the value adjustment board or the court must establish the assessment if there is competent, substantial evidence available which cumulatively meets the criteria of s. 193.011, F.S., and professionally accepted appraisal standards. If the record lacks such evidence, the value adjustment board or the court must remand the matter to the property appraiser with appropriate directions with which the property appraiser must comply. With respect to challenges following remand, the burden of proof is on the challenger initiating the proceeding.

In a challenge as to the classification of use of the status of an exemption, no presumption of correctness exists and the party initiating the challenge has the burden of proving by a preponderance of the evidence that the classification or exemption granted is incorrect.

The bill expresses the Legislature's intent that a taxpayer never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment. The bill provides that all cases establishing the reasonable-hypothesis standard were expressly rejected by the Legislature on the adoption of ch. 1997-85, L.O.F, creating the current presumption of correctness standard for ad valorem tax assessment challenges; and further expresses the Legislature's intent that any cases published since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the extent that they are interpretive of legislative intent. These expressions of legislative intent and rejection are intended to clarify existing case law and apply retroactively.

If approved by the Governor, these provisions take effect upon becoming law and shall first apply to assessments in 2009.
Vote: Senate 37-1; House 109-4

CS/CS/HB 611 — Public Construction Projects

by Economic Development and Community Affairs Policy Council; Roads, Bridges, and Ports Policy Committee; and Rep. Hukill and others (CS/SB 616 by Community Affairs Committee and Senator Haridopolos)

The bill amends s. 255.20, F.S., to increase the cost that triggers the statutory requirement to competitively bid a project from $200,000 to $300,000. For electrical work, the cost that triggers the competitive bidding process is increased from $50,000 to $75,000.

The bill states that any contractor may be considered ineligible to bid if the contractor has been found guilty of violating certain laws within the past 5 years.

The bill defines "repair" as corrective action to restore an existing public facility to a safe and functional condition. The bill defines "maintenance" to mean preventative or corrective action for the purpose of maintaining an existing public facility in an operational state or preserving the facility from failure or decline, but does not include:

- The construction of any new building, structure, or other public construction works; or
- Any substantial addition, extension, or upgrade to an existing public facility, for which the cost is more than 20 percent of the total cost of the repair or maintenance project.

The bill increases the public notice time for the public meeting wherein the local government will decide whether or not to bid a project or use its own staff from 14 to 21 days. The bill specifies that the notice must include information about the scope of the work and all costs associated with the work, including: employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The bill requires the local government to make available to the public a detailed itemization of each component of the estimated cost of the project. Contractors or vendors may present evidence to the governing board regarding the project and the accuracy of the estimated cost of the project.

The bill increases the cost that triggers the statutory requirement to competitively bid a project for projects such as roads and bridges under ch. 336, F.S, from $200,000 to $300,000. For electrical work, the cost that triggers the competitive bidding process is increased from $50,000 to $75,000.

The bill exempts airports, ports, and public transit systems from competitive bidding requirements when performing repairs or maintenance.

If approved by the Governor, these provisions take effect October 1, 2009.
Vote: Senate 39-0; House 107-10

HB 701 — Proposed Property Tax Notice

by Rep. Hudson and others (CS/CS/SB 752 by General Government Appropriations Committee; Finance and Tax Committee; and Senators Richter and Fasano)

This bill amends s. 200.069, F.S., to implement recommendations found in the Department of Revenue's Report on The Effect of Recent Changes in Law on the Notice of Proposed Property Taxes. It expands the TRIM notice to two additional columns of information to the first page, which is titled "Notice of Proposed Property Taxes," and it changes the order in which the columns are arranged. The new columns to be included are as follows:

- Last year's adjusted tax rate – The millage rate for ad valorem taxes that will provide the same tax revenue for each taxing authority as was levied during the prior year, also known as the "rolled-back rate." If the parcel did not exist in the previous year, this column must be blank (new Column 3).
- Tax Rate This Year IF PROPOSED Budget is Adopted – The proposed millage rate for ad valorem taxes to be levied against the parcel in the current year (new Column 5).

These changes result in the following format, which will provide taxpayers additional information on the TRIM notice that is used in property tax calculations:

Taxing Authority	Your Property Taxes Last Year	**Last Year's Adjusted Tax Rate (Millage)**	Your Taxes This Year IF NO Budget Change is Adopted	**Tax Rate This Year IF PROPOSED Budget Change is Adopted (Millage)**	Your Taxes This Year IF PROPOSED Budget Change is Adopted	A Public Hearing on the Proposed Taxes and Budget Will Be Held:

The bill also incorporates other proposals from the department report concerning the TRIM notice. It expands the notice to include a full-page presentation of Valuations and Exemptions that will show the assessed value, exemptions, and taxable value for each taxing authority. It also shows the specific assessment reductions and exemptions that have been applied to the property.

If approved by the Governor, these provisions take effect January 1, 2010.
Vote: Senate 40-0; House 117-0

CS/CS/HB 821 — Community Development Districts

by Economic Development and Community Affairs Policy Council; Military and Local Affairs Policy Committee; and Rep. O'Toole (CS/CS/SB 1602 by Judiciary Committee; Community Affairs Committee; and Senator Baker)

The bill amends s. 190.003, F.S., which prescribes definitions applicable to the Uniform Community Development District Act. The bill adds a definition for the term "compact, urban, mixed-use district," and it defines that term to mean "a district located within a municipality and

within a community redevelopment area created pursuant to s. 163.356, F.S., that consists of a maximum of 75 acres, and has development entitlements of at least 400,000 square feet of retail development and 500 residential units."

The bill further amends s. 190.006, F.S., relating to the powers of the governing board of a community development district. Six years after the initial appointment of members, the position of each member whose term has expired shall be filled by a qualified elector of the district, elected by the qualified electors of the district. There is an exception for a district exceeding 5,000 acres, in which case the new election process does not have to occur for 10 years.[2] The bill includes the newly defined "compact, urban, mixed-use district" within this exception. Therefore, such a mixed-use district would not have to hold the statutorily required election by the electors of the district for 10 years after the district was initially created.

Also under current law, if, when the time for election by qualified electors arises, there are not at least 250 electors in the district, members of the board continue to be elected by the landowners. There is an exception in current law for a district exceeding 5,000 acres, in which case the landowners continue to elect the board until there are at least 500 qualified electors. This bill includes the newly defined mixed-use district within this exception. Therefore, under the bill, if 10 years after initial appointment for this newly defined mixed-use district, there are not at least 500 electors, members of the initial board continue to be elected by the landowners. Thus if a project meeting the bill's definition of mixed-use district does not have enough electors available at the expiration of six years, it would receive, under the bill, authority to delay such change in the election process until 10 years after the district was initially created, creating additional time to secure electors within the district. The provisions of the bill relating to the board members are to be applied retroactively.

The bill revises deed restriction enforcement rulemaking authority of boards of directors of CDDs under s. 190.012, F.S., in a manner that expands their powers, and the powers of homeowner's associations (HOAs), over real property whether within or outside the CDD's geographic limits, subject to an interlocal agreement with another district, or the consent of the county or municipality in the area that enforcement is to occur.

The expansion of CDD rulemaking and enforcement authority extends to include residents who live outside of the geographic boundaries of the CDD. The bill provides for the election of an advisor to the district to represent properties located outside of the CDD. However, the advisor may only review enforcement actions proposed by the district against properties located outside the district and make recommendations relating to those proposed actions.

Specifically, the CDD may adopt by rule all or certain portions of deed restrictions that:

- Relate to limitations or prohibitions, compliance mechanisms, or enforcement remedies that apply to external appearances or uses and are deemed by the CDD to be generally

[2] *See* s. 190.005(3)(a)2.a., F.S.

beneficial for the CDD's landowners and for which enforcement by the CDD is appropriate, as determined by the CDD's board of supervisors; or

- Are consistent with the requirements of a development order or regulatory agency permit.

The board may vote to adopt rules only when all of the following conditions exist:

- The CDD was in existence on June 23, 2004, or is located within a development that consists of multiple developments of regional impact and a Florida Quality Development.
- For residential districts, the majority of the CDD board has been elected by qualified electors pursuant to the provisions of s. 190.006, F.S.
- The declarant (HOA, CDD, or any special district) in any applicable declarations of covenants and restrictions has provided the board with a written agreement that such rules may be adopted. A memorandum of the agreement shall be recorded in the public records.
- For residential districts, where less than 25 percent of residential units are in a homeowners' association.

The bill deletes the restriction that the CDD board may only vote to adopt rules relevant to the provisions above if the CDD's geographic area contains no HOAs as defined in s. 720.301(9), F.S.

The bill also expands the definition of "deed restrictions" to include compliance mechanisms and enforcement remedies contained in any applicable declaration of covenants and restrictions, including those of an HOA whose board is under member control, which govern the use and operation of real property. The scope of the deed restrictions is further expanded because they would not be limited to restrictions within the district.

The terms "compliance mechanisms" and "enforcement remedies" are often applied by HOAs and CDDs in the form of penalties or special assessments. A parcel owner's failure to comply can result in a lien being placed against the parcel.

The bill provides that whenever an interlocal agreement is entered into, a district board advisor seat is created for one elected landowner whose property is within the jurisdiction of the governmental entity entering into the interlocal agreement but not within the boundaries of the district. The district board advisor shall be elected for a two-year term by landowners whose land is subject to enforcement by the district but whose land is not within the boundaries of the district.

The bill requires that the elections occur at a meeting that is properly noticed and gives each landowner one vote per acre of land owned by him or her and located within the district for each person to be elected. Votes may be made in person or by proxy in writing. Landowners with less than an acre of land are entitled to one vote.

The bill provides that if a vacancy occurs in the district advisor seat, a special landowner election shall be held within 60 days after the vacancy using the notice, proxy, and acreage voting provisions.

The bill amends s. 190.046, F.S., to allow a landowner to petition to contract or expand the boundaries of a CDD. The bill specifies that the petition filing fee is paid to:

- The county if the CDD or land to be added or deleted from the district is located within an unincorporated area, or
- The municipality if the district or the land to be added or deleted is located within an incorporated area.

The filing fee must also be paid to each municipality contiguous with or containing all or a portion of land within, added to, or deleted from the external boundaries of the district. A copy of the petition shall be submitted to each of the entities entitled to receive the filing fee.

The bill deletes the provision in existing law that requires a rule amending the district boundary to have written consent of all the landowners whose land is to be added to or deleted from the district.

The bill adds the language "net" cumulative basis to add clarity to how district boundaries shall be assessed.

The bill states that petitions to amend the boundary of a CDD shall include only:

- A description of the external boundaries;
- A map of the proposed district showing water, sewer, and outfall;
- Proposed time-table and costs for district services;
- Designation of the future land uses;
- A statement of estimated regulatory costs; and
- Consent of the landowners as demonstrated by the filing of the petition by the district board of supervisors but written consent must be obtained from any landowner whose land is to be added or deleted from the district.

The bill requires that when CDDs petition to merge with each other their petitions must include the elements required to create a CDD and be evaluated using the criteria used when establishing a CDD. The filing fee would be the same. The petition must state whether a new district will be established or one district will be the surviving district. The amendment deletes language that would require CDDs that merge to hold a public hearing. The amendment specifies that the remaining CDD is still obligated to creditors. Any existing claim, pending action, or proceeding by or against a CDD can continue as if the merger had not occurred.

If approved by the Governor, these provisions take effect July 1, 2009.
Vote: Senate 36-2; House 116-0

CS/HJR 833 — Homestead Ad Valorem Tax Credit/Deployed Military

by Finance and Tax Council; and Rep. Horner and others (CS/CS/SJR 1302 by Policy and Steering Committee on Ways and Means; Finance and Tax Committee; and Senators Gardiner, Deutch, Baker, and Gaetz)

This joint resolution proposes an amendment to s. 3, Art. VII of the State Constitution to provide an additional homestead exemption for a person who receives a homestead exemption and was a member of the United States Military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard. The person must have been deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the Legislature. The additional exemption, which is to be provided by general law, is equal to a percentage of the taxable value of the deployed person's homestead property, and the percentage must be calculated based on the number of days the person was deployed on active duty outside the continental United States, Alaska, or Hawaii, divided by the number of days in the year.

Section 31 is added to Art. XII of the State Constitution to provide that if adopted by voters, the additional homestead exemption shall take effect January 1, 2011.

If approved by 60 percent of persons voting in the November 2010 General Election, these provisions take effect January 1, 2011.
Vote: Senate 40-0; House 115-0

HB 7013 — Open Government Sunset Review/Business Information/Government Condemning Authority

by Governmental Affairs Policy Committee and Rep. K. Roberson (CS/SB 1826 by Governmental Oversight and Accountability Committee and Community Affairs Committee)

This bill reenacts an existing public records exemption relating to business damages. Section 73.0155, F.S., provides that any information submitted with an eminent domain business-damage offer, is exempt from the public records provisions of s. 119.07(1), F.S., and s. 24(a), Art. I, of the State Constitution. This exemption allows business owners to more freely provide condemning authorities with confidential business information in presuit negotiations of business damage claims, saving the condemning authorities in both litigation and court cost fees. The bill also reorganizes the exemption, makes clarifying changes, and removes superfluous language.

If approved by the Governor, these provisions take effect October 1, 2009.
Vote: Senate 39-0; House 112-0

CS/HB 7019 — Open Government Sunset Review/Government-Sponsored Recreation Programs

by Economic Development and Community Affairs Policy Council; Governmental Affairs Policy Committee; and Rep. Braynon (CS/SB 1824 by Governmental Oversight and Accountability Committee and Community Affairs Committee)

The bill reenacts a public records exemption for any information that identifies or helps to locate a child participating in a government-sponsored recreation program or camp, or information that identifies or helps to locate the parents or guardians of such a child. This information is exempt from the public record provisions of s. 119.07(1)(a), F.S., and s. 24(a), Art. I of the State Constitution. In addition to the reenactment, the bill clarifies certain definitions, and makes organizational and editorial changes, but does not expand the scope of the existing exemption. The reenactment of the existing exemption means that further review of the exemption is not required under the Open Government Sunset Review Act established in s. 119.15, F.S.

If approved by the Governor, these provisions take effect October 1, 2009.
Vote: Senate 39-0; House 112-0

HB 7157 — Real Property Used for Conservation Purposes

by Finance and Tax Council and Rep. Bogdanoff (CS/CS/CS/SB 2244 by Policy and Steering Committee on Ways and Means; Finance and Tax Committee; Environmental Preservation and Conservation Committee; and Senators Altman, Lynn, and Haridopolos)

This bill implements s. 3(f), Art. VII of the State Constitution, by creating s. 196.26, F.S., to provide for a full ad valorem property tax exemption for real property dedicated in perpetuity and used only for conservation purposes. The perpetual dedication for use as conservation land does not preclude the receipt of income from activities that are consistent with a management plan when the income is used to implement, maintain, and manage the management plan. A partial ad valorem exemption of 50 percent is provided for real property dedicated in perpetuity for conservation purposes but for which commercial uses are authorized.

For purposes of the exemption, "dedicated in perpetuity" means land that is encumbered by an irrevocable and perpetual conservation easement; and "allowed commercial uses" are those commercial uses allowed under the conservation easement encumbering the real property. The bill provides that "conservation purposes" means:

- Serving a conservation purpose defined in 26 U.S.C. s. 170(h)(4)(A)(i)-(iii) – the Internal Revenue Code – for land which serves as the basis of a qualified conservation contribution for federal tax purposes; or
- Retention of the substantial natural value of the land, including woodlands, wetlands, water courses, ponds, streams, and natural open spaces;
- Retention of such lands as suitable habitat for fish, plants, or wildlife; or
- Retention of the natural value of such lands for water quality enhancement or water recharge.

For land that is less than 40 contiguous acres in size, no exemption is authorized unless the Acquisition and Restoration Council, which approves Florida Forever projects, determines that such property fulfills a clearly delineated state conservation policy, yields a significant public benefit, and meets the other requirements of the act. Land approved by the Council as eligible for the exemption must have a management plan and a designated manager who is responsible for implementing the management plan. In making the determination, the Council must consider if the land:

- Contains a natural sinkhole or natural spring that serves a water recharge or production function;
- Contains a unique geological feature;
- Provides habitat for endangered or threatened species;
- Provides nursery habitat for marine and estuarine species;
- Provides protection or restoration of vulnerable coastal areas;
- Preserves natural shoreline habitat; or
- Provides retention of natural open space in otherwise densely built-up areas.

The conservation easements that serve as the basis for the ad valorem tax exemptions must include baseline documentation as to the natural values to be protected on the land and may include a management plan that details the management efforts to conserve the natural resources on the land.

Buildings, structures, and other improvements located on land receiving the ad valorem tax exemption and the land area immediately surrounding such buildings, structures, or improvements must be assessed separately as provided in ch. 193, F.S., except that structures and improvements auxiliary to the use of the land for conservation purposes are exempt to the same extent as the underlying land. Also, land qualifying for the exemption but for which authorized commercial uses include agriculture and silviculture must comply with the most recent best management practices if such practices are adopted by rule of the Department of Agriculture and Consumer Services.

The bill provides water management districts with jurisdiction over lands receiving the exemption with a third-party right of enforcement to enforce the terms of an applicable conservation easement that is not enforceable by a federal or state agency, a county, city, or a water management district when the easement holder is unable or unwilling to enforce the terms of the easement. The Acquisition and Restoration Council is directed to maintain a list of nonprofit entities that are qualified to enforce the provisions of a conservation easement.

Section 193.501, F.S., is amended to provide a process for eligible persons and organizations to file an application for assessment of lands subject to a conservation easement, environmentally endangered lands, or lands used for outdoor recreational or park purposes when land development rights have been conveyed or conservation restrictions have been covenanted. On or before March 1 of each year, the eligible person or organization must apply for assessment with the county property appraiser and the application must identify the property for which the assessment is claimed. The initial application must include a copy of the instrument which

conveys the development right or which establishes a covenant providing the conservation purposes for which the property may be used. A county may, at the request of the property appraiser and upon a majority vote of its governing body, waive the requirement for an annual application.

The person or entity that owns land receiving the conservation classified use must notify the property appraiser any time the land becomes ineligible for such assessment. If the property owner fails to notify the property appraiser of an improper assessment and the appraiser determines that for any year within the preceding 10 years the land was not eligible for a classified use assessment, the owner is liable for taxes avoided as a result of such failure, plus 15 percent interest per year, and a penalty of 50 percent of the taxes avoided. A notice of tax lien will be recorded against any property owned by the person or entity within the county, or against property owned by the person or entity in any other county of the state if the person or entity no longer owns property in the county where the classification was improperly received.

For purposes of receiving a tax exemption, once an original application has been granted, in each succeeding year, on or before February 1, the property appraiser must mail an exemption renewal application to the applicant on a form prescribed by the Department of Revenue. The applicant must certify on the form that the use of the property complies with the requirements and restrictions of the conservation easement, and the application must be returned to the property appraiser. Failure to return the application may result in loss of the exemption.

The property owner must notify the property appraiser any time the use of the property no longer complies with the requirements or restrictions of the conservation easement. If the property owner fails to so notify the property appraiser and the property appraiser determines that for any year within the preceding 10 years the owner was not entitled to receive the exemption, the property owner is subject to taxes exempted as a result of the failure to notify, plus 18 percent interest per year, and a penalty of 100 percent of the taxes exempted.

Section 704.06, F.S., is amended to provide that any owner of property encumbered by a conservation easement must abide by the requirements of ch. 712, F.S., the Florida Marketable Record Title Act, or any similar law or rule to preserve the conservation easement in perpetuity.

Beginning in FY 2010-2011, the Legislature must appropriate funds to fiscally constrained counties to offset reductions in ad valorem tax revenues which occur as a result of the implementation of the revisions to s. (3)(f) and (4)(b), Art. VII of the State Constitution, as approved by voters in the 2008 General Election. For purposes of the appropriation, fiscally constrained counties are those counties within a rural area of critical economic concern as designated by the Governor, or those counties for which the value of one mill will raise no more than $5 million in revenue based on the taxable value for school purposes certified to the Commissioner of Education by the Department of Revenue. The moneys appropriated must be distributed in January of each fiscal year among the fiscally constrained counties based on each county's proportion of the total ad valorem tax reduction resulting from the exemptions and use classifications applied for conservation purposes. An application process is provided.

Finally, the Department of Revenue is provided with emergency rulemaking authority and such emergency rules will remain in effect for 6 months after adoption. The emergency rules may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 117-0